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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 344/2022

PR. COMMISSIONER OF INCOME TAX-1 ..... Appellant

Through: Mr.Sanjay Kumar, Sr.Standing Counsel for the Revenue with Ms. Easha Kadian, Advocate.

versus

M/S ATTIRE DESIGNERS PVT. LTD ..... Respondent

Through: None

% Date of Decision: 20th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present income tax appeal has been filed challenging the order dated 29th November, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA 5224/Del./2017 for the Assessment Year 2014-15.

2. Learned counsel for the Appellant states that the ITAT has erred in upholding the decision of the CIT(A) of deleting the addition made under Section 68 of the Income Tax Act, 1961 ('the Act') without appreciating the findings of the Assessing Officer and without considering the creditworthiness of the companies with whom assessee company had executed large scale transactions.

3. He further states that the ITAT has erred in deleting the addition made under Section 37(1) of the Act without appreciating the facts clearly

mentioned in the Assessment Order and without considering that assessee has claimed and received excess incentive on the basis of erroneous declaration.

4. A perusal of the paper book reveals that the CIT(A) noted the objection of the assessee that sufficient opportunity was not given by the Assessing Officer during assessment proceedings and accordingly directed the assessee to furnish details of payments of outstanding balance as on 31st March, 2014 along with confirmation for fair and proper disposal of the appeal. The assessee submitted details of parties as well as detail of transaction made by the Appellant with said parties during the Financial Year under consideration mentioned in transfer pricing report in the Form of 3CEB as well as transfer pricing study, which was submitted by Appellant before the Assessing Officer.

5. The CIT(A) noted that the said transactions of purchases were at arm's length price and no adverse finding was brought on record by the Assessing Officer and that the Assessing Officer never doubted purchases made by the Appellant during the year which includes purchases made from sundry creditors, sale made by Appellant during year and book result declared by the Appellant-Company for the financial year under consideration.

6. During the appellate proceedings, the CIT(A) also observed that M/s Vikas Superfine Garments Pvt. Ltd. and M/s Mangat Superfine Garments Pvt. Ltd. (the sundry creditors) have purchased goods during the year under consideration from different parties and out of the said purchases, they have sold goods to the Appellant-Company and as per general business practice, goods were purchased on credit basis and therefore, the allegation of Assessing Officer that the financial statement of the sundry creditors do not

support their creditworthiness, is not based on proper appreciation of the facts. The CIT (A) also perused the details of sale, purchase, trade payables and trade receivables for the financial year under consideration of the said sundry creditors and came to the conclusion that there are corresponding purchases against sales declared by them for the financial year under consideration and there are also trade payables outstanding as on 31st March, 2014, which shows that the said companies also having trade payable against purchases of goods, therefore, the allegation made by the Assessing Officer that such companies do not have creditworthiness to enter into large scale transaction of sale and purchase is factually incorrect. The CIT (A) held that once Assessing Officer has accepted sales and purchase transactions, transfer pricing report at arm's length and book results declared by the Appellant, he is not justified in treating the credit balance of associate parties relating to sales to the Appellant as non-genuine without bringing any adverse material on record.

7. It was also observed by the CIT (A) that the Appellant as well as parties in whose name credit balance have been treated as unexplained, have submitted sufficient documentary evidence during the course of assessment proceedings to prove identity, creditworthiness and genuineness of the transactions of purchases made by the Appellant from sundry creditors and no defect has been pointed out by the Assessing Officer in the assessment order.

8. The ITAT upheld the findings of the CIT (A) and dismissed the appeal of the Revenue.

9. The Appellate Authorities below relied on the judgment of this Court in the case of Commissioner ***of Income Tax v. Ritu Anurag Aggarwal***

[2010] 2 taxmann.com 134 (Delhi) wherein it has been held as under:

> *"2. It would be worthwhile to mention that the aforesaid creditors shown in the books of accounts, are the sundry creditors, from whom as per the assessee, he had made purchases. They are thus the creditors.* ***The Tribunal found that even if it is accepted that the books were rejected, significantly the Assessing Officer had not disallowed the purchases from those creditors nor the trading results have been disturbed.*** *In this behalf, learned counsel for the assessee also drew our attention to the orders of the Assessing Officer, as per which the assessee had shown the total turnover of Rs. 1,03,44,054, on which gross profit rates declared was 68.94% as compared to sales of Rs. 21,18,994 in the previous year. The Assessing Officer accepted the aforesaid figures and categorically observed as under:*
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> > *"The GP rate as well as the sales has been substantially increased during the year in comparison to the last year. Sales trading results are not disturbed."*
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> *3. This finding of Assessing Officer remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer.*
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> *4. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of the sundry creditors under section 68 of the Income Tax Act.* ***As there was no case for disallowance for corresponding purchases, no addition could be made under section 68 inasmuch as it is not in dispute that the creditors' outstanding related to purchases and the trading results were accepted by the Assessing Officer.****"*
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> (emphasis supplied)

