
(2011) 07 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 855 of 2010

Commissioner of Income Tax

APPELLANT

Vs

Raja Industries

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 133A, 142(1), 143, 143(1), 143(2)

Citation : (2012) 340 ITR 344 : (2012) 211 TAXMAN 125

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

Bench : Division Bench

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the Revenue against the order dated August 6, 2009, passed by the income tax Appellate Tribunal, Chandigarh Bench (B), Chandigarh (in short "the Tribunal") in I.T. A. No. 757/Chandi/2008, relating to the assessment year 2004-05.

2. The following substantial questions of law have been claimed for determination of this court :

(i) Whether, on the facts and in the circumstances of the case, the hon'ble income tax Appellate Tribunal was right in law in setting aside the order u/s 263 passed by the Commissioner of income tax by holding that the Commissioner has not furnished any opinion on any of the issues raised in his order u/s 263 ?

(ii) Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in setting aside the order u/s 263 of the Commissioner of income tax though the order was erroneous and prejudicial to the interests of the Revenue on account of improper and inadequate scrutiny by the Assessing Officer ?

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the respondent-firm filed its return of income for the assessment year 2004-05 on October 27, 2004, showing an income of Rs. 8.53,480. Thereafter,

assessment was made by the Assessing Officer u/s 143(3) of the Act on August 21, 2006, assessing the income of the assessee at Rs. 8,73,480 when an addition on account of disallowance of Rs. 20,000 out of telephone expenses and other unvouched expenses was made. The Commissioner of income tax (in short "the CIT"), vide order dated June 26/2008, passed u/s 263 of the Act held that the assessment framed by the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue. The Commissioner of income tax set aside the order of the Assessing Officer with a direction to the Assessing Officer to pass a fresh order after considering and examining the issues mentioned in his order. Dissatisfied with the order of the Commissioner of income tax, the assessee preferred an appeal to the Tribunal which was allowed, vide the order impugned herein. Hence, this appeal.

4. We have heard learned counsel for the appellant and perused the record. No one has appeared on behalf of the assessee despite service.

5. The issue that requires adjudication in the present appeal relates to exercise of revisional powers u/s 263 of the Act by the Commissioner of income tax.

6. Learned counsel for the Revenue submitted that the Tribunal had set aside the revisional order of the Commissioner of income tax on wrong premises whereas the Commissioner of income tax had passed the same after recording a definite conclusion that the order of the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue. According to the learned counsel, the assessee during the course of survey u/s 1133A of the Act which was conducted on the premises of the assessee on January 22, 2004, had surrendered an additional income of Rs. 12 lakhs. The Assessing Officer in the assessment order passed u/s 143 of the Act had accepted the returned income of 8,53,480 besides making an addition of Rs. 20,000 by disallowing certain expenses. The Assessing Officer had failed to take into consideration the income of Rs. 12 lakhs which was surrendered by the assessee. He drew the attention of the court to the following order of assessment passed by the Assessing Officer :

Return declaring income of Rs. 8,53,480 was filed by the assessee on October 27, 2004, which was processed u/s 143(1) on June 24, 2005. Since survey u/s 133A was conducted in this case on January 22, 2004, the case was taken for compulsory scrutiny in view of the existing guidelines and statutory notice u/s 143(2) has been issued on December 9, 2004, and served upon assessee. Further, information u/s 142(1) was called by issue of notice dated December 9, 2004. In response, the assessee attended the proceedings with Sh. Bhupinder Sharma, advocate, from time to time and furnished the requisite information/documents. Books of account along with supporting vouchers have been produced and examined. After discussion, assessment is made as under :

The assessee is carrying the business of steel rolling mills. During the course of survey u/s 133A the assessee declared, an additional income of Rs. 12 lakhs which is well reflected in the profit and loss account. Further, after discussion and

examination of books of account and bills/vouchers of expenses, a disallowance of Rs. 20,000 is made out of telephone expenses and other unvouched expenses being of personal or unverifiable nature.

In view of the above discussion, income is computed as under :

Rs.

Returned income

8,53,480

Addition of Rs. 20,000

As discussed above

20,000

Total income

8,73,480

Assessed at income of Rs. 8,73,480. Charge interest under sections 234D and 234C of the income tax Act. ITNS 150 is enclosed as a part of this order. Issue demand notice and challan.

(Sd.).....

