

(2006) 07 DEL CK 0129
In the Delhi High Court
Case No : IT Appeal No. 257 of 2005

Commissioner of Income Tax	Vs	APPELLANT
Sethia Plastic Industries		RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Income Tax Act, 1961 — Section 133A, 260A

Citation : (2006) 206 CTR 484 : (2009) 316 ITR 133 : (2006) 155 TAXMAN 357

Hon'ble Judges : Vipin Sanghi, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, for the Appellant; Ajay Vohra and Kavita Jha, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This appeal u/s 260A of the IT Act, 1961 (the Act) has been preferred by the Revenue against the order passed by the Income Tax Appellate Tribunal (the Tribunal) dt. 23rd Nov., 2004 in ITA No. 3504/Del/2003 in relation to asst. yr. 2000-01. By the impugned order the Tribunal partly allowed appeal filed by the respondent/assessed thereby reversing the order passed by the CIT(A) dt. 7th May, 2003 and deleting the additions of Rs. 30,83,659 made by the AO and confirmed by the CIT(A).

2. The facts in brief as noticed by the Tribunal are that the assessed was engaged in the business of manufacture of rigid PVC pipes and profiles. The assessed returned a total income of Rs. 25,26,292 for the asst. yr. 2000-01. Survey operations u/s 133A of the Act were carried out at the business premises of the assessed on 17th Dec, 1999. In the course of survey operations, the assessed surrendered a total amount of Rs. 25,07,500 out of which Rs. 9 lakhs were on account of unexplained investment in machinery, Rs. 4 lakhs on account of unexplained investment in building and Rs. 12,07,500 on account of excess cash.

3. The AO noticed during the course of assessment proceedings that the assessed had shown scrap generation at 24.9 per cent, that is a yield of 75.10 per cent in the concerned year while in the previous asst. yr. 1999-2000 the scrap generation was shown at 13.31 per cent. On account of this apparent deviation the AO issued a show-cause notice thereby intending to treat the claim of excess scrap generated in the year in question as utilization for unaccounted manufacture and sale of pipes, outside the books. Subsequently, the AO on basis of the figures for scrap generation for the last six years arrived at the average scrap generation figure of 16.38 per cent. On that basis, the AO computed the scrap generation at 71,631 kgs., in the relevant year. Consequently, he worked out the figure of Rs. 30,80,133 as the unaccounted total sales of finished goods. He proceeded to issue a second show-cause notice to the assessed, to show cause as to why an addition of Rs. 30.80 lakhs should not be made.

4. The assessed, in response to the second show-cause notice, explained that in the process of manufacture of pipes, etc. scrap is generated and most of the scrap is of the reusable kind and in fact is utilized in making finished products, while some scrap which is not reusable is sold in the market. Earlier the assessed was maintaining record of only that scrap which was not reusable and was simply lifting the reusable scrap from the floor and putting it to use in the manufacture of pipes. The assessed further explained that it had applied for ISO 9000 certificate in the relevant year. At this stage we may notice that the ISO 9000 certification was in fact granted to the assessed in August, 1999. The assessed explained that the audit team which visited the works of the assessed for the purpose of granting ISO certification insisted that reusable stock be also taken into the books and hence, in July, 1999, the assessed brought into the books all the scrap that was reusable which weighed about 81.8 tons. The assessed also explained that 62 tonnes of scrap was physically verified by the survey team which was carried forward as closing stock.

5. The AO however, proceeded to make addition of Rs. 30,83,659. He did so by taking note of the scrap generated in the preceding 3 years and succeeding 2 years which ranged from 0.61 per cent to 11.59 per cent as compared to 24.9 per cent claimed in the relevant year. He also took note of the fact that in 8 months of the year under consideration, the assessed had shown nil scrap generation and that 24.9 per cent scrap shown for the whole year under consideration was generated only during 4 months of April, June, July and October, 1999. The AO rejected the Explanation of the assessed as merely self-serving and without any basis. The AO also observed that the books of the assessed were not foolproof since the assessed had on its own surrendered/made a disclosure of Rs. 25,07,500 during the survey.

