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% 18.01.2011

Present: Mr. N.P. Sahni with Mr. Ruchesh Sinha, Advocates for the Revenue.
Ms. Bhakti Pasrija, Advocate for the assessee.

+**CM No.17903/2009**
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For the reasons stated in this application, delay in refilling the appeal is condoned.

CM stands disposed of.

ITA No.1377/2009

This appeal pertains the Assessment Year 1999-2000. In that year, the assessee had claimed deduction of losses suffered on account of goods damaged in the cyclone which had hit Kandla Port where the goods of the assessee were stocked. As per the assessee, the goods lost in the said cyclone were of the value of ₹2,67,54,880. Since the goods were insured, the insurance company had approved and paid the claim in the sum of ₹1,24,12,470. In this manner, it was submitted, the assessee had suffered a loss of ₹1,43,42,410 and deduction thereof was sought in the income tax return filed by the assessee. The Assessing Officer (AO) disallowed this claim on the ground that the stocks were overvalued. The AO while coming to this conclusion was swayed by the claim passed by the insurance company which was to the tune of ₹1,24,12,470. He, thus, valued that when the insurance company passed the claim for lesser amount, the value of the stock was not to the tune of ₹2.67 Crores as shown by the

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assessee, but was the sum for which the insurance company had passed the claim.

The AO also held that no cogent evidence was produced to demonstrate the quantity of the stocks.

In the appeal filed by the assessee before the CIT (A), the assessee succeeded and the CIT (A) allowed the aforesaid deduction on account of loss suffered by the assessee. As per the order of the CIT (A), the assessee was able to demonstrate the existence of the stocks and the valuation thereof on the basis of following three reasons:

(i) That the findings of the AO are without any rationale basis as the entire record was made available to the AO which depicted opening stock as on 01.04.1998.

(ii) That the return of previous year clearly shows the closing stock on 31.03.1998 which has been available with the AO (Ann. TAR-A to form 3-CD of ROI filed for Assessment Year 1998-99).

(iii) That the assessee had placed on record of AO certificates issued by the handling agents at Kandla confirming the availability of stock as on 01.04.1998.

It is also contended by the assessee that the AO was not right in observing that the details were not produced before the AO. No doubt, the assessee had taken few adjournments for this purpose,

but ultimately the relevant details were made available on 22.03.2005. This was accepted by the AO himself, but he had stated that by that time these details were filed, very little time was left for completing a time barring assessment, which showed that the AO did not look into those details while passing the assessment order.

In this background and on the basis of documents which were produced by the assessee before the AO AND ALSO BEFORE THE CIT (A), the CIT (A) allowed the claim holding as under:

> "5.1....It is in the case of the AO that stock register and on the relevant details were not filed by the assessee despite a number of opportunities and were made available to him only on 22.3.05 when very little time was left for completing a time barring assessment. Also, it is added that no substantial evidence was filed about the availability of opening stock for soyabean as well as rapeseed meal. In view of this the AO did not accept the plea of the assessee co. and disallowed the loss of ₹1,43,42,410.
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> 5.2 On the other hand it is contended by the assessee co.
>
> (i) That the findings of the AO are without any rational basis as the entire record was made available to the AO which depicted opening stock as on 01.04.1998.
>
> (ii) That the return of previous year clearly shows the closing stock on 31.03.1998 which has been available with the AO (Ann. TAR-A to form 3-CD of ROI filed for Assessment Year 1998-99).
>
> (iii) That the assessee had placed on record of AO certificates issued by the handling agents at Kandla confirming the availability of stock as on 01.04.1998."

The Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') has confirmed the aforesaid finding. The Tribunal has

also recorded that the CIT (A) had verified the contention of the assessee at length and held that the said cyclone loss of ₹1,43,42,410 was duly allowable. It was further observed by the Tribunal that in ITA Nos.1266, 1267 and 1268/D/06 for the Assessment Year 1998-99 to 2000-01, the Tribunal vide its order dated 11.05.2007 had held that the *modus operandi* of the assessee in carrying on its export of its activity was found to be genuine.

We are of the opinion that the two Authorities below on the basis of documents produced before them had arrived at a finding of fact that the stocks were not overvalued, but the assessee had demonstrated the value of the stocks by adducing sufficient evidence. We have also perused the Surveyor Report filed by the Department. It shows the existence of stock. However, the claim of lesser amount is passed only because of under insurance of the stocks and not that the quantity of stock.

We may point out at this stage that Mr. N.P. Sahni, learned counsel appearing for the Revenue had tried to demonstrate from the Surveyor Report that the total quantity of stock as per the said report was ₹9,441 M.T. whereas as per the statement filed by the assessee, quantity was 10,127 M.T. According to him, this was a discrepancy which was not noticed by any of the authorities. In this appeal, under Section 260A of the Income Tax Act, we are not concerned with the factual aspects, but the appeal can only be of substantial question of law. Admittedly, what is pointed out by the learned counsel for the

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Department is not the basis of assessment by the AO and this issue was never raised by the Department either before the CIT (A) or the Tribunal. It may also be of significance to point out that as per the Surveyor, the value of stock was even much higher than ₹2.67 Crores which is the value ascertained by the assessee and on that basis, loss was claimed. Therefore, the aforesaid discrepancy, if any, would not have any bearing on the final decision.

In view of the aforesaid discussion, we are of the opinion that no substantial question of law arises. This appeal is accordingly dismissed.

A.K. SIKRI, J.

M.L. MEHTA, J.

JANUARY 18, 2011
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