(2014) 09 CAL CK 0048

In the Calcutta High Court

Case No : I.T.A. No. 59 of 2004

Prakash Engineering Works APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:
Income Tax Act, 1961 — Section 260A, 40A(2), 40A(2)(b), 40A(2A)

Citation : (2015) 373 ITR 246

Hon'ble Judges : Soumitra Pal, J;Debangsu Basak, J.

Bench : Division Bench

Advocate : Soumitra Mukherjee, H.B. Dubey and Mukesh Mishra, for the Appellant; P. Dudhuria, for the Respondent

Judgement

1. This appeal under section 260A of the Income-tax Act, 1961, is from an order dated September 18, 2003, passed by the learned Income-tax Appellate Tribunal "A" Bench, Kolkata, in I.T.A. No. 1475 (Kol)/2001 for the assessment year 1994-95 on the following questions:

"(i) Whether the burden to prove that any expenditure in respect of which payment is made to a person referred to in section 40A(2)(b) is excessive or unreasonable within the meaning of section 40A(2A) is on the Assessing Officer can and the Tribunal was justified in law in casting the burden upon the appellant to show that the conversion charge paid by it was equal to the market rate or was not excessive or unreasonable?

(ii) Whether the initial explanation offered by the assessee assuming that the burden lay on the assessee amounts to discharge of the burden and shifting of the onus on the Assessing Officer and in the facts and circumstances of the case could the Assessing Officer disagree with the offer without adequate materials to deny the explanation and alternatively could the onus shift on the assessee and would the assessee be entitled to an opportunity to explain the point of disagreement noted by the Assessing Officer?

(iii) Whether the Tribunal was justified in law in disallowing Rs. 766.76 per metric tonne in respect of pig from and C.I. scrap out of the conversion charge of Rs. 2,766.76 per metric tonne under section 40A(2) as excessive and unreasonable and its purported findings in that behalf are arbitrary, unreasonable and perverse?"

Mr. Mukherjee, learned advocate appearing for the appellant, submits that the order passed by the Tribunal is perverse as there is no basis for accepting the conversion charges at Rs. 2000 per metric tonne. Prayer is made to remand the matter before the Assessing Officer for fresh assessment.

2. Mr. Dudhuria, learned advocate appearing for the Revenue, submits that in view of the letter dated November 21, 1998, issued by Marcandy Prasad Radha Krishna Prasad P. Ltd., the sister concern of the appellant, justifying the imposition of higher rate for conversion charges and as the entire issue has been dealt with by the Tribunal specifically, the order under challenge is just and proper.

3. We find that the Assessing Officer, while disallowing the claim of the appellant, had found as under:

"On scrutiny it reveals that the assessee paid conversion charges to M/s. Marcandi Prasad Radha Prasad, 65, G.T. Road, Howrah. The assessee-firm paid conversion charges to the abovementioned party during the financial year 1992-93 corresponding to the assessment year 1993-94 at Rs. 1,749.04 per metric tonne but during the financial year 1993-94 relevant to the assessment year 1994-95 the assessee paid conversion charges to the same party at Rs. 2,766.76 per metric tonne. On a query, the assessee-firm submitted explanation, vide letter dated February 27, 1997, submitted before me on February 28, 1997, that ''the assessee has not occupied any factory and all the production has been made by the outsider to fulfill the contract in time high rate of conversion charge was paid''. Considering the relationship between the assessee-firm and the concerned party (Marcandi Pd. Radha Pd. (P.) Ltd.) with whom the assessee holding 37,200 shares, it is more or less established that so far as expenditure or conversion charge is concerned, the assessee firm had made undue favour to said party by allowing conversion charge at exorbitantly high rate as compared to earlier year. After admitting the fact that there may be some increase in conversion charge in relevant year, I think Rs. 2,000 per metric tonne should be optimum rate.

In view of the above observation, the conversion charges (Rs. 2,766.76 - 2000) = Rs. 766.76 per metric tonne is disallowed under section 40A(2) of the Income-tax Act as excessive and unreasonable. Hence, Rs. (1033.652 x 766.76) = Rs. 7,92,563 is disallowed."

