IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1509 OF 2004

M/S. ASHISH PLASTIC INDUSTRIES ... Appellant

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX ... Respondent

O R D E R

The appellant-assessee is a registered firm engaged in the business of manufacture of PVC pipes of different varieties and sizes. Survey operations were conducted by the Income Tax authorities under Section 133A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') at the factory premises of the assessee on 23.09.1993. During the course of survey operations, the stock at the premises was physically verified by the survey party and total stock of the value of 16,92,420/- was found. Statement of both the partners were recorded under section 131 of the Act. In the said statement, it was admitted that the stock as per books was around Rs. 3 lakhs and the excess stock of Rs. 13,92,000/- was, accordingly, admitted. On this basis, the addition was made and the assessment order was passed by the assessing authority in respect of the assessment years 1992-1993 and 1993-1994.

Before the Commissioner (Appeals), the appellant assessee sought to explain this difference by alleging that up to 23.09.1993, sales of 32809 Kg. of finished products was made by one of the sister concern of the assessee, namely, M/s Ashish Agro Plast Private Limited, and the same was wrongly shown to be that of the assessee. On this plea taken by the assessee, in support of which some documents / materials were also filed, the Commissioner (Appeals) asked for remand report from the assessing authority. Before the assessing authority, the representatives of assessee were asked to produce the books of accounts of M/s Ashish Agro Plast Private Limited for the assessment years 1993-1994 and 1994-1995. It was found that the sales of the finished product of 32809 Kg. as shown in the sales register of the sister concern tallies with the impounded stock register. It was also found that the sales proceeds was received by the sister concern, namely M/s Ashish Agro Plast Private Limited through its bank account in Bank of Baroda, Dudheshwar Road Branch, Ahmedabad. The cheques received against those sales were cleared even prior to the date of survey. Notwithstanding the aforesaid finding which vindicated the stand of the assessee to the aforesaid extent, it was further found that the sale of 33682 Kg. of finished goods was nothing but unaccounted sales out of which 32809 Kg. sales was made to the aforesaid sister concern of the assessee. Taking into consideration this aspect, the Commissioner upheld the order of the assessing authority justifying the additions made on account of unaccounted production, sales and closing stock of finished products. This order has been upheld by the Income Tax Appellate Tribunal as well as the High Court. In fact, the High Court dismissed the appeal of the assessee preferred under Section 260A of the Act on the ground that no substantial question of law arose.

Normally, going by the aforesaid facts noted, the High Court may be correct in its observation that no substantial question of law arose. However, learned counsel for the appellant-assessee has brought to our notice a different aspect which was raised at the time of admission of the present special leave petition filed by the appellant. He drew our attention to orders dated 27.02.2004 which reads as under: -

> "Leave granted limited to the question as to whether in respect of sales of 32,809 kg., which are shown in the stock register of M/s. Ashish Agro Plast Private Limited, there has been double taxation."

It is clear from the above that leave was granted limited to the question as to whether the addition made on account of aforesaid sale would amount to double taxation. To put it differently, the submission of the learned counsel for the appellant is that on the aforesaid sales, which are found in the accounts of M/s Ashish Plastic Industries, the receipts are shown as income on which tax has been paid by M/s Ashish Agro Plast Private Limited. During the hearing of this appeal, learned counsel submitted that he can bring satisfactory evidence in support of this plea. We are of the view that the order of the authorities below should be sustained but if the appellant is able to prove that tax on the income generated from the sale of the aforesaid 32809 Kg. of material has been paid by M/s Ashish Agro Plast Private Limited, benefit thereof should be extended to the appellant. For this purpose, therefore, we remand the case back to the assessing authority, who shall give an opportunity to the assessee to demonstrate as to whether the sister concern has already paid the tax on the aforesaid income from the aforesaid sales and if that is shown, to the extent tax is paid, benefit shall be accorded to the appellant.

The appeal stands disposed of.

............................, J.
[A.K. SIKRI]

............................, J.
[ROHINTON FALI NARIMAN]

New Delhi;
March 23, 2015.

ITEM NO.107 COURT NO.13 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1509/2004

M/S. ASHISH PLASTIC INDUSTRIES Appellant(s)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX Respondent(s)

(with appln. (s) for permission to place addl. documents on record and office report)

Date : 23/03/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)
Mr. Manish J. Shah, Adv.
Mr. Kumar Shashank, Adv.
Mr. Abhishek Vinod Deshmukh, Adv.
M/s. Parekh & Co., Adv.

For Respondent(s)
Mr. Rupesh Kumar, Adv.
Mrs. Anil Katiyar, Adv.
Ms. Shweta Garg, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]