
(2010) 07 P&H CK 0270

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 410 of 1995

CIT

APPELLANT

Vs

Punjab Goncast Steels Ltd.

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 80I, 80I(8)

Citation : (2010) 07 P&H CK 0270

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—The income tax Appellate Tribunal, Chandigarh Bench (in short "the Tribunal") has referred the following question of law on a direction issued by this court in I. T. C. No. 146 of 1994 vide order dated 12-5-1995, for opinion of this court u/s 256(1) of the income tax Act, 1961 (hereinafter referred to as "the Act") for the assessment yeay 1989-90 :

Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is justified in law in holding that the provisions of section 80-I(8) are not applicable in this case ?

2. The assessee is a public limited company engaged in the business of" manufacture and sale of iron and steel products and, claimed deduction u/s 80-I of the Act. The Assessing Officer held that section 80-I(8) of the Act will apply and the value of transfer of goods inter se different units taken by the assessee will not be taken to be as declared by the assessee but the average price of the month in which the transfer took place. Accordingly, the profit was taken at a higher figure and addition was made to the declared income. On appeal, the Commissioner of income tax (Appeals) held that the provisions of section 80-I(8) of the Act could not be invoked as the sale price declared by the assessee was as per the market value. The Tribunal upheld the said finding in the following terms :

In the present case, the Assessing Officer has clearly mentioned in the body of

the assessment order that the cost of the raw material and consumable stores purchased by SMS-I was transferred and debited to the profits and loss account of various units. As regards the sale value, the Assessing Officer has clearly mentioned that the units had realised the maximum realisable price from the head office. Both these findings are findings of fact. Against the background, it cannot now be said that the goods were transferred from various units to the industrial undertaking and vice versa at less than the market price. In fact, the onus is on the Revenue to record a finding and to prove that the transfer of goods is at less than the market price. Instead of recording that finding, the Assessing Officer gives a certificate that the goods in the instant case had been transferred at the maximum realisable price. In that view of the matter, it is clear that the provisions of section 80-I(8) are not applicable in the instant case and hence the proviso to section 80-I(8) can also not be invoked. It is significant to note that the learned Commissioner of income tax (Appeals) has also held though impliedly that the provisions of section 80-I(8) are not applicable to the facts of the instant case. That finding has also not been challenged by the Revenue. We, therefore, hold that the entire exercise of re-allocation of various expenses on the facts and in the circumstances of the case was unwarranted.

3. No question has been claimed on the correctness of the finding that 3 transfer inter se different units was on the market price. On this finding section 80-I(8) cannot apply. No exception can thus, be taken to the view taken by the Tribunal. Accordingly, the question has to be answered against the Revenue. Ordered accordingly.