<u>Court No. - 35</u>

Case :- INCOME TAX APPEAL No. - 115 of 2010

Appellant :- The Commissioner Of Income Tax And Another
Respondent :- M/S Metro & Metro
Counsel for Appellant :- S.S.C. I.T.,Gaurav Mahajan
Counsel for Respondent :- R.R. Agarwal,Rishi Raj Kapoor

<u>Hon'ble Bharati Sapru,J.</u>
<u>Hon'ble Neeraj Tiwari,J.</u>

Heard Shri Gaurav Mahajan, learned counsel for the appellant and Shri R.R. Kapoor, learned counsel for the respondent-assessee.

This appeal under Section 260-A of the Income Tax, 1961(hereinafter referred to as the 'Act') has been filed by the department against the order of the Income Tax Appellate Tribunal dated 16.10.2009 for the assessment year 2004-05. The questions of law sought to be answered are as hereunder:

"*(1)* Whether the CIT rightly invoked the statutory provisions of Section 263 of the Act as the assessment so made by the A.O. was not only erroneous but also pre-judicial to the interest of the Revenue within the meaning of the provisions of Section 263 of the Act?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in setting aside the order passed u/s 263 of the Act by the CIT and restoring the assessment order by completely overlooking the reasons recorded in the order passed u/s 263 of the Act?"

Shri Gaurav Mahajan, learned counsel for the department has sought to argue that the Tribunal has wrongly set aside the order passed by the CIT under Section 263 of the Act because four grounds were raised by the CIT, which have not been explained by the department by the A.O.'s order and by the Tribunal. The grounds reads as hereunder"

"(i) From the records, it is seen that the assesse had disclosed export incentive in the form of duty draw back amounting to Rs.1,31,15,713/- on

total export turnover of Rs.52,93,21,557/-, which in terms of percentage works out to 2.47%. In the preceding year total export incentive in the from of draw back was shown at Rs.2,76,41,554/- on total export turnover of Rs.47,47,16,835/- i.e. 5.82 per cent. The decreases in percentage of export incentive in comparison to preceding year has not been inquired into by the A.O.

(ii) As the quantitative details of stock enclosed with the 3CD report filed along with the return of income it is seen that total number of pairs manufactured were shown at 793975 as against total number of pairs of sole/insole consumed at 961984. Thus, there remains a difference of 168009 pairs manufactured from the sole/insole consumed and the consumption of sole/insole has been claimed at much higher figure than the pairs manufactured. This has not been inquired into the Asseessing Officer.

(iii) An expenditure of Rs.2,11,896/- was claimed on 27.3.2004 for purcahse of foreign currency in respect of travelling of one of the partner of the firm Mr. Ajit N. Kaisi. The AO has not made any inquiry about the consumption of foreign exchange in the year under consideration particularly when the foreign currency was purcahsed at the fag end of the financial year.

(iv) From the details of the expenses in respect of Germany office, it is seen that the assessee firm has claimed expenditure in respect of health insurance of one of the partner, namely, Mr. Ajit N. Kaisi. This being a personal expenditure of the partner is not allowable in the hands of the firm?"

However, upon a joint reading of the A.O's order and the Tribunal's order we find that each and every aspect of the matter was discussed and the A.O. has taken into account the fact that the assessee was exporting shoes and the fluctuations, if any, in its accounts were due to fluctuating rates of exchange. on other counts also like travelling expenses etc., there is a complete discussion and expenses made by the assessee found to be justified.

The Tribunal while discussing the matter at length has recorded that after examining the entire record he found that there was nothing erroneous in the order passed by the A.O. and also that no prejudiced has been caused to the revenue.

The Tribunal, therefore, while relying on a decision of the Apex Court in the case of **Malabar Industries Company Limited Vs. CIT reported in (2000) 243 ITR 83(SC)** has come to the conclusion that in the facts of the present case it could not be said that the revisional order passed by the CIT was valid and therefore, he restored the order of assessment dated 29.09.2006.

The Tribunal as has been said earlier has examined each and every head as questioned by the Commissioner and has answered in respect of every issues raised by him whether it was a question of difference of pairs of footwears manufactured during the year or whether it was the travelling expenses of the partner or whether it was the health expenses and insurance expenses of the partner of the firm, has come to the conclusion that A.O. had made no error in passing the orders on these issues.

There is no quarrel with the settled law that it is always open to the CIT under the provisions of Section 263 of the Act to make a detailed inquiries with regard to any issue that may seem doubtful, but while passing the order under Section 263 of the Act he has to make a clear and firm decision that the order passed by the A.O. is either erroneous or to be prejudicial to the interest of the revenue. Neither has been found in the present.

In view of above, the questions of law are answered in favour of the assessee and against the department.

The appeal is accordingly dismissed.

Order Date :- 12.3.2018
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