4. Being aggrieved, the appellant preferred an appeal before the Commissioner of Income-tax (Appeals) who had allowed the appeal by holding as under:

"I have considered the facts of the case as well as the submission made by the learned authorised representative of the appellant. Since all the payments were made by account payee cheques and the Income-tax Officer could not found any defect in respect of the payment made to Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. and also failed to cite any comparable case of any other party in the same line of business the disallowance amounting to Rs. 7,92,563 out of conversion charges appears to be based on suspicion and surmise and not on any documentary evidence. As such the entire amount of disallowance is deleted."

5. Aggrieved by the said order, the Revenue preferred an appeal before the Tribunal. The Tribunal, while allowing the appeal, inter alia, held as under:

"It has not been disputed by the assessee that the assessee has substantial interest in M/s. Mercandy Pd. Radha Pd. P. Ltd. wherein they held 37,200 shares the case of the assessee rates only on the ground that during the year under consideration there were conversions of railway sleeper scrap in addition to the pig iron and the C.I. scrap though in the earlier year there was a conversion of the pig iron and the C.I. scrap only and that the melting loss of the railway sleeper scrap is more than other cases we have carefully perused the statement of total quantity got converted by the assessee through M/s. Marcandy Pd. Radha Pd. P. Ltd. during the year under consideration as well as in the immediate preceding assessment year. We find that during the year under consideration, the assessee got converted the pig iron and the C.I. scrap to the extent of 476.417 metric tonnes and 49.260 metric tonnes, respectively. The assessee has not given any explanation as to why the conversion charges in respect of the pig iron and the C.I. scrap has been made at a rate of 2766.76 per metric tonne as compared to 1749.04 metric tonnes, paid in the last year there is no reason to pay the higher rate of conversion charges in respect of the pig iron and the C.I. scrap. The assessee''s case is only that the quality of the railway sleeper scrap is generally of rough and of rejected the sleeper and having of good amount of dust and rust resulting in the melting loss at a higher percentage than the pig iron and the C.I. scrap. Therefore, paying the higher rate of conversion charges in respect of the railway sleeper scrap can be well understood but we fail to understand the reason for making the higher rate of conversion charges in respect of the pig iron and the C.I. scrap. The assessee has also not furnished any information or evidence to show that even the rate of Rs. 2,766.76 per metric tonne on account of conversion of the pig iron and the C.I. scrap is equal to the market rate the assessee has nowhere pleaded that the rate of Rs. 2,766.76 paid for conversion of the pig iron and the C.I. scrap is reasonable and not excessive having regard to the legitimate need of the business and the market value of the matter we are, therefore, of the considered view that the rate of Rs. 2,766.76 paid by the assessee to M/s. Marcandy Pd. Radha Pd. P. Ltd. on account of the conversion charges of the pig iron and the C.I. scrap is excessive and unreasonable and is liable to be disallowed to the extent of its being so excessive or unreasonable. The rate of conversion adopted by the

Assessing Officer at Rs. 2,000 per metric tonne for the year under consideration is found reasonable and proper inasmuch as the assessee has not disputed as such this rate adopted by the Assessing Officer. We, therefore, direct to allow the deduction of conversion charges for the pig iron and the C.I. scrap at Rs. 2,000 per metric tonne and to allow the conversion charges in respect of the railway sleeper scrap at Rs. 2,766.76 per metric tonne as claimed by the assessee. The Assessing Officer shall modify the assessment order accordingly."

6. We find that though Mr. Mukherjee submits that no opportunity was granted to the appellant, however, the Assessing Officer had specifically noted that the rate of conversion adopted by the Assessing Officer was not disputed by the assessee. It is also evident from the letter dated November 21, 1998, that the sister concern had explained for charging rate of conversion charges at Rs. 2,766.76 for the accounting year 1993-94.

7. As the Tribunal had dealt with the facts specifically, and as the entire issue relates to fact, we are of the view the order under challenge calls for no interference.

8. Hence, the appeal is dismissed. Urgent certified copy of this order be supplied to the parties, if applied for, upon compliance of all requisite formalities.