IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.194 of 1999
Date of decision: February 21, 2014.

M/s S.V. Auto Industries, Phagwara

... **Appellant**

v.

Commissioner of Income Tax, Jalandhar and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Argued by: Shri Akshay Bhan, Advocate, for the appellant.
Shri Vivek Sethi, Advocate for the respondents.

Dr. Bharat Bhushan Parsoon, J.

The challenge in this appeal filed under Section 260-A of the Income Tax Act, 1961 by the assessee is to the order dated 30.8.1999 (Annexure P-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.749(ASR)/93-94 pertaining to the assessment year 1990-91.

The appellant-assessee has sought consideration of this Court on the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the orders Annexures P-1 and P-3 are legally sustainable?

(ii) Whether in the facts and circumstances of the case, the confirmation of the additions made on account of excess wastage even though, no discrepancy or defect was present in the Books of Accounts of the assessee-appellant, is legally sustainable?

(iii) Whether in the facts and circumstances of the case, the confirmation of the addition made on account of excessive wastage with there being no material and cogent evidence on record and the same being based on presumptions and

conjectures, is legally sustainable?

(iv) Whether in the facts and circumstances of the case, the confirmation of the addition made on account of excess wastage by Appellate Tribunal is legally sustainable without taking recourse to proviso to Section 145(1) of the Income Tax Act, 1961?

(v) Whether in the facts and circumstances of the case, the respondents were legally justified in making an addition on account of excess wastage on mere surmises without there being any evidence on record to support the same?

A perusal of these questions reveals that that these are neither happily worded nor are terse and telling. In fact, the real controversy is as to whether without rejection of books and accounts, the results arrived at by the assessee based on his books can be ignored? It is in this light that the entire dispute is being discussed.

Finalizing assessment for the assessment year 1990-91, a sum of Rs.1,22,547/- was added in the income of the assessee, a manufacturer of pins and steel bars, interalia on account of excessive wastage shown by the assessee. It was vide order dated 9.10.1991 (Annexure P-1) of the Assessing Officer. Additions made on many other counts being not relevant, are not being discussed.

In appeal preferred by the assessee, this addition made by the Assessing Officer was deleted, though additions on some other counts made by the Assessing Officer were upheld by Commissioner of Income Tax (Appeals), Jalandhar. It was vide order dated 19.4.1993 (Annexure P-2).

Inter-alia against this order of deletion, the Department went in appeal before the Income Tax Appellate Tribunal. However, no appeal was preferred by the assessee regarding upholding of certain other additions which had been ordered against it, by CIT (Appeals).

Upholding the order of the Assessing Officer to some extent regarding addition to the income of the assessee qua excessive wastage, the Appellate Tribunal allowed wastage @ 2% instead of wastage @ 2.7% claimed by the assessee. Claim of the assessee is that when wastage had been arrived at in conformity with the entries in the stock register and the books of accounts, there was no parameter with the Tribunal to quantify wastage @ 2% instead of 2.7% claimed by the assessee on the fact based situation.

We have heard counsel for the parties while perusing the paper book.

It is urged by the assessee that wastage depends on many variables and quantum of wastage cannot be the same every time. It is claimed that the stock register kept in regular course of business and in the due discharge of their duties by the officials maintaining the same, shows production as also wastage, which is accordingly quantified on day to day basis and is meticulously recorded in the stock register as well. In short, it is claimed that the wastage has been quantified on the basis of actual production and actual wastage taken into account on day to day basis.

Plea of the revenue on the other hand is that the Tribunal having found large scale variation as compared to the previous years in output of wastage, had taken the average figure of 2%, rejecting the claim of the assessee of wastage at 2.7%.

It may be noticed that in the manufacture of pins and steel bars, MS rounds are converted into bright bars by application of the prescribed manufacturing process. These bars thereafter are cut into pieces according to the size required of the bars by the assessee.

In this process, some wastage and scrap emerges as a natural process and this scrap is sold by the assessee at much lower a price. Prices of the steel bars and of the scrap considerably vary.

Concededly, books of accounts including stock register maintained by the assessee in the course of manufacturing process and business operations, have neither been doubted in their correctness nor have been questioned much less rejected under Section 145 of the Act. Once the books of accounts have not been doubted in their correctness and much less are rejected, there is absolutely no explanation coming forth from the revenue as to why the Assessing Officer as also the appellate authorities including the Tribunal went on to substitute their own judgment for the actual figures of wastage emerging from stock register and from the books of accounts of the assessee?

Merely because last year, i.e. assessment year 1989-90, such wastage was calculated by the assessee @ 1.5% whereas in the year under consideration, i.e., assessment year 1990-91, it is 2.7%, would not mean that the quantity of wastage has been inflated merely to increase actual profits, as scrap is sold at much lower a price than finished steel bars manufactured by the assessee.

