
(2010) 10 P&H CK 0032
In the Punjab And Haryana At Chandigarh

B.T. Steels Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Income Tax Act, 1961 — Section 131, 260A, 69

Citation : (2010) 328 ITR 471 : (2011) 196 TAXMAN 362

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260-A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 30.1.2004 of the Income Tax Appellate Tribunal, Chandigarh in I.T.A. No. 16/Chandi/1999 for the assessment year 1995-96 proposing to raise following substantial questions of law:

- a) Whether the variation between the stocks hypothecated with the Bank and the stock shown in the books of accounts empowers the Assessing Officer to invoke the provisions of Section 69 of the Income Tax Act, 1961 and make additions of difference in stock as appeared in the books of accounts towards unexplained investment in the stocks?
- b) Whether the Assessing Authority was right in equating the hypothecation of stock with that of pledging of stock when the two situations are not identical and have separate meaning and thus erred in invoking the provisions of Section 69 of the Income Tax Act, 1961?
- c) Whether the order passed by the Assessing Officer as restored by the learned Appellate Tribunal is without jurisdiction and the stock statement furnished to the Bank in the case of hypothecation of stock falls within the meaning of investment or expenditure?

d) Whether the impugned action of the Assessing Authority of the learned Appellate Tribunal are not without jurisdiction and non application of mind?

2. The Assessing Officer made additions to the declared income of the assessee on the basis of stock available with it but not reflected in the books of account. Stock statement of hypothecated goods furnished to the bank was also at variance with the stock entered in the books of account. On appeal, the CIT(A) deleted the additions by observing that without verification from the bank, the stock statement furnished to the bank could not have been relied upon. On further appeal, the Tribunal set aside the order of CIT(A) and restored that of the Assessing Officer. The observations made by the Tribunal are as under:

13. The matter has been dealt with by the A.O. in reason No. (i) in the third para at page 4 of the assessment order. It has been mentioned therein, and the Id. CIT(A) does take note thereof, that the bank furnished the photo copies of the proforma for supervision/follow-up and monitoring of advances in respect of the visit report to the assessee in respect of stocks as on 31.12.1994. The bank stated that the records of the visits to the units of the assessee- company on other dates/occasions during the year 1994-95, were not available with them. In the proforma report as on 31.12.1994, it was confirmed by the Regional Officer of the bank that the assessee was having stock with it as per the statement given to the bank. The position of non-availability of records of the bank's visits to the units of the assessee-company on dates other than 31.12.1994, was reflected in the AO's report submitted to the Id. CIT(A). The Id. CIT (A) took this fact into consideration in arriving at the conclusion that no adverse inference could be drawn against the assessee. However, this does not appear to be a correct conclusion, since the fact giving rise to this conclusion was taken in isolation from other closely related facts, such as that as per the proforma report as on 31.12.1994, the Regional Officer of the bank confirmed the assessee to be having stocks as per the statements given to the bank. Also the signed statement given to the bank contained the self-same fact so far as regards the quantity of stock with the assessee. It has been nowhere denied that the bank officers/officials visited the assessee in respect of the stock with it as on 31.12.1994. The very concept of hypothecation of goods and visits require periodic check up by the bank. The fact that the bank admitted not having the records of visits to the assessee on other dates during the assessment year, could not undermine the value of the report of the visit conducted on 31.12.1994. In fact, this report supports the statement of the assessee, to which statement is attached a presumption of truth so far as regards the contents thereof. The bank authorities found that the stock shown in the stock statement was actually lying with the assessee. It was on these facts that the AO concluded that the assessee had a stock of consumable stores valuing Rs. 30,72,570/- as on 24.8.1994. The Id. CIT(A) has erringly ignored this attendant position. In view of these glaring facts, an adverse inference does call for to be drawn against the assessee and the assessment order cannot be given a summary go-by in this regard.

14. The other reason recorded by the Id. CIT(A) for arriving at the conclusion that he did is that the AO could not justify the rejection of the arguments of the assessee that had the stock statement been confronted to the Director Shri Bhupinder Singh, he would have admitted a huge inflation in the value of consumable stores as shown to the bank. The statement of Shri Bhupinder Singh, director of the assessee-company who looked after the dealings of the assessee with the banks, was recorded u/s 131 of the Act, on 19.1.1998. The assessment order, at page 6 thereof, states that vide office letter dated 22.12.1997, the assessee was again afforded an opportunity to explain the difference in stock and to state as to why an addition of Rs. 28,83,620/- be not made to its total income, representing the unaccounted investment in the stock as on 24.8.1994; that however, the assessee did not file any reply to this letter till date (29.1.1998 i.e. the date of passing the assessment order); and that, therefore, it was presumed that the assessee had nothing to say as regards the unaccounted investment in stocks as on 24.8.1994, more than what had been stated by it vide its letter dated 4.11.1997.