(B. R. Madaan)

Asstt. Commissioner of income tax, Circle, Khanna.

7. He urged that a perusal of the assessment order clearly spells out the manner in which the accounts of the assessee appear to have been scrutinised.

8. Learned counsel further submitted that the Commissioner of income tax in the revisional order had noted various details which had not been verified by the Assessing Officer before accepting the returned income of the assessee. In terms of the order of the Commissioner of income tax dated June 26, 2008, the following issues had not been verified by the Assessing Officer while making assessment u/s 263 of the Act:

(A) The G. P. rate shown by the assessee in this assessment year was only 2.45 per cent, whereas the G. P. rate shown in the assessment year 2002-03 was as high as 4.08 per cent. The Assessing Officer in perfunctory manner without any enquiry accepted the contention of the assessee that the G. P. rate was almost higher than the last year. It was incumbent upon the Assessing Officer to verify the correctness of the G. P. rate when in fact the Assessing Officer has also collected the G. P. rate for the assessment year 2002-03 from the assessee. The Assessing Officer failed to verify this aspect.

(B) Further, the Assessing Officer also failed to examine the correctness of the electricity expenses shown by the assessee; which was higher than the last year

when compared on the basis of manufacturing done. In the assessment year 2003-04, the assessee had manufactured 700.123 units of finished product. The electricity expenses claimed was Rs. 21,02,499 which comes to Rs. 3,003 per unit of goods manufactured. However, in the assessment year 2004-05, the assessee manufactured only 575.034 units of finished goods. The electricity expenses claimed was Rs. 21,82,859. The electricity expenses per unit was Rs. 3,796 which was abnormally higher as compared to immediately preceding year (increase by approximately 26.40 per cent.). Despite this, which was evident from the record, the Assessing Officer failed to make any verification and enquiry and accepted the claim of the assessee in a perfunctory manner.

(C) The Assessing Officer failed to examine the correctness of the G. P. rate shown by the assessee in pre-survey and post-survey period. As per the details on record the assessee had shown the G. P. rate at 2.33 per cent, in the pre-survey period but 3.25 per cent, in the post-survey period. This aspect needed verification and it was incumbent upon the Assessing Officer to verify the correctness of the G. P. rate shown. It was necessary to verify the reasons whether it was actual or manipulated trading results. It was necessary to examine the low G. P. rate shown in the pre-survey period. The Assessing Officer failed to examine and verify this issue.

(D) The Assessing Officer also did not verify the correctness of the closing stock of raw material which was shown at Rs. 1,69,217 for 17.160 units. (Rs. 9,861 per unit), whereas the average purchase price of the purchase of 2662.590 units for Rs. 3,24,50,559 came to Rs. 12,187 per unit. The Assessing Officer has not examined the issue and why the value of the closing stock of raw material was shown at a lower figure.

(E) The Assessing Officer has allowed the deduction on account of theft of Rs. 3 lakhs merely on the basis of a letter of the police which only stated that the accused were let off and discharged by the court from the criminal proceedings in the absence of evidence. The Assessing Officer failed to collect details of FIR and examine the fact that the FIR was against unknown persons. The Assessing Officer also did not obtain a copy of the court's order releasing the accused made by the police and examine all the facts. The assessee had claimed the deduction of Rs. 3 lakhs based on the court's order on criminal proceedings. The Assessing Officer failed to examine when actually the sum had become irrecoverable. The Assessing Officer also did not examine the statement of Shri Kamal Talwar and Sh. Jas-winder Singh and their subsequent retraction. The Assessing Officer did not examine the fact when the sum had become irrecoverable. No enquiry in this regard from the police was made nor evidence was collected by the Assessing Officer on this point. Mere decision of the court in the criminal proceeding cannot be the sole, deciding factor to pinpoint the time of irrecoverability of the theft amount. The Assessing Officer has failed to examine the issue and collect details and evidence in this regard. The Assessing Officer has accepted the claim of the assessee without collecting all details,

orders, statements and reports.

The case of Commissioner of Income Tax Vs. Durga Jewellers, relied upon by the assessee is clearly distinguishable. The hope of recovery has to be examined and seen with reference to the FIR as to whether it was against known or unknown persons. The Assessing Officer has not examined all the aspects and has not ascertained from the police as to when the stolen sum had become irrecoverable. Mere disposal of a criminal case by itself could not be a final point of reference in regard to irrecoverability of the stolen sum its allowances as deduction while computing the income of the assessee."

