(2015) 10 DEL CK 0089

In the Delhi High Court

Case No : ITA 625/2010

Commissioner of Income Tax APPELLANT

Vs

Tony Electronics Ltd. RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:
Income Tax Act, 1961 — Section 260A, 80HH, 80-IA

Citation : (2015) 10 DEL CK 0089

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Rohit Madan, Advocate, for the Appellant; Satyen Sethi, Advocate, for the Respondent

Judgement

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (''Act'') is directed against the order dated 17th July 2009 passed by the Income Tax Appellate Tribunal (''ITAT'') in ITA No. 4658/Del/2000 for the Assessment Year (''AY'') 1997-98.

2. The six issues raised by the Revenue are as under:

(A) Whether on the facts and in the circumstances of the case, the ITAT erred in law and on merits in deleting the addition of Rs. 85,28,745/- on account of suppressed production and sale of AMT cut at Unit G-3 & G-4?

(B) Whether on the facts and in the circumstances of the case, the ITAT erred in law and on merits in granting depreciation of Rs. 2,46,135/- the fixed assets in respect of Namoli Unit?

(C) Whether on the facts and in the circumstances of the case, the ITAT erred in law and on merits in deleting the addition of Rs. 23,97,748/- on account suppressed sale of blank audio cassettes from Namoli Unit?

(D) Whether on the facts and in the circumstances of the case, the ITAT erred in law and on merits in granting deduction u/s 80HH of the Income Tax Act, 1961 of

Rs. 67,37,569/- and 80-1 of the Income Tax Act, 1961 of Rs. 84,21,961/- in respect of the Namoli Unit and deduction u/s 80-IA of the Income Tax Act, 1961 of Rs. 34,83,289/- in respect of Malanpur Unit?

(F) Whether on the facts and in the circumstances of the case, the ITAT erred in law and on merits in deleting the addition of Rs. 2,35,24,595/- on account of undisclosed investment in production in Unit G-5 & G-6?

3. At the outset, it requires to be noticed that questions B and D stand covered by the decision of this Court in Commissioner of Income Tax Delhi Vs. Tony Elelctronics Ltd.--> in favour of the Assessee and against the Revenue.

4. Question C is covered in favour of the Assessee and against the Revenue by the decision of the Supreme Court in Joint Commissioner of Income Tax Vs. Madideep Engg. and Pkg. India (P.) Ltd., and the decision of this Court in The Commissioner of the Income Tax-III Vs. S.K.G. Engineering Pvt. Ltd., which in turn refers to the decisions in J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, and Commissioner of Income Tax, Jodhpur Vs. M/s. Chokshi Contacts (P) Ltd. Udaipur, .

5. As far as Question A is concerned the facts are that during the relevant AY the Assessee was engaged in the manufacture of audio magnetic tapes (''AMT''), assembly of audio cassettes, manufacture of video magnetic tape (''VMT'') and assembly of video cassettes. The Assessee had five units. It was producing AMT at Unit I at Noida and VMT in Unit II, also at Noida. The Assessee was assembling blank audio cassettes at Unit IV viz., the Namoli Unit and blank audio/ video cassettes at its Unit v. in Malanpur. The Daryaganj Unit of the Assessee was trading in audio and video cassettes.

6. For the AY in question, the Assessee had shown production of 1,43,20,025 AMT cuts of various lengths i.e. C-60, C-45 and C-36. The Assessing Officer (''AO'') adopted three different methods to examine the question whether the Assessee had understated its production figures. Using the method based on length of the polyester film roll, the AO concluded that production of AMT C-60 cuts had been understated by 16%. In other words, the production was understated by 22,29,256 AMT cuts. Adopting another working method based on the weight of the polyester film roll, the AO concluded that the production of AMT C-60 cut had been understated by 4,04,864 cuts. Using a third method on the basis of consumption of chemicals, the AO concluded that 28,42,915 AMT C-60 cuts were produced outside the books. Accordingly, an addition of Rs. 85,28,745 was made on the basis that 28,42,915 must have been sold at Rs. 3 per cut.

