(2015) 10 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 356 of 2014

The Commissioner of Income Tax — APPELLANT

Vs

Srishti Construction — RESPONDENT

Date of Decision : 14-10-2015

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

Citation : (2015) 10 P&H CK 0087

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Vivek Sethi, Advocate, for the Appellant; S.K. Mukhi, Advocate, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 27.12.2012, Annexure-3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No. 74(ASR)/2011 for the assessment year 2007-08, claiming following substantial questions of law:--

"i) Whether on the facts and circumstances of the case and in law, the Hon''ble ITAT was justified in deleting addition of Rs. 36,41,702/- on account of closing work in progress without appreciating the findings of AO and ignoring the decisions of Hon''ble Supreme Court in the cases of The Commissioner of Income Tax, Madras Vs. A. Krishnaswami Mudaliar and Others, and Commissioner of Income Tax Vs. British Paints India Ltd.,

ii) Whether on the facts and circumstances of the case and in law, the Hon''ble ITAT was justified in deleting addition of Rs. 38,000/- on account of disallowance of interest on interest free loans ignoring the decisions of Hon''ble P&H High Court in the cases of Commissioner of Income Tax-I Vs. Varinder Agro Chemicals Ltd., , Commissioner of Income Tax Vs. Avery Cycle Industries Ltd., and Commissioner of Income Tax Vs. Industrial Cables (India) Ltd., and also ignoring the fact that the Hon''ble ITAT has itself dismissed the ground No. 5 vide which the addition has been challenged?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a civil contractor and has executed various projects like railway over-bridges, airport and other government constructions. During assessment proceedings, the Assessing Officer noted that the assessee had not shown any closing stock or closing Working in Progress (WIP) in the profit and loss account/balance sheet for the year ending 31.3.2007. The assessee had not maintained stock register. The method of valuation of closing stock was stated to be at cost or market value whichever was lower. The Assessing Officer made the following additions on account of closing stock/WIP:--

"a) Material : Rs. 22,27,607/- as per the details furnished by the assessee.

b) Wages: Rs. 9,21,979/- being 1/6th of the expenditure incurred under this head in the month of March 2007.

c) Earth filling: Rs. 4,35,916/-. The AO noted that expenditure of Rs. 3,06,500/- was incurred by the assessee in executing the contracts in Punjab from 26th March 2007 to 31st March 2007 which she held obviously have to form part of the closing WIP.

d) Fuel expenses: Rs. 56,220/- added on account of fuel consumption on pro rata basis to the closing WIP."

The Assessing Officer also made addition of Rs. 78,000/- on account of disallowance of interest on interest free loans. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 21.12.2010, Annexure 2, the CIT(A) partly allowed the appeal confirming the following additions:--

"i) Closing work in progress Rs. 36,41,702/-

ii) Disallowance of interest on interest free loans Rs. 38,000/-."

The assessee filed second appeal before the Tribunal. Vide order dated 27.12.2012, Annexure 3, the Tribunal partly allowed the appeal giving relief to the assessee on the fact that the method of accounting had been followed by the assessee consistently for many years and this fact had not been rebutted by the revenue. It was further held that the Assessing Officer was, thus, not justified in making addition on account of closing work in progress. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. With regard to question No. (i), the Assessing Officer made certain additions on account of closing Stock/WIP. The CIT(A) on appeal gave partial relief to the assessee but confirmed the additions on account of closing work in progress and disallowance of Rs. 38,000/- on account of interest on interest free loans. The Tribunal on considering the matter recorded that since the assessee had been

following the same method of accounting consistently for many years, in the absence of any justification by the authorities below in their orders, different methodology could not be adopted. Therefore, the Assessing Officer and the CIT(A) were not held to be justified in adopting different methodology. It was further recorded that if the method of accounting is changed by the Assessing officer, then for including the closing stock/WIP in the income, the Assessing Officer is required to give deduction for the opening stock which is accepted method of accounting. The relevant findings recorded by the Tribunal read thus:--

"8. We have heard the rival contentions and perused facts of the case. There is no dispute to the fact that the assessee has been following the same method of accounting consistently for many years as pointed out at PB-12. This fact has not been rebutted by the revenue. Therefore, it is undisputed fact that when method of accounting has been followed consistently and in the absence of any justification by the lower authorities in their orders, a different methodology cannot be adopted departing from the past practice as a matter of principle of consistency. Therefore, the AO as well as the learned CIT(A) are not justified in adopting different methodology as in the present case. The reliance was placed on the decisions of various courts of law upon by the learned AR for the assessee Shri Sandeep Vijh mentioned hereinabove.

8.1 Moreover, if at all, the method of accounting is changed by the AO then for including the closing stock in the name, the AO is required to give deduction for the opening stock which is accepted method of accounting. This had not been done by the AO. Therefore, he is not justified in making any addition on account of closing stock.

8.2 Nothing has been brought by the AO or nothing has been demonstrated by the AO that the method adopted by the assessee is different as required by the revenue and how the profit has been under estimated has not been worked out properly. The AO has relied upon the measurement book of Jalandhar Improvement Trust and the same has been applied on the other contractees which infact is not true. It has been argued and also is on record that the assessee had received payment upto 30th March. Therefore, on no account, the purchase of material between 25th March 2007 to 31st March 2007 can be Rs. 22,27,607/-. Therefore, no addition in the present case can be made on surmises and conjectures."

5. The finding recorded by the Tribunal is a pure finding of fact which has not been shown to be illegal or perverse in any manner by the learned counsel for the appellant-revenue warranting interference by this Court.

6. With regard to question No. (ii), the same has not been pressed even before the Tribunal as is evident from para 2 of the order dated 27.12.2012 passed by the Tribunal. Consequently, question No. (ii) does not arise.

7. In view of the above, no substantial question of law arises and the appeal stands dismissed.