
(2012) 09 DEL CK 0240

In the Delhi High Court

Case No : ITA 281, 285, 364 and 365 of 2012

CIT

APPELLANT

Vs

PC Chemicals

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Income Tax Act, 1961 — Section 132, 148, 23, 23(3), 69A

Citation : (2013) 359 ITR 129 : (2012) 211 TAXMAN 166

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Suruchi Aggarwal, for the Appellant; S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The Revenue is aggrieved in these appeals by orders of the Income Tax Appellate Tribunal ("Tribunal", for short) and

they are disposed of by this common judgment since the subject matter of these appeals is common. The question of law sought to be urged is

whether the Tribunal fell into error in not remanding the matter to the Assessing Officer for providing opportunity to the assessee to furnish relevant

and material documents instead of deleting the addition. Briefly the facts are that pursuant to the search and seizure u/s 132 of the Income Tax Act,

1961 ("Act", for short) on 15.12.2004 in the premises of one Brij Mohan Gupta, certain documents and the materials were found and seized. On

the basis of the statements of his son and accountant, the Assessing Officer reopened the assessment of the assessee herein. During the course of

the reassessment proceedings, the Assessing Officer placed reliance upon the statement of Brij Mohan Gupta and certain other materials which

according to him were relevant and pertain to the assessee. On that basis the

Assessing Officer framed the assessments. The assessee claimed to be aggrieved and carried the matter in appeal before the CIT (Appeals) who by his order set-aside the assessments even while upholding the notice u/s 148 of the Act. The Revenue as well as the assessee went into cross appeals to the Tribunal. The Revenue's appeal was rejected by the Tribunal which affirmed the observations of CIT (Appeals) with regard to denial of opportunity. As far as the assessee's appeal was concerned, it was dismissed as not pressed. The Tribunal held as follows: -

11. Having heard the parties and having perused the material on record, we do not find any force in the contentions of the department. Undeniably, there is no material brought on record by the AO to support the additions, which were based on mere conjectures and surmises, without any evidence calling for such additions. Further, the very statement forming the basis of the additions, i.e., the statement of Shri B. M. Gupta, was never provided to the assessee. The assessee was thus never confronted with the material on which the additions were based. The action of the AO was, therefore, hit by the principles of natural justice. The assessee was condemned unheard.

2. The Revenue relies upon the recent decision of the Supreme Court reported as ITO Vs. M. Pirai Choodi, . In this case the Court had disapproved the approach of the concerned High Court which set-aside an order of reassessment on the ground of the assessee not having been given opportunity to cross-examine the concerned witness. The relevant observations of the Supreme Court in this regard are as follows: -

.....We are of the view that the High Court should not have set aside the entire assessment order. At the highest, the High Court should have directed the Assessing Officer to grant an opportunity to the assessee to cross-examine the concerned witness. Be that as it may, we are of the view that, even on this particular aspect, the assessee could have gone in appeal to the Commissioner of income tax (Appeals). The assessee has failed to avail of the statutory remedy. In the circumstances, we are of the view that the High Court should not have quashed the assessment proceedings vide the impugned order.

3. In the present case too this Court is of the view that once the Assessing Officer was of the opinion that the relevant materials and documents

necessitated a conclusion and he even proceeded to state (as he did in the assessment order) that such materials were shown or disclosed to the

assessee's representative - it was incumbent upon him to discuss and advert to those facts. The counsel for the assessee disputed that in fact such

material was ever disclosed. We do not wish to enter into this controversy except to state that since the Assessing Officer was of the distinctive

opinion that the material obtained during the search of B. N. Gupta and his associates' premises yielded some relevant materials, he ought to have

disclosed them to the assessee. But that did not happen. In this context this Court recollects the Constitution Bench judgment in 2013 (26) ITR

(Trib) 775 wherein the Court had then very presciently observed as follows: -

As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the income tax Officer is not

fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of

law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of Section 23 of the Act, the

income tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There

must be something more than bare suspicion to support the assessment u/s 23(3). The rule of law on this subject has, in our opinion, been fairly

and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. Commissioner of income tax, Punjab.

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose

to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company

to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case.

The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the income tax Officer and the

Tribunal, seems to be based on surmises, suspicions and conjectures.

4. The present case is no different. The assessment order is bereft of any discussion as to what were the materials adverse to the assessee and

what was the inference that could be drawn in the light of those materials and

documents. Consequently, even while we do not fault the Tribunal's reasoning about the denial of opportunity to the assessee, the outcome has to be slightly different especially in the light of the decision of the Supreme Court in M. Pirai Choodi (supra). Resultantly these matters have to be remitted for fresh consideration by the Assessing Officer who shall proceed to make available the necessary documents, adverse to the assessee, and proceed in accordance with Section 69A of the Income Tax Act, 1961. The order so made shall appropriately discuss the materials as well as the assessee's explanation in that regard. The Revenue's appeals are allowed in the above terms.