9. We find considerable force in the submission of learned counsel for the Revenue.

10. The Tribunal, without considering the aforesaid issues discussed by the Commissioner of income tax, had set aside the said order with the following observations :

In this case, the Commissioner has advanced four reasons to say that the assessment order has been passed by the Assessing Officer without application of mind. On each of the issues, the assessee had furnished an explanation before the Commissioner, which was on similar lines as was made before the Assessing Officer during assessment proceedings. We find that on each of the issues, the Commissioner had not rendered a definite and clear opinion as to why the order of the Assessing Officer was erroneous and prejudicial to the interests of the Revenue. As noted earlier, "erroneous" in the context of section 263 is to be understood as to mean something which is unsustainable in law or is devoid of factual support. On none of the issues, is there any finding by the Commissioner as to how the order of assessment deviates from the law or is otherwise invalid. The Commissioner has merely set aside the assessment and directed a fresh assessment and has directed the Assessing Officer to consider the issues raised by the assessee. Quite clearly, on all the issues, elaborate submissions were made by the assessee and in the context of the same, there is no finding of the Commissioner as to how the assessment order was contrary to law or that it was based upon a mistaken view of law or of fact. For instance, with regard to the deduction of Rs. 3 lakhs on account of theft, the Commissioner has concluded that the said deduction was allowed by the Assessing Officer without verification. In the "show cause notice" issued u/s 263 dated January 21, 2007, the Commissioner observed that the theft had taken place on June 9, 2000, and, therefore, being an expenditure of an earlier assessment year, could not be allowed during the year under consideration. The assessee explained that the amount was written off in the books of account on the basis of a report from the police, which mentioned that the hon"ble civil court had acquitted the accused on July 11, 2003, and no recovery has been made. Since, the issue was settled by the civil court on July 11, 2003, the amount in question was claimed as a deduction during the year under consideration. On the fact of such explanation, there is no finding of the Commissioner as to how the assessment order dated

August 21, 2006, was erroneous wherein the said amount was allowed. The Commissioner has merely set aside and required the Assessing Officer to examine the issue. Similarly, the Commissioner has referred to the low G. P. during the year in comparison to the G. P. rate declared of two years earlier, i.e., for the assessment year 2002-03. When the assessee explained that the G. P. rate during the year was 2.45 per cent, as against 2.42 per cent, in the immediately preceding assessment year and also explained that the G. P. rate of 2.45 per cent, was without considering the income surrendered during the survey. According to the assessee, if the income surrendered was added, the G. P. rate for the year under consideration would come to 5.70 per cent, which was much higher in comparison to the earlier rate. In the face of such explanation, the Commissioner merely observed that the G. P. of 2.45 per cent, during the year was lower than the G. P. rate of 4.08 per cent, declared for the assessment year 2002-03 and, therefore, the Assessing Officer was to examine the G. P. rate in the pre and post-survey period. In fact, the assessee had also explained that the separate trading account was furnished for the pre-survey and the post-survey period. In the pre-survey period, the G. P. rate was 2.33 per cent, and it was 3.25 per cent, in the post-survey period. The assessee had also explained the reasons for the same. The Commissioner has merely required the Assessing Officer to examine the same without pointing out as to how the acceptance of the trading results in the assessment order was erroneous or that it had resulted in loss of revenue to the Department.

11. It would be expedient to analyse the assessment order passed by the Assessing Officer before delving into the legality and validity of the order of the Tribunal. A perusal of the assessment order passed u/s 143 of the Act clearly shows that none of the issues as has been noticed by the Commissioner of income tax had been considered and analysed by the Assessing Officer. Further, it has not been discussed by the Assessing Officer as to how and why the returned income of Rs. 8,53,480 was accepted against the surrendered income of Rs. 12 lakhs by the assessee. The assessee was required to justify that surrendered income had to be reduced to the declared income due to post-surrender losses. Though no specific format is prescribed for passing an assessment order, yet in the facts, the circumstances and the basis thereof were required to be dealt with by the Assessing Officer. The Tribunal has also failed to appreciate and advert to the aforesaid aspect of the matter. Accordingly, the order of the Tribunal cannot be sustained. The questions of law are, thus, answered in favour of the Revenue and against the assessee. The matter is remitted to the Tribunal for decision afresh in accordance with law.