In fact, when production of 5 years earlier to the present assessment year are compared, it becomes clear that quantum of wastage has never been the same in any two consequent years, though it was somewhere in the same vicinity in the years 1985-86, 1986-87 and 1987-88. In the year 1988-89, quantum of wastage was nearly double of the year under consideration. Figures of wastage declared by the assessee in terms of its stock register and other books of accounts right from the assessment year 1985-86 till the assessment year in question, are reproduced as below:-

Assessment year	Percentage of waste (Shown and accepted)
1985-86	1.91%
1986-87	2.5%
1987-88	2%
1988-89	4.4%
1989-90	1.5%
1990-91	2.7%

The Assessing Officer has very conveniently bye-passed the figure of wastage at 4.4% for the assessment year 1988-89 merely mentioning it as an exception in the entire scenario. It remains a fact that in all the earlier assessment years, quantum of wastage as declared by the assessee was based on entries in the stock register incorporating opening stock, closing stock, monthly trading account, bank statements furnished to the bank from time to time etc. and on entries in other account books and had never been questioned in any other assessment year. Rather, percentage of wastage was being accepted as used to be declared by the assessee including the highest percentage of wastage @ 4.4% declared in the assessment year 1988-89.

When the books of accounts including stock register etc. have neither been rejected nor are doubted, accounts could not be bye passed merely on the whims and fancies of the authorities. Almost the same view was taken in Madnani Construction Corporation P. Ltd. v. Commissioner of Income Tax, (2008) 296 ITR 45 (Gauhati) and Pyarelal Mittal v. Assistant Commissioner of Income Tax, (2007) 291 ITR 214 (Gauhati).

When even slightest doubt has not been expressed with regard to genuineness of the entries in the stock register as also in other books of accounts of the assessee, findings of the Tribunal in taking the percentage at 2% instead of 2.7% claimed by the assessee, the same being without any basis or on any sound formula, is not the

correct approach of the Tribunal. Rather, it is dependent on over-generalization of quantum of wastage arrived at by the assessee in the earlier assessment years. Observations of the Tribunal in the impugned order (Annexure P-3), in its relevant portion are as under:-

> *"On going through the order of the A.O., we find that in the assessment years 1985-86 to 1990-91, the assessee has been showing the percentage of wastage at 1.9%, 2.3%, 2%, 4.4%, 1.5% and 2.7% respectively. Of course, the assessee is maintaining stock register and production record and the A.O. has not been able to detect any defect in the register but the fact remains that the assessee is manufacturing pins and steel bars and in this very business,, he has shown the percentage of wastage at 1.5%in the preceding year but in the year under consideration, he has shown the wastage at 2.7%.*
> *...*
> *xxxx xxx xxxx xxxx*
>
> *Thus all these facts clearly indicate that upto 1989-90, variation in wastage was shown by the assessee from .3% to . 5% only with the exception i.e., in the assessment year 1988-89, when the assessee shown the wastage at 4.4% it varied from 2.4% to 2.9% but we are of the opinion that such exceptions cannot be accepted as a rule for looking into the reasonableness of the variation in the percentage of wastage when the assessee suddenly shows the variation from 1989-90 to 1990-91 at 1.2% and claiming the wastage at 2.7% which to our mind, on account of our above discussion, is certainly high because the assessee has not rendered any plausible explanation for the same.*
>
> *15. Looking into the past history of the case, and also in view of our detailed analysis, it would be fair and reasonable to adopt the reasonable percentage of the assessee at 2% against 2.7% claimed by the assessee.*
>
> *16. The order of the CIT(A) is set aside and the order of the A.O. gets modified with the directions to the A.O. to work out the addition after taking into consideration the reasonable percentage of variation at 2% . With these observations, this ground of appeal No.2 is partly allowed."*

In contrast, when we peruse order dated 19.4.1993 (Annexure P-2) of Commissioner of Income Tax (Appeals), following observations are noteworthy:-

> *"2.1 .... From this, it is apparent that wastage varied from year to year and even to the extent of 4.4% it was not considered excessive. In such circumstances, claim of wastage of 2.7% was*

reasonable especially when it was supported by complete stock registers and no defects of any type were pointed out in the books of accounts or the stock registers. It was contended that even if the average of previous 3 years is adopted it would work out to almost the same as claimed. Therefore, the addition made on this account is warranted and needs to be deleted.

2.2 After careful consideration of the rival submissions and of the past history of the case, in my opinion, the claim of wastage of 2.7% could not be termed excessive when wastage to the extent of 4.4% had been allowed in the assessment year 1988-89. Moreover the trading results are being supported by complete stock register and no defects have been pointed out in the said register. Therefore, the addition made on this account is deleted as claim of wastage is in accordance with the past history of the case."

When the entire matter is tested on factual matrix and by application of law, order of the Commissioner of Income Tax (Appeals) takes precedence over the impugned order of the Tribunal. There is nothing in the order of CIT(A) which could be assailed on the fact based situation or on any principle of law. Impugned order of the Tribunal rather is not based on any sound parameters and runs contrary to the entries in the stock register and other books of accounts, veracity of which entries is not questioned by the revenue even a little.

Consequently, there being merit in the appeal, all the substantial questions of law are answered in favour of the assessee to the extent discussed above.

The appeal is accordingly allowed.

[**Dr. Bharat Bhushan Parsoon**]
Judge

[**Rajive Bhalla**]
Judge

February 21, 2014.
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