(2017) 01 AHC CK 0133

In the Allahabad High Court

Case No : Income Tax Appeal Nos. 100 of 2003 and 310 of 2007

Commissioner Income Tax APPELLANT

Vs

M/s Micromatic Grinding Technologies RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (2017) 392 ITR 268

Hon'ble Judges : Bharati Sapru and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : S. Chopra, B. Agarwal, Advocate, for the Appellant in Income Tax Appeal No. 100 of 2003; P.K. Jain, Dhruva Agarwal and Nikhil Agarwal, Advocates, for the Respondent in Income Tax Appeal No. 100 of 2003; Dhananjay Awasthi, Advocate, for the Appellant in Income Tax Appeal No. 310 of 2007; Nikhil Agrawal, Advocate, for the Respondent in Income Tax Appeal No. 310 of 2007

Final Decision : Dismissed

Judgement

Heard Sri Ashish Agrawal, learned counsel for the department and Sri Nikhil Agrawal, learned counsel for the assessee.

2. As the controversy involved in these appeals is identical, the same is being decided by a common judgment and order treating the Income Tax Appeal No. 100 of 2003 as the leading case.

3. This is department''s appeal filed under Section 260-A of the Income Tax Act, 1961 against an order dated 17.6.2002 of the tribunal for the assessment year, 1998-99.

4. The question of law sought to be answered in this appeal is hereunder:

"Whether the Hon''ble Tribunal was justified in cancelling the order under Section 263 passed on 18.12.2001 in spite of the fact that the issue of paying of commission to the sales agency was not examined earlier by the Assessing

Officer?"

5. The facts of the case are that the assessment of the company was completed under Section 143 (3) vide order dated 29.12.2000. The returned income of Rs. 2,47,23,220/- was accepted. As per Profit and Loss A/c the assessee has claimed various expenses including deduction on account of payment of commission of Rs. 72,92,319/- to its sister concern M/s. Micro Matic Machines and Tools (P) Ltd. besides expenditure of Rs. 19.14 lacs was claimed as exhibition expenses Rs. 26,14,832/- as travelling and conveyance and Rs. 10,27,446/- as advertisement and publicity expenses. The A.O. called for the details of such expenses and has allowed the same without making proper verification and examining the allowability of the same.

6. However, the department being aggrieved by the order passed by the A.O. went to an appeal before the CIT, who issued a show cause notice dated 16.10.2001 under Section 263 of the Income Tax Act,1961 whereby it came to conclusion that the commission of Rs. 72,92,319/- shown to has been paid to the sister concern of the assessee has been allowed by the A.O. without proper verification and also took a view that the recipients, who was sister concern had not rendered any services for the benefit of the company and by getting this allowance the assessee had, in fact, evaded the payment of proper tax.

7. Aggrieved by the order passed by the CIT the assessee went to appeal. The tribunal has examined the matter threadbare specially with reference to the amounts paid towards the commission. The tribunal records in its order that:

"(6) The AR of the assessee took us through the entire records of assessment, as well as the submissions made before CIT, Ghaziabad. The fact that the necessary enquiry was made by the AO who himself was the Addl. Commissioner of Income-tax is beyond dispute. The AR of the assessee has made a dates chart of the proceedings before the AO which clearly shows that the assessment was made after detailed enquiry and investigation, not only with regard to several heads of expenditure but also with regard to other aspects of the expenditure. Detailed questionnaires were issued vide order sheet entries through which specific queries were raised. After issue of notice u/s 142 records of the assessee were examined which took place on many dates running for several hours at a stretch. We are, therefore, of the opinion that the basic premises of CIT, Ghaziabad, that owing to the fact that returned income was accepted and, therefore, no enquiries were made is factually incorrect.