6. The CIT(A) confirmed the addition made by the AO. As noticed above, on appeal by the assessed before the Tribunal by the impugned order, the Tribunal reversed the orders of the AO and the CIT(A) on the aforesaid aspect.

7. Learned Counsel for Revenue contends that the order passed by the Tribunal suffers from perversity and is contrary to the relevant provisions of the Act. He contends that since, admittedly, the assessed had made a surrender of over Rs. 25 lakhs, during survey operation, the books of the assessed could not be relied upon and that the AO was entitled to make his best judgment assessment since he was not satisfied about the correctness or completeness of the accounts of the assessed. He relies upon a decision of this Court in *Action Electricals Vs. Dy. Commissioner of Income Tax*, to contend that where the assessed has made disclosure/surrender at the time of search, the same constituted sufficient material for the AO to base his satisfaction that the books of account of the assessed were not correct and complete.

8. We are in respectful agreement with the proposition laid down in the aforesaid decision. However, the AO even while making a best judgment assessment is obliged to take into account all the relevant material as are brought before him and he has gathered, and are not in dispute.

9. We find that the Tribunal has reasonably analysed the facts and circumstances of the case in para 8 of its order. Since we agree with the reasons given by the Tribunal we reproduce them below:

We have duly considered the rival contentions and the material on record. Appreciating the facts in its true perspective, we find that there is much ado about nothing. The whole problem, it appears, is created because of the reporting in absolute terms by the auditors. The auditors did certify the results correctly. But it would have been better appreciated, and it is also expected of them, if they had inserted an explanatory note explaining the reasons of low yield. The Revenue authorities failed to appreciate that hitherto only non-reusable scrap was brought into the books and the yield was arrived at taking into consideration only the non-reusable scrap. The reusable scrap was never brought into the books, nor was it taken into production. This year the situation was totally different. The ISO certification requirements compelled the assessed to bring into the books even the reusable scrap. The auditors took this scrap also into consideration to compute the yield. Naturally, on application of simple commonsense, the arithmetical computation of yield would show a lower figure than earlier years when more scrap is taken into consideration for calculation purposes. In reality, the generation of scrap has been more or less the same. This situation is well-supported by the accounts of the earlier year and the succeeding year. The fact the assessed received ISO certification in August, 1999 is not in dispute. The fact that the assessed used a bulk out of the carried forward stock of reusable scrap in the following year is well documented, and it also explains the high yield of 92.75 per cent in that year. The GP ratio at 14.84 per cent during the year is comparable to the ratio of 15.48 per cent in the preceding year. If the addition made by the AO is sustained, it will reflect nonexistent production and unearned profit in the abnormally high GP of 26.33 per cent. The changed situation also explains that the assessed was always

valuing its stock of scrap at Rs. 7 per kg. as it contained only non-reusable scrap. This year, it was valued at Rs. 27 per kg. because for the first time the closing stock also included the reusable scrap. Thus, considering all the facts and circumstances of the case, we see no justification at all to sustain the addition. This is more so in the light of the fact that, (a) there was no discrepancy found by the survey party between the physical stock of scrap and the books stock, and (b) there is no material at all to suggest any sales outside the books of account. We reiterate, most of the reusable scrap which was brought into the books during the year, was used in the subsequent year which is reflected in a higher yield in that year.

10. We find that the AO and the CIT(A) did not take into consideration the following admitted facts that were on record:

(i) The assessed had applied for ISO 9000 certificates in the relevant year. This necessitated the assessed to bring into its book even reusable scrap, an exercise that was not carried out in earlier years.

(ii) Most of the scrap was of the reusable kind and in fact was utilized in making finished products.

(iii) The quantity of scrap physically verified by the survey team had been carried forward as closing stock.

(iv) The assessed had used a bulk of the carried forward stock of reusable scrap in the following years which is well documented and also explains the high yield of 92.75 per cent in that year.

(v) There was no material to suggest that any sales outside the books of account had taken place.

(vi) The GP ratio at 14.84 per cent during the year under consideration was comparable to the ratio of 15.48 per cent in the preceding year. However, if the addition made by the AO is sustained, it would reflect an abnormally high GP rate of 26.33 per cent.

11. In view of the aforesaid conclusions, which are all findings of fact, no substantial question of law arises in the present case.

12. Dismissed.