

ORDER SHEET
ITA No.59 of 2004
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

M/S. PRAKASH ENGINEERING WORKS
Versus
COMMISSIONER OF INCOME TAX

BEFORE:

The Hon'ble JUSTICE SOUMITRA PAL

The Hon'ble JUSTICE DEBANGSU BASAK

Date : 18th September, 2014.

Appearance:
Mr. Soumitra Mukherjee, Adv.
Mr. H. B. Dubey, Adv.
Mr. Mukesh Mishra, Adv.

Mr. P. Dudhuria, Adv.

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

"i) Whether the burden to prove that any expenditure 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(2)(A) 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 M.T. in respect of pig from and C.I. Scrap out of the conversion charge of Rs.2.766.76 per M.T. under Section 40A(w2) 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 conversion charges at Rs.2000/- per M.T. Prayer is made to remand the matter before the Assessing Officer for fresh assessment.

Mr. Dudhuria, learned Advocate appearing for the Revenue, submits that in view of the letter dated 21st November, 1998 issued by Marcandy Prasad Radha Krishna Prasad Private 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.

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

"On scrutiny it reveals that assessee paid conversion charge to M/s Marcandi Prasad Radha Prasad, 65, G.T. Road, Howrah. The assessee firm paid conversion charge to the above mentioned party during the F.Y. 92-93 corresponding to A.Y. 93-94 @ 1749.04 per Mt. but during the F.Y.93-94, relevant to A.Y. 94-95 assessee paid conversion charge to the same party @ 2766.76 per M.T. On query, the assessee firm submitted explanation vide letter dt.27.2.97, submitted before me on 28.2.97 that "assessee has not occupied any factory and all the production has been made by outsider to fulfil the contract in time high rate of conversion charge was paid". Considering the relationship between the assessee firm and concerned party (Marcandi Pd. Radha Pd (P) Ltd.) with whom assessee holding 37200 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.2000/- per M.T. should be optimum rate.

In view of the above observation conversion charge (2766-76-2000) = 766.76 per M.T. is disallowed u/s 40A (2) of I.T. Act as excessive and unreasonable. Hence Rs.(1033.652 x 766.76) = 792563/- is disallowed."

Being aggrieved, the appellant preferred appeal before the C.I.T.(A) 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 A.R. of the Appellant. Since all the payments were made by A/C Payee cheque and the I.T.O. could not find any defect in respect of 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".

Aggrieved by the said order, the Revenue preferred 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 37200 shares the case of the assessee rates only in the ground that during the year under consideration

there were conversions of railway sleeper scrap in addition to pig iron and C.I. Scrap though in earlier year there was a conversion of Pig iron and C.I. scrap only and that the melting loss of 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 preceeding assessment year. We find that during the year under consideration the assessee got converted pig iron and C.I. Scrap to the extent of 476.417 M.T. and 49.260 M.T. respectively The Assessee has not given any explanation as to why the conversion charges in respect of pig iron and C.I. Scrap has been made at a rate of 2766.76 per M.T. as compared to 1749.04 M.T, paid in the last year there is no reason to Pay higher rate of conversion charges in respect of pig iron and C.I. Scrap The Assessee's case is only that the quality of railway sleeper scrap is generally of rough and of rejected sleeper and having of good amount of dust and rust resulting in the melting loss at a higher percentage than pig iron and C.I. Scrap Therefore paying the higher rate of conversion charges in respect of 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 pig iron and C.I. Scrap. The Assessee has also not furnished any information or evidence to show that even the rate of 2766.76 M.T. on account of conversion

of pig iron and C.I. Scrap is equal to the market rate the assessee has nowhere pleaded that the rate of 2766.76 paid for conversion of pig iron & 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 2766.76 paid by the Assessee to M/s. Marcandy Pd. Radha Pd. P. Ltd. on account of the conversion charges of pig iron & 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 A.O. at Rs.2,000/- per M.T. for the year under consideration is found reasonable and proper in as much as the assessee has not disputed as such this rate adopted by the A.O. We therefore direct to allow the deduction of conversion charges for pig iron & C.I. scrap @ Rs.2,000/- per M.T. and to allow the conversion charges in respect of railway sleeper scrap @ Rs.2,766.76 per M.T. as claimed by the Assessee The A.O. shall modify the assessment order accordingly".

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 21st November, 1998 that the sister concern had explained for charging rate of conversion charges at 2766.76 for the accounting year 1993-94.

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.

Hence, Appeal is dismissed.

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

(SOUMITRA PAL, J.)

(DEBANGSU BASAK, J.)

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