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(2010) 10 P&H CK 0393

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 61 of 2010

Commissioner of Income Tax — APPELLANT

Vs

Sambhav Textiles Ltd. — RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2010) 328 ITR 444

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

Bench : Division Bench

Advocate : Denesh Goel, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 (for short, "the Act") against the order dated April 29, 2009 of the income tax Appellate Tribunal, Chandigarh in I.T.A. No. 1113/Chd/2008 for the assessment year 2005-06 proposing to raise the following substantial questions of law: 1. Whether on the facts and circumstances of the case, the hon''ble income tax Appellate Tribunal erred in law in agreeing with the decision of the Commissioner of income tax (Appeals) holding that sale of Rs. 45,19,63,026 shown in the return filed with the ROC includes the sale of Rs. 3,66,70,962 on which Central excise duty was not paid?

2. Whether on the facts and circumstances of the case, the hon''ble income tax Appellate Tribunal erred in law in not upholding the decision of the Assessing Officer relating to calculation of the proportionate profit on sale of Rs. 3,66,70,962 on which Central excise duty was not paid?

In the course of assessment, the Assessing Officer made addition on the basis of alleged unaccounted sales. On appeal, the Commissioner of income tax (Appeals) deleted the addition with the following observations:

As already mentioned, the Assessing Officer has also made addition of Rs.

52,58,618 by applying rate of 14.25 percent. to the estimated unaccounted sales of Rs. 3,66,70,962. Here again the facts that the appellant carried out unaccounted sales of knitted fabric is confirmed by the Central Excise Department. Therefore, the appellant carrying out such sales outside the books of account is undisputed facts not controverted even during the appeal proceedings. However, for making the addition of Rs. 52,58,618 the Assessing Officer has estimated both the sales and profit rate. On the other hand, as is clear from the figures given above against the sales of Rs. 42,68,83,702 shown in the audited accounts filed with the return of income, the sales have been shown at Rs. 45,19,63,026 in the documents filed with the Registrar of Companies. As the profit on the sales of Rs. 45,19,63,026 and which came to Rs. 1,92,98,200 has already been considered as income of the appellant, the sales whatsoever, which have not been accounted for in the sales considered in the audited accounts filed with the return of income are taken to be covered in the sales reflected in the balance-sheet with the Registrar of Companies. Once the income of the appellant had been held to be assessable at Rs. 1,92,822,200 as against that of Rs. 9,984 shown in the return of income, the addition of Rs. 53,58,618 with all fairness should be taken to have been covered in the above addition. As such, there is no need to make separate addition of Rs. 52,58,618 and this addition accordingly deleted.

2. We have heard learned counsel for the appellant.

3. Learned counsel for the appellant is unable to dispute the correctness of concurrent finding recorded by the Commissioner of income tax (Appeals) and the Tribunal that the alleged unaccounted sales which were made the basis for addition to the income of the assessee, were already covered by income declared by the assessee.

4. Thus, no substantial question of law arises. The appeal is dismissed.

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