(2013) 07 P&H CK 0781

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 131 of 2013

CIT		APPELLANT
	Vs	
Mansarover Impex (Regd.)		RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0781

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—The Revenue challenges order dt. 10-4-2012 passed by Tribunal, Chandigarh Bench A, Chandigarh on seven questions, styled as substantial questions of law, which read as follows:

(i) Whether the Tribunal was correct in law as well as facts and circumstances of the case in confirming the order of Commissioner (Appeals) thereby, ignoring that assessee firm has purchased the goods at higher price from its sister concern, which is claimed to be justified for being superior and different in quality, while the sale price has been put on parity with the so-called inferior quality goods purchased from other unrelated independent concern?

(ii) Whether Tribunal was correct in law as well as facts and circumstances of the case by confirming the order of Commissioner (Appeals) by wrongly appreciating the justification given by assessee firm for purchase from sister concern at higher price being superior in quality, cannot be relied, as no detail/description has been given on purchase bills and similarly assessee firm is also not giving any description of goods with regard to superior quality as the goods are being sold at one and the same price irrespective of quality of goods purchased?

(iii) Whether Tribunal was correct in law as well as facts and circumstances of the case in not appreciating that availability of superior and inferior grades of goods in stock are not verifiable as no detailed stock register is being maintained by the firm, the fact which has been pointed out by the statutory auditor in his tax audit report?

(iv) Whether Tribunal was correct in law as well as facts and circumstances of the case by confirming the order of Commissioner (Appeals) ignoring one important aspect that assessee firm has entered into transaction of purchase at higher price with sister concern to shift the profit of the taxable unit to the unit enjoying tax exemption u/s 80IB of Income Tax Act, 1961?

(v) Whether Tribunal was correct in law as well as facts and circumstances of the case by accepting the argument of assessee concern ignoring the basic fact that although the rate of tax may be same in both units but yet the transaction was not revenue neutral as transfer of profit from taxable to exempted unit was being effected by entering into the transaction of purchases at higher price with sister concern by ignoring the arms length principle and which leads to evasion of tax?

(vi) Whether Tribunal was correct in law as well as facts and circumstances of the case by confirming the order of Commissioner (Appeals), but ignored the vital facts that although no tax is to be paid by the assessee in his sister concern M/s. Mansarovar Forgings (P) Ltd., Ludhiana being exempted u/s 80IB of Income Tax Act, 1961, yet the sister concern of the instant assessee firm has resorted to methods which lead to evasion of tax as the income from other sources disclosed during the survey operation amounting to Rs. 1 crore has falsely been claimed exempted as business income u/s 80IB and which has been added back by the assessing officer during the scrutiny assessment and quantum as well as concealment penalty stand confirmed up to Tribunal. Therefore, it is clear that assessee group is in habit of resorting to practice which leads to evasion of tax due to exchequer and the instant methodology of profit shifting from taxable to exempted sister unit is example of one such fraudulent means with mala fide intention and shows utter disregard the assessee has when it comes to comply the provisions of fiscal laws?

(vii) Whether Tribunal was correct in law as well as facts and circumstances of the case by overlooking to the facts that only very small percentage of tax return is being picked up for scrutiny and knowing well this facts of the Government policy that most of the returns are being accepted by the IT Department without scrutiny the assessee group has tried to take chance by claiming false exemption and also tried to take favour of various lower appellate Courts by suppressing the facts of sister unit of assessee group being exempted thus the argument taken by the assessee that same rate of tax being applicable in both units is immaterial. This principle of law with regard to the mala fide intention of assessee has also been enumerated by Hon''ble Delhi High Court in Commissioner of Income Tax Vs. Zoom Communication Pvt. Ltd.,

2. We would, before dealing with the controversy, like to impress upon the Department that it must take care in framing "substantial questions of law", as it is the quality of a question and not their quantity that invites attention of a Court. We have come across various appeals where questions of fact, howsoever

small, are sought to be altered into a substantial question of law. In the present case the only question that may arise, has been divided into seven different questions.

