(2015) 03 DEL CK 0040

In the Delhi High Court

Case No : ITA No. 797/2014

Commissioner of Income Tax APPELLANT

Vs

Mahavir Concast Ltd. RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:
Income Tax Act, 1961 — Section 115JB, 145(3), 36(1)(iii), 40A(2), 40A(2)(b)

Citation : (2015) 03 DEL CK 0040

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

Bench : Division Bench

Advocate : Arjun Harkauli and Satyawan Shekhawat, for the Appellant

Judgement

1. Though notice was served, there is no appearance on behalf of the assessee.

2. The revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 17.04.2014 in ITA 3283/Del/2011. It urges two questions, i.e. (a) as to the correctness of the ITAT''s opinion with respect to rejection of books of accounts under Section 145(3) of the Income Tax Act, 1961 (hereafter referred to as "the Act") by the Assessing Officer (AO), and; (ii) the decision for directing cancellation of Rs.12,10,000/-, disallowed on account of interest.

3. The assessee was carrying on the business of manufacturing of MS Alloys Steel Casting, including MS Ingots. It also used to trade in iron and steel. For AY 2007-08, it paid tax under Section 115JB of the Act on book profit of Rs.18,31,207/-. It had claimed certain losses. In scrutiny assessment, it was discerned that the assessee had disclosed gross sales of Rs.35,09,16,339/- as against a substantially lower amount in the preceding year. It also earned commission income of Rs.36 lakhs which was higher than the preceding year''s income. The overall Gross Profit Rate during the year was 0.8% as against (-)17.23% and the NP Rate of 0.54% as against 2.07% in the preceding year. The assessee had claimed bank interest of Rs.19,25,169/- in the Profit and Loss Account. The AO found that the assessee had given advance of Rs.55 lakhs to

SVP Builders (India) Limited which was repaid in the same year. However, no interest was claimed. The AO added Rs.12,10,000/- on the basis that the assessee''s contention of commercial expediency or nexus for using borrowed funds for business purposes was in substantiated under Section 36(1)(iii) of the Act. The AO went on to examine the books and rejected the books of accounts under Section 145(3). On the basis of his estimate, after allowing appropriate deduction, the AO determined the income @ 6% Gross Profit Rate (hereafter "G.P. Rate") of Rs.12,08,45,880/-.

4. The assessee''s appeal to the CIT(A) succeeded. The CIT(A) held that the rejection of books was unwarranted. Likewise, the applicability of 6% G.P. Rate was set aside. The addition on interest of Rs.12,10,000/- was, however, confirmed. We may also notice that the CIT(A), having set aside the rejection of books by the AO and also the application of 6% G.P. Rate to determine income, remitted the matter for further giving effect to the appellate order after restricting the profits to Rs.10,02,125/-. The matter was remitted to the AO for consequential action.

5. The assessee''s appeal to the ITAT - limited to the question of calculation of G.P. Rate and the interest addition partly succeeded, in that on the latter question, the ITAT held that the assessee had sufficient interest-free funds, relying upon the Bombay High Court''s decision in The Commissioner of Income Tax-3 Vs. Reliance Utilities and Power Ltd., . In that case, it was held that wherever the assessee is possessed of sufficient interest-free funds, and it lends money, in the absence of other material, there is a presumption that such interest free funds would be invested or advanced as interest-free loans or advances.

6. We have considered the submissions of the Revenue. The CIT(A), after noticing the facts, discussed the rationale and the justification of the AO''s approach, in rejecting the books of account and the application of 6% G.P. Rate. The relevant discussion is follows:

"5.3 I have gone through the submissions of the appellant findings recorded by the ld. AO as well as case laws relied upon by the appellant. It has been noticed from the assessment order that the ld. AO rejected the Audited books of accounts of the appellant invoking the provisions of Section 145(3) solely on the ground that the appellant had made purchases and sales from/to its sister concern, i.e. M/s. Mahavir Steel Rolling Mills.

5.3.1 It is seen that the audited books of account along with all the vouchers, purchase bills and sale bills were produced during the course of assessment proceedings however, the Assessing Officer has not printed out any particular defect in the books of the appellant.

5.3.2 The transactions with sister concern are liable to be examined as per the provisions of sec 40A(2). The law does not give right to the AO to reject the Audited books of accounts of the appellant without legally justifying the action.

5.3.3 The AR furnished details in accordance with the provisions of Section 40A(2) which are placed on records. The following conclusion can be safely drawn from the submissions of the appellant:

(a) the assessee had furnished complete details in respect of purchase of raw material, manufacturing and sale of finished products.

(b) the method adopted by the assessee was a regularly employed method.

(c) The department must show other defects in the books of account maintained by the assessee and the defects must be such that it was not possible to determine the income properly.

(d) There is nothing on record to show that it was profitable for the assessee to manipulate the purchase/sell of goods with sister concern.

5.3.4 In view of the above, I hold that the action of the AO of rejecting the books of accounts is not justified on the facts of the legal pronouncement made from time to time. The ground no.2 relating to the rejecting of books of accounts of the appellant is, therefore, allowed."

7. The CIT(A) then considered in detail the various reported decisions with respect to the G.P. Rate and held that since the assessee had furnished complete particulars of transactions, various issues which in turn were analysed and the purchases made from its sister concern as compared with other parties had resulted in excess payment of Rs.10,02,125/-. The addition under Section 40A(2)(b) was restricted to that sum. The ITAT confirmed this but required the AO to give effect to the order. At the same time, it remitted the matter on certain limited aspects:

"..............At the same time we also note that the Ld. CIT(A) has not confronted the AO with the details of transactions furnished by the assessee with sister concern. Under the circumstances, we are of the considered opinion that in the interest of justice the issue should be set aside to the file of the AO for fresh verification. Hence, the prayer of the Ld. D.R. is granted." 8. As far as the issue of addition of interest to the tune of Rs.12,10,000/- is concerned, we notice that the ITAT, in para 13 recorded that the assessee had sufficient interest-free funds. Consequently, the application of Reliance (supra) cannot be faulted. Being a finding of fact, this Court does not propose to re-examine the matter. Furthermore, we notice that the entire addition is to the tune of Rs.12,10,000/- and the tax effect is less than Rs.10 lakhs. Consequently, no question of law arises on this count too. The appeal is, therefore, dismissed as without merit.