7. The Commissioner of Income Tax (Appeals) [CIT (A)] allowed the Assessee''s appeal by order dated 20th September 2000 and reversed the above order of the AO. The CIT(A) found that the AO had presumed the length of the entire polyester film roll to be 6100 m, whereas, all rolls were not of that length. Even the wastage of batch of roll was presumed to be 14% without making a comparison with the actual production. There was no reason given by the AO as

to why the details of actual production were ignored. Moreover, the manufacturing record was verified by the excise authorities and no discrepancy had been noted in the relevant statutory registers. Even the calculation of the excess production based on consumption of chemicals was factually incorrect particularly since the chemical was not the principal raw material. CIT (A) also noted that the AO had made additions by taking the sale of AMT cut at Rs.3 per cut, which was inclusive of excise duty of 60 paise. The ITAT in the impugned order upheld the above findings of the CIT (A).

8. Having heard learned counsel for the parties, the Court is of the view that opinion of the CIT (A), which has been concurred with by the ITAT, was essentially based on facts. The order of the CIT (A) has elaborately discussed the said facts in support of its conclusion. With the factual findings of both the CIT (A) and the ITAT being concurrent, the Court is of the view that no substantial question of law arises for consideration, as far this issue is concerned.

9. Question C relates to addition of Rs. 23,97,748 on account of sale of blank audio cassettes produced at Namoli unit. The Assessee had been selling different categories of cassettes at a price range of Rs. 7.50 to Rs. 22.10 per cassette. This according to the Assessee was its market strategy. The bulk of the sale was made at two price ranges i.e., Rs. 16.45 and Rs. 22.10 per cassette. The AO concluded that the lower priced models ought to have been sold at Rs. 17.25 per piece and on that basis made an addition of Rs. 23,97,748.

10. The CIT (A) noted that the additions were made without there being any evidence of under-invoicing of sales. The additions were made on the basis of suspicion. Merely because some of the cassettes were sold at a higher price, it did not mean that all cassettes ought to have been sold at a higher price. Again, the CIT (A) noted that the Revenue was unable to point out any defect in the books maintained by the Assessee.

11. Here again, the findings of the CIT (A) concurred with by the ITAT are entirely based on facts. Consequently, no substantial question of law arises in this regard.

12. Question F relates to addition of Rs. 2,35,24,595 on account of alleged undisclosed investment in production of VMT. The AO proceeded on the basis that the weight of a VMT E-80 cut, exclusive of wastage, was 90 grams. Inclusive of wastage the weight was 104.65 grams. The AO concluded that from a polyester film roll having weight of 41.99 kg, 550 finished VMT cuts could be produced. On that basis, the AO concluded that the Assessee had understated its consumption of polyester film roll by 87518 kgs. On that basis, the undisclosed investment in 2084 polyester film rolls was computed at Rs. 1,72,18,008. A further sum of Rs. 63,06,587 was added on the ground that the Assessee had shown under consumption of chemicals to the extent of 19,876.6 kg.

13. The CIT (A) pointed out that even according to the AO''s own calculations, the content of polyester film in a VMT cut worked out to 76.34 grams. The CIT

(A) concluded that the polyester film content of 1 VMT E180 could not be 90 gm as surmised by the AO because that would exceed the gross weight of the polyester film. The very foundation of the alleged understatement of consumption was therefore found to be misconceived. 90 gm of VMT comprised polyester film (76.34 grams) and chemicals (14 grams). The AO in making the addition did not consider the weight of the chemicals. As a result, the entire calculation was rendered erroneous.

14. On this aspect as well the conclusion of the CIT (A) as affirmed by the ITAT appears to have turned on facts. Consequently, the Court declines to frame a question of law on this issue.

15. For the aforementioned reasons, the appeal is dismissed.