15. This factual position remains unrebutted, meaning thereby, that the argument raised by the assessee does not hold water. Otherwise also, the statement in question was made by a director of the assessee company and that too, a director looking specifically after the dealings of the assessee with the banks. So far as regards the stock statement given to the bank, that statement, as discussed above, in itself, is a signed statement, the contents whereof are duly verified by the deponent. The contents of that statement carry a presumption of truth. Rebuttable though, such presumption may be, it is not the case that such presumption stands rebutted. The stock statement, therefore, binds the assessee. Even if such statement were before Shri Bhupinder Singh witness and Shri Bhupinder Singh, as the assessee tries to make out, "...would have admitted a huge inflation in the value of consumable stores as shown to the bank...." it would have served no purpose. Obviously, therefore, there was no reason for the AO to reject the argument raised by the assessee. The Id. CIT(A) has observed that the AO could not bring on record anything to defend his case. To our mind, in view of the above discussion, there was nothing to be brought on record by the AO. The facts are self speaking.

16. Still further, though the Id. CIT(A) has observed that there being numerous decisions and the law being settled that the statements given to the bank for hypothecation of stocks are not good evidence unless it can be proved that stock was actually inspected, no such decision forms part of the impugned order. Moreover, it is not a case where the stock was not inspected. The stock being hypothecated with the bank, the bank has to inspect the stock and this was the procedure explained by the bank authorities when enquiries in this regard were made by the AO. Also, as discussed above, the report of the visit of the bank officials at the units of the assessee company on 31.12.1994 amply demonstrates the stock having been actually inspected.

16A. Moreover, the difference in the value of consumable stores as shown to the bank at Rs. 30,72,570/- and as shown in the books at Rs. 1,88,950/-, is Rs. 28,83,620/-, which comes to seven times. It is not the case of the assessee that the difference was only on account of value and not on account of quantity. No reconciliation of the same has been brought on record at any stage. In fact, the Ld. Counsel for the assessee conceded that this was a manipulation done by the assessee for the purpose of claiming higher loans. These material facts have wrongly been over looked by the Id. CIT(A).

3. We have heard Learned Counsel for the parties.

4. Learned Counsel for the assessee submits that mere difference in the value of stock furnished to the bank and shown in the books of account, was not sufficient to make addition. Reliance has been placed on judgment of Madras High Court in Commissioner of Income Tax Vs. N. Swamy, and judgment of this Court dated 12.10.2006 in CIT v. Chauhan Papers Pvt. Ltd. I.T.A. No. 358 of 2006.

5. We are unable to accept the submissions.

6. Whether difference in the statement of value of stock furnished to the bank and entries in the books of account, justifies addition, is a question of fact in each individual case. The object of assessment is to tax the real income of the assessee. The Assessing Officer has to determine the same on the basis of books of accounts and other material available. Burden of showing taxable income is on the revenue. The said burden can be discharged by drawing appropriate inference from the material on record. Reference may be made to judgment of the Hon''ble Supreme Court in Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay AIR 1961 SC 1316. In the present case, the Assessing Officer drew inference from statement furnished by the assessee to the bank and made addition on that basis. The Tribunal has held that the Assessing Officer not only had the bank statement before him but also the verification thereof by the Regional Officer that the stock was actually lying with the assessee. The assessee was given due opportunity to explain the difference, but it could not give any satisfactory explanation. In these circumstances, the CIT(A) was not justified in deleting the addition. The finding recorded by the Tribunal being a finding of fact does not call for any interference.

7. We may now refer to the judgments relied on behalf of the assessee. In N. Swamy, it was observed that statement of the assessee to a third party could not be acted upon unless there was material to corroborate the same. Burden of showing that the assessee had undisclosed income was on the revenue, which was not discharged by referring to the statement made to the third party.

8. The judgment relied upon is distinguishable on facts. There is no doubt about the proposition that burden of proving taxability of income is on the revenue, as held in Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad, , referred in the above judgment. For discharging the said burden, it is not necessary that some positive evidence must be led by the revenue. In a

given case, even by drawing inference from the material available, if explanation of the assessee is found to be unreliable, claim of the assessee can be rejected. In such situation, burden on the revenue can be held to have been discharged. In the present case, the assessee had given stock statement to the bank which was at variance with entries in books of accounts. No doubt, it was a statement to a third party, but neither the said statement was denied by the assessee nor any valid explanation furnished about the discrepancy. On the other hand, the verification from the bank showed that the assessee had excess stock, which justified addition to the income. In these facts, the judgment relied upon is distinguishable. In M/s Chauhan Papers Pvt. Ltd., on facts, it was found by the Tribunal that the statement furnished to the bank did not justify the addition. Therein, the assessment was made on the basis of gross profit rate and there was no discrepancy in figure of purchases or sales. This Court held that in absence of perversity of findings, no substantial question of law arises for consideration.

9. In the present case, the findings recorded by the Tribunal, reproduced above, have not been shown to be perverse and the said findings justify the additions made by the Assessing Officer.

10. For above reasons, the questions of law framed by the assessee have to be answered against it.

11. Accordingly, the appeal is dismissed.