Court No. - 32

Case :- INCOME TAX APPEAL No. - 46 of 2004

Petitioner :- Commissioner Of Income Tax Varanasi And Another
Respondent :- M/S United Engg. (P) Ltd. Delhi Road, Saharanpur
Petitioner Counsel :- A.N. Mahajan,Ashok Kumar,Bharatji Agarwal,D. Awasthi,G.Krishna,R.K. Upadhaya,S Chopra
Respondent Counsel :- R.R. Agrawal

Hon'ble Sunil Ambwani,J.
Hon'ble Aditya Nath Mittal,J.

We have heard Sri Govind Krishna for the appellant. Sri R.R. Agarwal appears for the respondent-assessee.

This Income Tax Appeal under Section 260-A of the Income Tax Act, 1961 is directed against the order of the Income Tax Appellate Tribunal, Delhi Bench, Delhi dated 22.09.2003, relevant for the Assessment Year 1986-87, by which the Tribunal confirmed the appellate order.

The appeal was admitted on the following question of law:-

> "(1) Whether the ITAT is justified in deleting addition relying on the finding of Ld. CIT (A) and holding that when the amount of Central Excise Duty was received on account of reimbursement and also because this amount was not debited in the profit and loss account inasmuch as the Excise duty account wherein the amount has been credited as receivable in an integral part of profit and loss account and balance sheet.?"

We have gone through the order of the Tribunal and found that valid reasons have been given by the Tribunal in holding that the Assessing Authority was not justified in making the addition of Rs.10,31,279/-, on account of excise duty receivable. The reasoning given by the Tribunal are as follows:-

> "6. Ground No.2: This ground is directed against deletion of addition of Rs.10,31,279/- made on account of excise duty receivable. The version of the assessee in this regard was that this amount has not been debited in the P & L A/c, and it was only balance sheet entry which reflected this amount. The learned CIT (A) has considered the submissions of the assessee and has reproduced the same in the

appellate order on pages 5 & 6. He has also observed that the assessee used to reimburse from the concerned Government department in lieu of the central excise duty paid earlier and thus in the net result the assesee was not in receipt of any amount from the government department to whom the goods were sold. The relevant facts and findings have been recorded by the learned CIT (A) in para 3.1 of his order which are as under:-

> "3.1 From the detailed explanation of the appellant, it is seen that the Excise Duty was never charged from the Govt. Department to whom the goods were supplied by the appellant. However, on the removal of goods from the premises of the appellant, Excise duty was kept by the appellant as per the requirement from the concerned Government Department in lieu of Central Excise Duty paid earlier. Thus, in the net result, the appellant was not in receipt of any amount from the Government Department to whom goods were sold. This becomes clear from entries in its books of a/c as mentioned above. It is also surprising to note that the Export Incentive of Rs.4,05,777/-, which was exempt u/s 80 HHC of the I.T.Act was also added to the income of the appellant in the wake of Excise Duty refunded to the appellant. After due consideration of the total facts on the issue, there remains no confusion and I am of the clear opinion that no addition of Rs.10,31,279/- was called for in this case, because, what the appellant received during the relevant period was only a reimbursement of what was paid by the appellant on behalf of the Govt. Department at the time of removal of goods for being supplied to the Government Deptt. I, therefore, delete the addition of Rs.10,31,279/- made by the AO in this regard. The appellant will get relief accordingly."

7. After going through the appellate order, I do not find any scope to interfere as, in my view, the AO was not justified in making the addition particularly when the amount of central excise duty was received on account of reimbursement and also because this amount was not debited in the P & L a/c by the assessee itself. Ground fails."

Sri Govind Krishna has relied upon decisions in **Commissioner of Income Tax Vs. Narang Ram Chiranji Lal** [(1999) 235 ITR 11]; **Commissioner of Income Tax Vs. Chaudhary and Co.** [(1996) 217 ITR 431]; and **Commissioner of Income Tax Vs. Ram Agya Shyam Narain** [(1991) 189 ITR 470].

We do not find that any judgment cited above is relevant to the question of law raised in this appeal.

We do not find any error in the reasoning given by the Tribunal that the assessee used to reimburse from the concerned Government Department in lieu of the central excise duty paid earlier, and thus in the net result, the assessee was not in receipt of any amount from the Government Department, to whom the goods were sold.

The question of law raised in this appeal is thus decided against the revenue and in favour of the respondent- assessee.

The Income Tax Appeal is **dismissed.**

Order Date :- 9.8.2012
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