

(2010) 02 DEL CK 0092

In the Delhi High Court

Case No : Income Tax Appeal No. 1 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Forech India Ltd.

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Income Tax Act, 1961 — Section 260A

Citation : (2010) 231 CTR 267 : (2010) 329 ITR 336

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; M.S. Syali and Mahua Kalra, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The present appeal filed by the Revenue is in respect of the asst. yr. 2000-01 and arises out of the Tribunal's order dt. 28th April, 2006 in ITA No. 4562/Del/2003.

2. The Revenue was also in appeal before the Tribunal being aggrieved by the order passed by the CIT(A), who had deleted the addition of Rs. 1,15,44,926, which the AO had made on account of undisclosed stock found with the assessee during the course of a survey.

3. We have heard counsel for the parties and have also examined the orders passed by the AO, the CIT(A) and the Tribunal.

4. We note that the CIT(A) observed that the crux of the matter pertains to the genuineness of purchase of Rs 1,46,00,078 made by the respondent-assessee prior to the date of survey but which were not entered in the purchase account in the financial books. The CIT(A) also noted that out of this, purchases to the extent of Rs. 1,24,00,747 were represented by six bills from M/s. Sanjay International and M/s. Maxwell. The case of the assessee was that even though the entries of such material had been made in the stock register and such stock

was physically found in the factory premises of the assessee and formed part of the inventory taken in the survey, the purchase value of these items had not been debited in the purchase account as the purchase bills had not been handed over to the accountant for making entries thereof in the books of accounts. It was observed by the CIT(A) that, as against this, the AO felt that the aforesaid purchase bills had been arranged after the survey and were, therefore, not genuine.

5. The CIT(A) examined the genuineness of the purchase bills and examined the issue as to whether the purchase bills had been arranged after the survey or that the materials had, in fact, been purchased by the assessee prior to the survey. The CIT(A), on examining the facts in detail, found as under:

I find from the facts placed before me that these were import purchases, on which customs duty has been paid before the date of survey or the same have been imported against the duty exemption scheme of the Government of India. The payment of duty is verifiable from its bank account for the period prior to the date of survey. Also the entries of such imports are found to be duly made in the duty exemption export certificate book, which is authenticated by the customs and excise authorities prior to the date of survey. The appellant has also submitted the copies of bills of entry issued by customs authorities in respect of these goods, which show that the dates of import of these goods are prior to the date of survey and that these goods had been actually learned (sic) by customs prior to the date of survey. Further, the export obligation discharged certificate was also issued by the Jt. Director General, Foreign Trade, which shows that the goods had been purchased by the appellant before the date of survey and had also been utilized for manufacturing purposes to discharge the export obligations. It is also noticed that gate passes were issued in the name of the company by Container Corporation of India while releasing the goods from the ICD, Tuglakabad after levy of certain charges for storage of container in which imports were made. The appellant has shown that the dates on these, gate passes are all prior to the date of survey. The facts also show that one of these import purchase bills is from M/s. Bayer, GMBH, in respect of which customs clearance has been made and the documentary evidences produced before and the AO show that this purchase was made prior to the date of survey. The claim of the appellant is found verifiable from the RG-23, Part-II entries in excise registers, on which the Modvat credit has also been allowed by the excise authorities prior to the date of survey.

I find that the fact that purchases had actually been made and the goods had actually been received by the appellant prior to the date of survey has also been verified independently by the AO during the course of assessment proceedings from the suppliers, as well as from the clearing agents who have confirmed that they had cleared the goods and transported and delivered the same to the factory of the appellant. The entries of purchase of these goods prior to the date of survey are also found recorded in the stock register of the appellant, which

fact has been duly verified by the AO himself at the time of assessment proceedings and it is not the case of the AO that there is any discrepancy in the maintenance of the same. The fact that the books of account have been maintained on the computer is not disputed by the AO. The facts show that it was only the trial balance which was identified by the survey team.

6. The Tribunal was of the view that the order passed by the CIT(A) could not be faulted and that the AO's approach was not correct. The Tribunal, inter alia, held as under:

17. The controversy as noted by the learned CIT(A) is whether claim of the assessee that purchases to the tune of Rs. 1,46,00,078 made prior to the date of survey and claimed to be not entered in the financial books was genuine or not. Out of above, purchases to the extent of Rs. 1,24,00,747 were made from two parties, namely, M/s. Sanjay International and M/s. Maxwell through 6 bills noted by the learned AO at p. 3 of the impugned order. The learned AO refused to believe the claim of the assessee. We have already recorded reasons given by the AO in the assessment order for not accepting above claim. The objections raised were met by the assessee before the learned CIT(A) and his attention was drawn to various items which showed that purchases made by the assessee were genuine though not accounted for in the financial books. The learned CIT(A) for the reasons recorded by him and reproduced above has held that on preponderance of probability the case of the assessee has to be accepted as genuine. The addition has been accordingly deleted.

18. Comparative study of two orders, and on facts, we are inclined to accept and agree with the order passed by the learned CIT(A). Although complete detail of what happened at the time of survey was not produced before us, it is agreed between the parties that survey party on 20th Jan., 2000 found discrepancy between stock actually present in the factory premises and stock worked out as per books of account of the assessee. The discrepancy pointed out in stock was fully reconciled on behalf of the assessee although the plea was taken that some of the purchases including purchases made at high sea were not entered in financial books though goods were actually received at the factory premises. It is not in dispute that books of accounts of the assessee at the time of survey were incomplete. The assessee later completed books of accounts after incorporating all the purchases and showed that position of stock at the premises and in the books of accounts stood reconciled. This was conveyed by the assessee to the Dy. CIT being certified it for vide letter dt. 7th Feb., 2000. The same position was maintained by the assessee during the course of assessment proceedings. The assessee had also relied upon the fact that completed books of accounts were audited and supported by report of an auditor.

7. In our view, the findings returned by the CIT(A) and the Tribunal with regard to the genuineness of the purchases prior to the survey are pure findings of fact. We would also like to note the decision of this Court in the case of Commissioner of Income Tax Vs. NHK Japan Broadcasting Corporation, wherein the scope of

interference with findings of fact in an appeal u/s 260A has been pithily explained. In the said decision it was observed as under:

12. The effect of a concurrent finding has been dealt with in *Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs.*, . The Supreme Court noted two situations where findings of fact can be interfered with (though u/s 100 of the CPC which is admittedly in part materia with Section 260A of the Act). The first situation is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion, while the second situation in which interference is permissible is where a finding has been arrived at by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. Neither of these two situations arises in the present case. Therefore, on the basis of the decision rendered by the Supreme Court, no substantial question of law would arise on the finding of fact arrived at by the CIT and the Tribunal....

8. We find that neither of the two situations which permit an interference with concurrent findings of fact arises in the present case. The present appeal is not a case where relevant evidence has not been considered nor is it a case where a finding has been returned by placing reliance on inadmissible evidence. Whatever is sought to be agitated before us was considered by the CIT(A) as well the Tribunal. The CIT(A) as well as the Tribunal have not placed reliance on any inadmissible evidence either. Consequently, the findings arrived at by the Tribunal cannot be interfered with. No substantial question of law arises for our consideration. The appeal is dismissed.