
(2010) 01 SHI CK 0001
In the High Court Of Himachal Pradesh

Commissioner of Income Tax

APPELLANT

Vs

Teknika Components

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 149, 263, 80I

Citation : (2010) 01 SHI CK 0001

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the appellant against the order of the Income Tax Appellate Tribunal, Chandigarh Bench(A), Chandigarh, hereinafter referred to as the ITAT, dated 13.12.2005, vide which the appeal filed by the assessee was allowed and the order passed by the Commissioner of Income Tax, hereinafter referred to as the CIT, ordering fresh assessment by the Assessing Officer, was set aside.

2. Briefly stated the facts of the case are that the assessee/respondent filed return for the assessment year 2000-01. The assessee declared taxable Income of Rs. 1,72,980/- after claiming deduction u/s 80IA amounting to Rs. 89,74,875/-. It was observed by the Assessing Officer that the assessee is a partnership firm consisting of two partners namely Smt. Bhupinder Kaur and Smt. Manjeet Kaur having 1/2 share each. During the year under consideration, the assessee firm derived income from manufacture and sale of main shaft of watches, latch links for MCBs and weighing scale parts. On sales of Rs. 1,33,72,078/-, a gross profit of Rs. 1,01,49,123/- giving rate of 75.8% has been declared by the assessee. Since the assessee firm was held eligible for deduction u/s 80IA, the rate declared by it at such a margin was examined by the Assessing Officer. A sum of Rs. 1,72,985/- was credited on account of interest in the profit and loss account, which was not held to be eligible for deduction u/s 80IA and return submitted by the assessee was accepted, except the above

deduction which was disallowed on account of interest.

3. The CIT exercising its revisional jurisdiction u/s 263 of the Income Tax Act passed a detailed order on 30.3.2005 setting aside the order of the Assessing Officer, dated 30.10.2002, to be erroneous and in so far it was prejudicial to the interest of the Revenue. The Assessing Officer was directed to frame fresh assessment after giving reasonable opportunity of being heard to the assessee after bringing on record all necessary evidence and also taking into consideration all the facts and circumstances of the case, as discussed in the order.

4. On appeal by the assessee against this order of the CIT, dated 30.3.2005, the same was accepted by the ITAT and the order passed by the CIT was cancelled. Being aggrieved, the Revenue has filed the present appeal.

5. We have heard the learned Counsel for the parties and have gone through the record of the case.

6. The appeal was admitted by this Court on seven substantial questions of law formulated alongwith the grounds of appeal. However, a perusal of these substantial questions of law shows that the main points on which the appeal has been admitted is in regard to the powers of the CIT u/s 263 of the Act and whether the learned Tribunal was right in law in not giving findings on each of the issues raised by the CIT in its order holding the order of the Assessing Officer as erroneous and prejudicial to the interest of the Revenue.

7. The learned Counsel for the Revenue, during the course of arguments, had pointed out that in the order passed by the CIT, it had considered each aspect of the case and had given reasoning also for disagreeing with the assessment made by the Assessing Officer. However, the ITAT, while setting aside the order of the CIT, had not referred to each of the points raised by the CIT in its impugned order giving reasoning for disagreeing with the assessment made by the Assessing Officer. It was submitted that the CIT had observed in regard to the gross profit rate being shown very high and no inquiry had been conducted by the Assessing Officer of his own and he had only gone through the invoices and books of account produced during the course of assessment proceedings, which findings were upheld by the ITAT wrongly. It was submitted that the CIT had considered each aspect of the case including the question as to huge profits being shown in the earlier years, less use of electricity for running the Unit and as such the order passed by the ITAT was liable to be set aside and the order passed by the CIT was liable to be restored directing the Assessing Officer to look into the matter afresh after making investigation as required. It was also submitted that the powers of the Commissioner u/s 263 of the Act are wide enough which were rightly exercised by the CIT.

8. Before we refer to the case law cited by the learned Counsel for the appellant, we may reproduce the provisions of Section 263 of the Income Tax Act regarding the revision of orders prejudicial to Revenue and the powers of the Commissioner in this regard, which are relevant for the present discussion:

263.(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment and directing a fresh assessment.