(7) The second premises of the notice was that the sales during the year had gone down and the expense had gone up. This again is factually incorrect. The AR of the assessee took us through details of turn over since 1981 upto the year 2001, it is apparent from the same that in the year under consideration, the sales of the assessee were the highest ever achieved by it. In this year sales were of the order of Rs. 16.58 crores, whereas the sales in the previous year were Rs. 15.04 crores and in the subsequent year Rs. 10.15 crores. Therefore,

the second premise of CIT, Ghaziabad of initiating proceedings under section 263 is also factually incorrect.

(8) The third issue raised by CIT, Ghaziabad in his notice is that the sole selling agent of the company has made a loss whereas the assessee has made a profit and, therefore, the payment of selling commission is only to reduce the tax liability. This again is an inherent fallacy. The selling agent as the assessee have been taxpayer for the last twenty years and every year both the companies have paid tax, both are closely held companies and, therefore, the rate of tax is also the same. In this particular year the sole selling agent has made a loss due to the fact that it had incurred an unusually large expenditure on the Indian Machine Tools Trade Fair held in Delhi (which is held once in three years) and it also participated in a Trade Fair in Germany which is also not an annual feature. These two events had led it to spend more than 25 lakhs in this year vis-a-vis the amount spent in the previous year. In addition the selling agent is a tax payer and is assessed in Special Range 27, Delhi and in the year under review, assessment had been done by JCIT, New Delhi and disallowances etc. had been made in respect of foreign travelling and exhibition expenses against which the sole selling agent had filed appeals. These are separate proceedings and no adverse inference should have been drawn in respect thereof, especially when the selling agent is a large tax payer for the last twenty years and had paid tax every year before and every year after the year under consideration. Therefore, the third assumption of fact by CIT, Ghaziabad is also wrong. We find that all the three assumption on the basis of which CIT, Ghaziabad initiated proceedings u/s 263 are factually incorrect and we are of the opinion that the order u/s 263 dated 18.12.2001 needs to be cancelled."

8. While examining the matter the tribunal also took a note of the fact that there was an agency agreement between the two parties, which showed the various responsibilities of the agent which were noted by the Tribunal as hereunder:

"(13) The AR also took us through the selling agency agreement which showed the various responsibilities of agent which are:

(i) To convince the prospective customers of the utility of the machine manufactured by the company.

(ii) To collect the advances/deposits against the orders as per agreed terms.

(iii) To provide technical assistance to the customers for the installation and commissioning of the machine.

(iv) To collect the net realisation from the customers against the supplies made and to deliver the same to the principal.

(v) To provide after sales services to the customers during the warranty period of the machine.

(vi) To attend to the complaints of customers after warranty period against the machine supplied to them.

(vii) During break down after sales services is to be provided promptly so as to create a sense of confidence and dependability in the market."

9. After examining all these conditions the tribunal came to conclusion that assessee was in no way in control of the selling agent. Further the tribunal also examined the documents relating to the approval granted by the Government of India, Ministry of Law, Justice & Company Affairs issued under Section 294 AA of the Companies Act, as this approval was required to be taken by the companies, which had to be taken paid up capital of more than Rs. 50 lakhs. This too reflected the genuineness of the commission which was granted by the assessee, who is selling agent. It is on the basis of above material that the tribunal has come to conclusion that the learned CIT had made an error in revising the order under Section 263 of the Income Tax Act, as the material on record did not reflect in any manner that any activity of the assessee had resulted in causing prejudice to the revenue, nor were there any circumstances to contemplate the taking of any action under Section 263 of the Income Tax Act by the department. The tribunal, therefore, came to conclusion that the commission paid to the selling agent was based on sound and genuine business consideration and therefore, the allowances have rightly been allowed by the A.O. The disallowance of Rs. 72,92,319/- made by the CIT was therefore, deleted by the Tribunal.

10. Having heard the counsel for the both the sides and after examining the law on this issue, we are of the opinion that in the facts and circumstances of this case it is abundantly clear that the provisions of Section 263 of the Income Tax Act were not attracted in the present case for reasons that no income had escaped taxation and no prejudice or loss had been caused to the revenue.

11. The question of law is, accordingly, answered in favour of assessee and against the department.

12. The appeal is, accordingly, dismissed.

