THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2014

\+ **ITA 231/2014**

COMMISSIONER OF INCOME TAX-IX ..... Appellant

versus

HIGH TECH ENGINEERS ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rohit Madan, Mr P. Roy Choudhary and Mr Akash Vajpai.

For the Respondent: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

S. RAVINDRA BHAT, J (OPEN COURT)

1. The Revenue claims to be aggrieved by the impugned order of the Income Tax Appellate Tribunal (ITAT), whereby the order of the CIT(Appeals), rendered in favour of the assessee was affirmed.

2. The assessee's original return for AY 1998-99 was accepted, it had reported an income of ₹4,04,930/-. The AO sought to re-assess the income by issuing notice under Section 148 of the Income Tax Act, 1961 (the Act), and framed a fresh assessment on 29.03.2004. In this case, the AO disallowed a sum of ₹7,40,04,922/- originally claimed by the assessee under Section 80HHC of the Act, primarily added on account of certain investigations carried out by the Department of Revenue Intelligence (DRI). One of the grounds was that, whereas, originally the assessee used

to export its consignments to Moscow, however, for the given relevant period, he allegedly did so to Helsinki via Moscow. There were also certain allegations based upon the inflated value of the bills claimed or that some of bills/invoices were sourced from fictitious firms. These two were based upon the DRI investigations. The reassessment order was completed without issuing a specific notice under Section 143(2) of the Act. The assessee's appeal was accepted by the CIT(Appeals), both on the question of denial of natural justice as well as on the merits. The ITAT examined the matter elaborately and concurred with the findings of the CIT(Appeals). It first of all, upheld the assessee's complaint that the AO's reassessment order was vitiated on account of failure to provide an opportunity of being heard and secondly, on the merits.

3. It is urged by the revenue that the record clearly discloses that the assessee was provided with sufficient opportunity in this regard and that on two separate occasions it was called upon to produce materials. It was only upon its failure to do so, that the AO resorted to Section 144 and rendered a best judgment assessment in the circumstances of the case.

4. This Court has considered the submissions and findings of the ITAT. As is facially evident, the impugned order, deals with both the failure to issue notice under Section 143(2) of the Act, as well as on the merits. Most importantly, on merits the ITAT said:-

> "*10. The Ld. CIT (A) has also made his observations regarding the non-maintainability of the disallowance made by the AO in the reassessment accepting contention of the assessee in this regard. He has observed that in the assessment in the case of proprietary concern of Shri Rajeev Verma also reopened u/s 148*

of the Act for the assessment years 1998-99, 1999-2000 & 2000-2000, the same Assessing Officer as that of assessee firm vide assessment orders dated 08/10/2004 has accepted the exports made by the proprietary concern of Shri Rajeev Verma in all the assessment year.

1) For denial of deduction u/s 80HHC, the only issue remained as to whether the assessee had made export outside India or not. The AO has admitted that the assessee has earned business income of Rs.7,39,59,930/-. He has made reference of the investigation carried out by the DRI and he has used this report as basis for disallowance of the deduction. As per this report the allegation was of over valuation of export pertaining to the period 1998 to 2000. The contention of the assessee remained that the report of DRI pertains to the period 1998-2000 whereas the assessment year under consideration is 1998-99, and the relevant previous year is 1/4/1997 to 31st March 1998. The AO has also referred the report of DRI wherein it was mentioned that on enquiry from Russian Custom, it was revealed that the goods were sent by the assessee to Helsinki from Mosco. The contention of the assessee in this regard remained that u/s 80HHC there is no such condition that the exemption will be allowed only if the goods are exported to Mosco and not to any other country. Since there is no allegation that goods have not been exported out of India, we are of the view that the Ld. CIT(A) has rightly accepted this contention of the assessee.

2) The AO further observed that Mr. Rajeev Verma claimed illegal draw back and suppliers have confirmed that they have been issued bills for leather bags at inflated value. The assessee objected this allegation with this contention that the draw backs has been claimed as per the law and the suppliers have given bills only for the amount for which the goods have been purchased. It was contended that no statement of the suppliers was made available to the assessee for their confrontation. And as such, such information is not valid piece of evidence. It was argued that even for a moment if it is assumed that the assessee

has claimed illegal "Draw Back", it will reduce the income of the assessee under the head, "Draw Back" and it will no where affect the computation of Section 80HHC deduction. It was argued that if the AO is of the view that this draw back is not due to the assessee, then it will be a liability of the assessee and cannot be turned as income. If it is to be termed as income, then the nature of income will "Draw Back" only, contended the assessee. In absence of any specific rebutal of these contentions of the assessee, we are of the view, that the Ld.CIT(A) was justified in accepting the above contention of the assessee questioning the disallowance of the claimed deduction u/s 80HHC of the Act. The ground no-2 is thus rejected. So far as Ground No.-3 is concern, we find that the assessee had sought permission for admission of the additional evidence filed by way of photocopy of seized record which could not have obtained during the course of assessment proceedings. It was also contended that the AO has made disallowance u/s 80HHC of the Act ignoring the documents already on record and the audited balance-sheet, certificate from auditors, etc. We thus find that sufficient reason was shown by the assessee behind non-furnishing of these documents before the AO, and the Ld. CIT(A) has decided the appeal after obtaining remand report of the AO, on the material submission of the assessee. We thus do not find substance in the issue raised in Ground No.-3. The same is accordingly rejected.

11. In result the appeal is dismissed."

5. This Court notices that the decision of the ITAT is based upon its consideration of the CIT(Appeals') order. Furthermore, the AO seems to have been entirely influenced by the allegations envisaged in the DRI report as to the alleged unjustified drawback claimed by the assessee. There was otherwise no independent material to support the conclusions of the AO in the reassessment proceedings-a fact which persuaded the CIT(Appeals) to set aside the reassessment. The findings being intensely factual, this Court finds no substantial question of law which requires

consideration in the present appeal.

6. The appeal is dismissed as bereft of merits.

S. RAVINDRA BHAT, J

VIBHU BAKHRU, J

MAY 21, 2014
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