9. To substantiate his submissions, the learned Counsel for the appellant had relied upon the following decisions.

10. The decision in Green World Corporation Vs. Income Tax Officer and Others, was relied upon which was a decision of a Division Bench of this Court. After considering the facts of the case, it was held by the Division Bench that the CIT had the power to advise/direct the Assessing Officer to reopen assessment for earlier assessment years. It was held that direction of the CIT for reopening the assessment for earlier years was not without jurisdiction. The Assessing Officer was not satisfied with the answers to questionnaires furnished by the assessee and the Assessing Officer wanted more material in this regard from the assessee. She was prevented from doing so and it was held to be a clear case of interference in statutory functioning of a statutory authority by a superior authority and not a case of monitoring of the functioning of a subordinate authority. The facts of the above case show that the Assessing Officer had passed a detailed order holding that the firm had not been engaged in any manufacturing process at Parwanoo, within the meaning of Sections 80IA and 80IB of the Income Tax Act, inasmuch as it appeared to have not engaged between ten to twenty workers, no power had been used in the manufacturing process, the business transacted between the firm and a sister concern of the partners of the firm, situated at Delhi, indicated that it (the business) was so arranged that it yielded to the assessee firm more profits than ordinarily expected, the value of the plant and machinery transferred from unit-I to unit-II of the assessee firm, was much higher than 20% of the total value of the machinery and plant used in the business of unit-II. It was held that hence no deduction could have been claimed u/s 80I in view of explanation 2 to Sub-section (2) of the said provision and the activities of the firm did not amount to manufacturing of any goods or articles for the purpose of claiming tax holiday under Sections 80IA and 80IB of the Income Tax Act. Consequently, the Commissioner of Income Tax ordered that only 5% of the total declared net profits of the assessee firm could be said to be its income from the business at Parwanoo, with respect to which deduction u/s 80IB of the Income Tax Act could be allowed and that the rest of the amount declared as net profits to the tune of 95% was the income of the firm from undisclosed sources and hence taxable under the relevant provisions of the Income Tax Act. In that case, it was also observed that when the unit was allegedly operational, the average monthly consumption of electricity was a meager 234 units, but when it was not

operational, the consumption was 258 units per month. It was observed that this fact knocks the bottom of the assessee's claim that it had been manufacturing Exercise Books and Notepads etc. by use of power driven machinery. The percentage of profit shown was 250% approximately on the cost of the material and expenses on salary, wages, electricity, freight and consumable stores etc. The percentage of profits was not only held to be unbelievable but even unimaginable. Therefore, the order of the CIT for reassessment was restored by setting aside the order passed by the Income Tax Appellate Authority.

11. The Division Bench in deciding the matter had also observed in para 17 as under:

17. Before proceeding further in the matter, we would like to add that tax holiday has been allowed to the newly established manufacturing units in the State of Himachal Pradesh for a period of ten years and profits and gains from such manufacturing units are deductible from the income assessable to tax to the extent of 100%. Many bogus units had been set up in the State to illegally claim benefit of tax holiday. The modus operandi was that some premises were arranged in the State by the alleged manufacturers in which machinery and plants were installed. Goods were manufactured, furnished and disposed of outside the State, but records were fabricated to show that raw material was received, goods were manufactured and workers were employed in such premises. It is in the light of this ground reality that the factual aspect of the matter needs to be dealt with.

12. Reliance was also placed upon the decision in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, in which the powers of the Commissioner u/s 263 of the Act as well as the term "prejudicial to Revenue" were considered and it was held that the order which is erroneous and prejudicial to the Revenue must be read in conjunction with an erroneous order while interpreting the provisions of Section 263 of the Act.

13. The decision in Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo, shows that the powers of the Commissioner u/s 263 of the Income Tax Act were considered and it was held that reopening of proceedings in terms of Sections 147 and 148 of the Income Tax Act cannot be initiated at any point of time. It was further held that the proceedings are to be initiated within the limitation prescribed u/s 149 of the Act, which is two years from the assessment year in question.

14. Reliance was also placed upon the decision in Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo, wherein it was held that the order passed by the Assessing Officer at dictates of the Commissioner is a nullity. The notice was issued for reassessment, which was challenged by the assessee in appeal by special leave. The Apex Court exercised its jurisdiction under Article 142 and directed the assessment to be reopened. The provisions of Section 263 of the Act were also considered in this regard.

15. Coming to the order in question of the CIT, which was set aside by the ITAT, it is clear that each aspect of the case had been considered by the CIT in coming to its findings. It was clearly observed that there was low consumption of electricity and details of consumption of electricity in units per month were considered and it was observed that in view of the manufacturing turn over of over 1.33 crore, the expenditure of Rs. 1,04,680/- is considered highly inadequate. The observation was also made in regard to employment of less than 10/20 workers and the assessee firm claimed to have employed 14 persons during the financial year 1999-2000, out of which 3 persons were working exclusively as office staff. Thus, it was concluded that 11 persons could be held to be engaged for manufacturing process and keeping in view of the nature of the manufacturing process, as claimed by the assessee, and its turn over, the expenses were considered very much on the lower side. This reference has been made to show that the CIT had considered every aspect in detail and had come to a conclusion while exercising its revisional jurisdiction that fresh assessment should be made by the Assessing Officer after giving reasonable opportunity of being heard to the assessee and after bringing on record all necessary evidence, which is produced in support by the parties. It was not that the Commissioner had concluded and finalized that the return submitted by the assessee firm was incorrect and, therefore, had exercised its revisional jurisdiction accordingly, but it had only concluded that keeping in view the infirmities in the return submitted by the assessee, the case deserves to be considered afresh by the Assessing Officer, which findings, in view of the facts and circumstances of the case, cannot be said to be incorrect in any manner. However, while exercising its appellate jurisdiction, the ITAT had set aside the order of the CIT without giving its detailed findings in regard to the observations of the CIT and accordingly we are of the opinion that the order passed by the ITAT is liable to be set aside and that of the CIT is liable to be restored.

16. In view of the above discussion, the appeal filed by the Revenue is accepted and the order of the ITAT is set aside and that of the CIT is restored. However, there is no order as to costs.