
(2015) 04 DEL CK 0324

In the Delhi High Court

Case No : ITA 229 of 2015

Commissioner

APPELLANT

Vs

Diamond Proteins P. Ltd.

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Income Tax Act, 1961 — Section 115JB, 143(1), 148, 260A, 69C

Citation : (2015) 04 DEL CK 0324

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Suruchii Aggarwal, Senior Standing Counsel, for the Appellant

Judgement

1. The question sought to be urged in this appeal under Section 260A of the Income Tax Act, 1961 (hereafter referred to as "the Act"), directed against the order of the Income Tax Appellate Tribunal (ITAT) dated 24.09.2014 in ITA 643/Del/2012 and CO No. 97/Del/2013 is whether the direction to cancel the addition of Rs. 55,02,380/- made by the Assessing Officer (AO) was valid in the circumstances of the case.

2. The assessee - which engages itself in the business of trading in books and machines had filed a NIL return for A.Y. 2003-04 after adjusting carried forward unabsorbed depreciation and declared book profit of Rs. 94,644/- under Section 115JB of the Act. This was processed under Section 143(1). The AO sought to reopen the assessment on 23.10.2009. The assessee reiterated the return filed earlier in response to notice under Section 148. The AO completed the assessment and directed addition of Rs. 55,27,737/-. This was largely on account of money from unexplained investments; the amount was brought to tax under Section 69C. The AO also noticed Rs. 10,63,000/- which was in the form of small denomination drafts of Rs. 19,500/- received as share application money to be invested with one M/s. K.C. Fibres Limited. The assessee's appeal was accepted in part in that the sum of Rs. 55,02,380/- directed to be added by the AO was cancelled.

3. The Revenue's appeal was rejected by the ITAT which also, in addition, accepted the assessee's cross-objections as to the sum of Rs. 10,63,000/-.

4. It is argued that the reasons which persuaded the ITAT to direct deletion of Rs. 55,02,380/- were in the circumstances, erroneous. Learned counsel submitted that these amounts were brought to tax after appropriate investigation by the AO. It was also urged that even the CIT(A) had remitted the matter for re-examination by the AO so far as the sum of Rs. 10,63,000/- which comprised of small denomination drafts of Rs. 19,500/- was concerned. The findings of the CIT(A) with regard to the sum of Rs. 55,02,380/- were noticed by the ITAT. The records would reveal that the assessee had received that sum - firstly a sum of Rs. 22,50,000/- on account of sale of its factory; Rs. 7,50,000/- as loan from M/s. Swarnim Credit and Holding Ltd.; Rs. 25,02,380/- was on account of sale of books etc. Of these amounts, the assessee advanced Rs. 16 lakhs to M/s. Swarnim Investment and Finance Pvt. Ltd. and Rs. 39 lakhs as share application money in M/s. K.C. Fibres Ltd. The cheques towards consideration of Rs. 22,50,000/- were on account of sale of factory. The CIT(A) noticed that at least as far as these amounts were concerned, there could have been no allegation of small denomination demand drafts of Rs. 19,500/-. The CIT(A) also took note of the conveyance deed and the bank statements in respect of these transactions which were duly submitted to the AO. The latter significantly did not make any adverse note or argument in that regard. Further, Rs. 7,50,000/- from M/s. Swarnim Credit and Holding Ltd. by way of single cheque was duly supported by confirmation and ledger extract of that party. The CIT(A) took the view that these could not be treated as unexplained income or cash. The CIT(A) then went into the balance amount of Rs. 25,02,380/- on account of sales and examined the ledger account as well as the cheques received. The order of the CIT(A) has recorded the details of all the cheques received and thus, in the course of these, it was observed that the total sale proceeds to the extent of Rs. 10,63,000/- only was received by way of small denomination demand drafts.

5. Having regard to the factual nature of the scrutiny undertaken by the CIT(A) and subsequently by the ITAT, this Court is of the opinion that since the substantial amounts to the extent of Rs. 45 lakhs were explained by the assessee, the view of the ITAT reversing the remission to the extent of Rs. 10,63,000/- cannot, in the circumstances of the case, be deemed to be unexplained. In any event, even if this Court were to entertain the said matter, so far as the small denomination demand drafts of Rs. 19,500/- are concerned, the total amount on that account itself would be only Rs. 10,63,000/- - a sum clearly below the tax-effect threshold which entitles the Revenue to approach this Court under Section 260A. No question of law is made out. The appeal is accordingly dismissed.