3. Counsel for the appellant submits that as the assessee purchased finished goods from a sister concern at a much higher rate than the rate offered to other similarly situated units, the assessing officer was right in disallowing excess payment made to the sister concern. The findings recorded by Commissioner (Appeals), affirmed by the Tribunal, are contrary to the facts on record and have no foundation, whether in fact or in law and may, therefore, be set aside. The mere fact that the sister concern sold these items to other entities, at higher rates, is insufficient to allow the assessee to evade responsibility and to claim the amount paid to the sister concern, as valid business expense.

4. We have heard counsel for the appellant, perused the impugned orders and find no reason to hold that any question of law, much less a substantial question of law, arises for adjudication. A perusal of orders passed by the Tribunal and the Commissioner (Appeals) reveals that after due consideration of the entire gamut of the dispute, including the remand report forwarded by the AO, a clear finding has been recorded, from the chart filed by the assessee that the assessees sister concern has charged higher rates from the assessee as well as from all other entities, to which it supplied similar finished goods. In order to place our conclusion in its correct perspective, it would be appropriate to reproduce a relevant extract from the order passed by the Commissioner (Appeals):

5.... Perusal of this chart reveals that factually whatever has been stated by the assessing officer is in as much as the rates of purchase of the appellant from the sister concern are higher than the rates of the purchases from the outside parties. But at the same time the contention of the appellant is also correct that the sister concern has been making sales to outside parties at higher rate as compared to the sale rate offered by the sister concern to the appellant. The assessing officer in his remand report has failed to comment upon this important issue raised by the learned counsel for the appellant. Perusal of the record suggests that the appellant has made these very submissions even before the assessing officer during the course of assessment proceedings vide letter dt. 6-11-2008.

5.1 The learned counsel has taken me through the written submissions filed by him vide letter dt. 15-12-2009. He has highlighted that the GP rate of the appellant has gone upto 7.65 per cent during the year under appeal as compared to 6.69 per cent during the earlier year. He has also taken me through the comparative charts of purchase price of various items purchased from outside parties and also from the sister concern M/s. Mansarovar Forgings (P) Ltd., and also comparison with sales made by M/s. Mansarovar Forgings (P) Ltd., to other parties. He also took me through photocopies of the relevant bills which have been filed along with the written submissions. He explained in detail that the variation in prices is consequential upon the difference arising from the thickness, finishing, quality of nickel polishing, hardening, tempering, barrelling, grinding, etc. He also highlighted the fact that the goods purchased from its sister concern were of a superior quality and heavier weight. He specifically draw my attention to the chart showing comparative sale rates which is being reproduced below:

5.2 Keeping in view the facts and above stated position of the case, I am of the view that the submissions made by the appellants counsel are fully justified. The rate of a product depends upon the quality, the weight, the fineness etc. Further, M/s. Mansarovar Forgings (P) Ltd., made sales to outside parties at higher rate than the appellant firm. Moreover, the said sister concern is also paying tax at the same rate as that paid by the appellant, there could have been no incentive for the sister concern to supply the goods at a higher rate than the market rate because it would go to increase its profits. I have also gone through the judgment of the Hon''ble Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Siya Ram Garg (Huf), on the same identical situation. The GP ratio of the appellant is also higher than in earlier years. The assessing officer has not been able to pin point any defect in the stand put forward by the appellant. I am, thus, inclined to agree with submissions of the appellants counsel and direct to delete the disallowance of Rs. 45,88,653.

5. The order passed by the Commissioner (Appeals) has been affirmed by the Tribunal after taking into consideration the aforementioned facts. The finding recorded in the above order and order passed by the Tribunal do not suffer from any error of jurisdiction or law so as to raise a substantial question of law, much less the questions framed by the Revenue. In view of what has been recorded hereinabove, the appeal is dismissed.