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% 18.07.2011

Present: Mr. Sanjeev Sabharwal, Counsel for the appellant on behalf of Ms. Suruchi Aggarwal, Advocate.
Mr. Ved Jain, Advocate for the Respondent.

+ITA No. 650/2010

The Assessee, during the relevant assessment year 2005-06, had imported gold bars of the value of ₹1,82,86,49,640/- from M/s Ramadan Jewelers Dubai. The job assigned by the said M/s Ramadan Jewelers to the assessee was to cut those bars into smaller ones and to re-export these bars to the same person. The Assessee incurred an expenditure of ₹4,55,948/- on cutting of the aforesaid bars into the smaller bars, however, he supplied the same back to M/s Ramadan Jewelers for ₹1,73,44,96,383/-. The Assessing Officer found that this had resulted into a loss of ₹9,41,53,256/- which was because of the reason that the assessee had given heavy cash discount in the sum of ₹8,55,61,419/- to the said foreign party which had resulted into the aforesaid loss. The AO deleted the discount and added the same to be the income of the assessee.

We may note here that the explanation given by the assessee was that the foreign party had paid sale consideration to the assessee at the time of sale while the purchase consideration was paid by the assessee to the same foreign party after a gap of one year. In this manner, the assessee was able to utilize huge amount of ₹1,73 crore which the assessee kept in the FDRs and KVPs and earned substantial interest on the amount. The assessee paid the consideration only after a gap of one year was the reason furnished by the assessee for giving heavy discount. It was also explained that in spite giving said cash discount, the income earned by way of interest was much higher and in the process the assessee still could make a profit of more than ₹60 lac which was offered for taxation. This plea was taken by the assessee before the CIT (A) as well which appealed to the CIT (A). The analysis of the entire transaction is undertaken by the CIT (A) and projected in the following chart:

Trading A/c of Imports, Exports for

01-04-2004 to 31-03-2005

To Purchase on credit basis	1828649640.00	By sales (Spot Basis)	1734496384.00
To Net Profit	6145348.00	By interest (Earned on Fund Received on sale on spot basis).	98236104.00
		By commission (on advance sale receipts)	2062500.00
	1834794988.00		**1834794988.00**

The CIT (A) thus held that the discount given by the assessee to the foreign party could not have been taken in isolation and the aforesaid factor because of which the assessee could earn interest of Rs.9.82 crore which was much more than the cash discount offered should have also to be considered. On this basis, CIT (A) deleted the addition and ITAT has also accepted the same inter alia observing as under:-

> *"9. We have heard both the counsels and perused the records. We find ourselves in agreement with the view that in the course of transaction of purchase and sale of gold, assessee's earning of interest income cannot be completed disregarded while examining the issue of cash discount granted by the assessee. The overall transaction as resulted in a profit margin of approximately 0.25% which Assessing Officer had himself estimated. The Assessing Officer's view that assessee had diverted interest income to the foreign supplier is not based upon any cogent material and at best be a surmise of the Assessing Officer. It is a settled law that addition based on surmises cannot sustainable".*

We are entirely in agreement with the aforesaid approach. The factual parts of the transaction are appreciated in a proper manner. No question of law arises in this appeal. Dismissed.

A.K. SIKRI, J.

M.L.MEHTA, J.

July 18, 2011
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