
(2013) 08 DEL CK 0067

In the Delhi High Court

Case No : Income Tax Appeal No. 1545 of 2010

CIT

APPELLANT

Vs

Pearl Intercontinental

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Income Tax Act, 1961 — Section 260A, 69C, 80HHC

Citation : (2013) 7 AD 104

Hon'ble Judges : Sanjiv Khanna, J; Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Abhishek Maratha, for the Appellant;

Judgement

Sanjiv Khanna, J.—This appeal by the Revenue u/s 260A of the Income Tax Act, 1961 (Act, for short) emanates from order dated 13th August, 2009 passed by the Income Tax Appellate Tribunal (tribunal, for short) in the case of Pearl Intercontinental Limited and relates to Assessment Year 1994-95. By order dated 16th August, 2011, the following two questions of law were framed:-

1. Whether the Tribunal was justified in law deleting the addition of Rs. 82,73,328/- made by the Assessing Officer by treating the exports to M/s. Taj AL Khaleej General Trading Company, Dubai as bogus and consequentially treating the income to the assessable as "income from other sources"?
2. Whether on the facts and in the circumstances of the present case, Tribunal was correct in law in deleting the addition of Rs. 59.87 lacs made by the Assessing Officer u/s. 69C of the Act on account of unexplained expenditure, incurred by assessee in respect of manufacturing activity carried out by M/s. MS Shoes East Ltd. for and on behalf of the assessee.
2. The first question is factual and relates to whether or not the assessee had made exports to Taj AL Khaleej General Trading Company, Dubai and whether the sale proceeds amounting to Rs. 82,73,328/- were genuine or bogus.

3. The Assessing Officer in the assessment order dated 31st March, 2000 has stated that the Sheikh to whom alleged supplies were made was not produced by the respondent-assessee for cross-examination to check authenticity and veracity of the Sheikh's affidavit dated 13th January, 1997 and contents of letter dated 31st March, 1999 received from the office of Director General of Foreign Trade. He held that the sales made to Taj AL Khaleej General Trading Company were not genuine. We note that similar additions on sales to Taj AL Khaleej General Trading Company, Dubai were made for the earlier Assessment Years 1993-94, but were deleted by the tribunal in the case of the assessee and in the case of sister concerns of the assessee. Revenue had preferred appeals in the said cases before the High Court. The High Court dismissed these appeals by a detailed order dated 28th September, 2012 holding that the factual findings recorded by the tribunal were not perverse. The decision of the High Court dated 28th September, 2012 is in ITA No. 999/2006 in the case of M/s. M.S. International Limited, ITA No. 210/2007 in the case of M/s. M.S. Shoes East Limited and ITA No. 575/2007 in the case of M/s. Pearl Intercontinental Limited.

4. This decision is applicable to the present year also. The High Court while disposing of the appeal has referred to various documentary evidence, which were filed before the Assessing Officer, which prove that in fact transaction had taken place and was genuine. These included original bank certificate from UAE showing bills received by the said bank drawn on the importer and the fact that the respondent-assessee was paid, export orders were confirmed by the importer and the original statement showing credit limit of the importer issued by Export Credit Guarantee Corporation of India etc. The Sheikh had also explained the reason why he had earlier made a different statement. In view of the aforesaid position, we answer the first question in favour of the respondent-assessee and against the appellant-Revenue holding that the findings recorded by the tribunal do not require any interference on the ground that they are perverse.

5. On the second question, we find that the assessment order is cryptic. The findings recorded therein read as under:-

In the original assessment the assessee claimed to have manufactured soles for its sister concern. In the year under consideration also, the assessee has claimed to have manufactured 29,93,999 pairs of PVC soles. In the assessment order for assessment year 1993-94, the manufacturing cost of PVC soles have been worked out at Rs. 2/- per pair. Taking this into consideration manufacturing cost for this year is Rs. 59,87,998/-. Since the assessee has failed to furnish any evidence in support of its contention that it has utilised the machinery of its sister concern i.e. MS Shoes East Ltd. also as it is not supported by evidence its contention is not acceptable. But it is also a fact that the company have incurred manufacturing expenses which was not accounted in its books. Therefore, an addition of Rs. 59,87,998/- is being made to the income of the assessee.

6. Commissioner of Income Tax (Appeals) did not agree with the findings recorded by the Assessing Officer and deleted the addition observing that similar

addition had been made in the earlier year, i.e., Assessment Year 1993-94 but was deleted by the tribunal recording as under:-

The next common issue for consideration is with regard to the addition on account of unexplained expenditure in the hand of PIL and a corresponding addition of unaccounted receipts in the hands of MSSE.

On this issue we find that there is no dispute with regard to the use of manufacturing facilities by M/s. PIL. The MD of MSSE has filed an affidavit in the proceedings whereby he has affirmed that they 1-Java allowed M/s. PIL to use the manufacturing facilities and that they did not charge any fee from them as both of them were companies belonging to the same group. This affidavit has not been adverted to by the revenue authorities. The Assessing Officer has however made a passing reference to the affidavit without making any efforts to disprove the contents of this affidavit. In the light of this affidavit, we are of the view that the first requirement of the provisions of S. 69C viz., that the assessee should have incurred an expenditure is not prima facie satisfied. In the case of MSSE, there is no evidence to show that they received Rs. 34 lacs from PIL. On the other hand we have on affidavit of the MD affirming that MSSE did not receive any money from PIL for allowing it to use its manufacturing facilities. The addition in the hands of MSSE is therefore not called for. Accordingly ground no. 2 in the case of MSSE and ground no. 7 in the case of PIL are allowed.

7. By the impugned order the tribunal had affirmed the findings recorded by the CIT(Appeals).

8. The findings recorded by the tribunal relating to the addition made by the Assessing Officer u/s 69C of the Act are factual. We notice that the Assessing Officer did not elaborate and give detailed reasons or grounds making the said addition. Order of the Assessing Officer is brief, devoid of details and indicates the halfhearted attempt to make the addition. The case and the stand of the respondent-assessee was that they had used machinery of their sister concern and had not paid any money for the same. No further attempt was made by the Assessing Officer to verify the facts whether the sister concern had the requisite machinery or not and whether the electricity bills of the said sister concern justify the stand of the respondent-assessee. Similar disallowance was made in the Assessment Year 1993-94 by the Assessing Officer but was deleted by the tribunal. Revenue had preferred an appeal before the High Court being ITA No. 575/2007. The said appeal was admitted to hearing on 3rd October, 2008, but no specific question of law for the similar addition made and deleted u/s 69C was framed. The question of law as framed related to deduction u/s 80HHC in respect of alleged export of goods worth Rs. 4,36,38,057/-. We do not think that the decision of the tribunal on the second question can be categorised and treated as perverse. Accordingly, we answer the second question in favour of the respondent-assessee and against the appellant-Revenue.

The appeal is disposed of. No costs.