ORDER SHEET
ITA 56/2008

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction(income tax)

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA

Versus

SHREE HANUMAN SUGAR & INDUSTRIES LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 11th July, 2016.

Mr. M.P. Agarwalla, Adv. Appears.

Mr. S. Bhowmick, Adv. Appears.

The Court : The subject matter of challenge in the appeal is a judgment and order dated June 26, 2007, passed by the learned Income Tax Appellate Tribunal, "E" Bench, Kolkata, in ITA No.762/Kol/2007, pertaining to the assessment year 2002-03, by which an appeal preferred by the assessee was allowed.

The aggrieved revenue has come up in appeal which was admitted on March 17, 2008 and the following substantial question of law was formulated:

> Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in deleting the addition of Rs.1.5 crores, being the difference between the annual lease rentof Rs.2,25,00,000/- receivable and Rs.75,00,000/- received while the

assessee paid the full amount of lease rent of Rs.1,18,42,200/- and the three companies, the lessor, the assessee and the sub-lessee were sister concerns?

The facts of the case, briefly stated, are as follows.

The assessee is a lessee in respect of the sugar factory at an annual rental of Rs.1,18,42,200/-. The lessor of the assessee is Shruti Ltd. The assessee, on its part, has let out the factory to M/s. Eastern Sugar and Industries Ltd. at a rental of Rs.2.25 crores. During the relevant previous year, consequent to the breakdown of the boiler, necessitating extensive repairs and renovations, the assessee agreed to reduce the rental from Rs.225 lakhs to Rs.75 lakhs, which is evidenced by a Board Resolution dated March 5, 2002. The Board Resolution adopted by the Board of Directors of the assessee, reads as follows:

> *"RESOLVED THAT the Lease Rental receivable from Eastern Sugar & Industries Ltd. in respect of sugar factory at Motihari be reduced from Rs.225 lacs p.a. to Rs.75 lacs p.a. w.e.f financial year 2001-02 till the normal production of the factory starts."*\

The Assessing Officer made an addition of a sum of Rs.150 lakkhs on the ground that *"the assessee has failed to justify reason for allowing reduction of lease rent to the lessee-company which belongs to the same group of companies. The lease rent has, therefore, accrued in the hands of the assessee-company amounting to Rs.2,25,00,000/- which was receivable as per agreement and Rs.1,50,00,000/- is added to the total income of the assessee-company being accrued lease rent for the relevant previous year."*

The CIT(A) agreed with the views of the Assessing Officer and added as follows:

> *"In my opinion, the effect of the agreement between the lessor and the lessee cannot be modified by such resolution. Lease rent payable to the appellant is stipulated in the agreement. This*

agreement has not lapsed. Therefore, income in terms of the agreement has accrued to the assessee."

In a further appeal by the assessee, the learned Tribunal deleted the addition on the basis of the following reasoning:

"On a total consideration of the facts and circumstances of the case, it transpired that although there was an agreement in existence during the material time because of the changed position due to inability to pay a sum of Rs.1.5 crore and having agreed upon to pay Rs.75 lakhs by the lessee company, the Board of Directors, through resolution, altered the conditions stipulated in the agreement in the financial interest of the company as has been brought on record by the Ld. Counsel on behalf of the appellant company. To this factual aspect, there is no denial or rebuttal by the Revenue that such a resolution having been passed had got any mala fide intention to avoid tax. In such a situation, the averments made by the Ld. Counsel has to be accepted since it is the provision of law that through resolution the Board of Directors can change or alter the stipulated conditions of the agreement for the financial interest of the company. With this specific finding on facts as well as on provision of law, we are inclined to allow the assessee's appeal in its favour."

Mr. Agarwal, learned Advocate appearing for the revenue-appellant, submitted that the head lessor, the assessee and the sub-lessee are all sister concerns. He submitted that if due to breakdown of the boiler, it was necessary on the part of the assessee to reduce the rental payable by the sub-lessee, the assessee, in that case, would have approached the head lessor for proportionate reduction of the rent payable to the former by the assessee. The fact that the assessee did not do any such thing, is a pointer to show that the reduction in the rent payable to the assessee is not a genuine reduction.

The submission advanced by Mr. Agarwal has been vehemently opposed by Mr. Bhowmick. He submitted that Mr. Agarwal has made out a new case. The genuineness of the transaction was never in issue before the learned Tribunal or even before the CIT(A). Mr. Bhowmick drew our attention to a judgment of the Apex Court in the case of ***CIT -vs- Calcutta Discount Co. Ltd., reported in 1973 (91) ITR 8***, wherein the following view was taken:

> *"Where a trader transfers his goods to another trader at a price less than the market price, and the transaction is a bona fide one, the taxing authority cannot take into account the market price of those goods, ignoring the real price fetched, to ascetain the profit from the transaction."*

Mr. Bhowmik submitted that even assuming that the assessee has allowed a reduction of rent, the revenue is not entitled to make an addition which the assessee could have earned but chose not to earn by remitting the rent payable by Eastern Sugar & Industries Ltd. He submitted that the bona fide of the transaction has never been in dispute. He also drew our attention to section 63 of the Contract Act, which provides as follows:

> ***"63. Promisee may dispense with or remit performance of promise.-*** *Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit."*

He relied upon the statutory illustration (b) of section 63 which reads as follows:

> *"(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged."*

He submitted that once the assessee accepted a sum of Rs.75 lakhs in satisfaction of the agreed sum of Rs.2.25 lakhs, the debt, if any, of the balance sum of Rs.1.5 crore payable by the sub-lessee stood discharged. He contended that the revenue cannot, in the circumstances, seek to make the addition for a sum which the assessee never received nor is the sum receivable in future. He submitted that the learned Tribunal, for appropriate reasons, has deleted the addition made by the Assessing Officer and upheld by the CIT(A). This Court should refrain from interfering with the order passed by the learned Tribunal.

We have considered the rival submissions advanced by the learned Advocates. There is no denial of the fact that the bona fide of the transaction was never in dispute. There is evidence to show that the assessee resolved to remit the sum of Rs.1.5 crore. There is also evidence to show that the assessee received only a sum of Rs.75 lakhs. In that view of the matter, the addition of the sum of Rs.1.5 crore, made by the Assessing Officer and upheld by the CIT(A) was rightly deleted by the learned Tribunal. In that view of the matter, the question formulated is answered in the affirmative and against the revenue.

The appeal, for the aforesaid reasons, is dismissed. The parties shall, however, bear their own costs.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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