10. As far as the second issue raised by the Appellant is concerned, this Court finds that the Appellate Authorities below have recorded that assessee had received incentive of Rs.1,68,00,331/- from Custom Department Authority on export of 'technical textile'. However, later on, Deputy DGFT asked the assessee to refund the incentive received, as certain exports did not fall in 'technical textile' category for which the incentives were payable. The Appellate Authorities below noted that in the letter directing the assessee to refund the incentive, nowhere it was stated that assessee had committed any offence under foreign trade regulation.

11. The Appellate Authorities below further recorded that the Revenue has not placed any material on record to point out that interest paid by the assessee was on account of any act of assessee which is prohibited by law and to demonstrate that the payment is hit by Explanation 37(1) of the Act.

12. This Court in the case of ***CIT v. Enchante Jewellery Ltd. [2013] 40 taxmann.com 216 (Delhi)*** has held as follows:

> *"2. The facts are that the assessee used to manufacture and trade in gold jewellery. Its return for the assessment year 2001-02 was selected for scrutiny and notice under Section 143(2) was issued and served upon the assessee. During the assessment proceedings the Assessing Officer disallowed Rs. 1,04,000/- paid by the assessee as interest on customs duty demand. The assessee contended that he used to import jewellery manufacturing machinery under Export Promotion Capital Goods Scheme (EPCG Scheme) at a concessional rate with an export obligation which it could not fulfil and was required to pay interest @ 24% per annum to DGFT. The Assessing Officer after considering the contentions of the assessee held that the interest paid by the assessee cannot be allowed as deduction as it was penal in nature and, therefore, fell within the mischief of Explanation below Section 37(1) of the Act. The assessee appealed to the Commissioner (A) who ruled in favour of the*

assessee in the following terms:-

> *"3.2 During the course of appellate proceedings it has been submitted by the appellant counsel the interest is on late payment of customs duty and is not a penalty. The penalty was to surrender the special import licences equivalent to thrice the value of import license. Therefore, the A.O. has wrongly disallowed the amount. It was further submitted if any interest is paid for purchase of capital asset after commencement of the business the same is allowable as a business expenditure.*
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> *3.3 On going through the letter placed on record by the appellant counsel it is observed in the letter it is clearly mentioned that the entire duty saved along with interest @ 24% is to be deposited. It is also mentioned that SIL equivalent to thrice the value of import license is also required to be surrendered as penalty. Therefore, from this letter it is clear that the interest paid is not in the nature of penalty. It is also a fact that, the business of the appellant has already commenced and even the interest paid on purchase of machinery is an allowable business expenditure. Therefore, the addition made by the A.O. is deleted."*

3. The Revenue's appeal before the Tribunal was that the disallowance directed to be set aside by the CIT (A) was not justified since the amount paid was penal in nature. The Tribunal considered the submissions and held that there was no infirmity in the order of the CIT (A) and the amount paid was not penal in nature as much as it was as per the declared policy of the government and occasioned by the failure of the assessee to meet its obligations. ***The amount being interest was compensatory and not penal according to the Tribunal.***

4. The counsel for the Revenue attacked the reasoning of the Tribunal contending that since the assessee availed the facility without having fulfilled the obligations, there was a violation of the terms of the scheme, doing something that is prohibited by

law.

5. ***The Revenue, in the opinion of the Court, has been unable to establish that the assessee's conduct was an offence or that it did anything that was prohibited by law.*** *The Assessing Officer has not pointed out which provision of law was violated by the assessee.* ***Even if in any adjudicatory proceedings under Customs Act the word "penalty" is used, that cannot be determinative of the nature of the payment, nor can the Assessing Officer conclude that the assessee did something that was an offence or was prohibited by law.*** *There is nothing brought on record by the Revenue to show that the payment was hit by the Explanation below Section 37(1) of the Act."*

(emphasis supplied)

13. Consequently, both the Appellate Authorities below have recorded concurrent findings of fact on both the issues.

14. The Supreme Court in the case of ***Ram Kumar Aggarwal & Anr.*** **vs. Thawar Das** ***(through LRs), (1999) 7 SCC 303*** has reiterated that under Section 100 of the Code of Civil Procedure the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court in ***State of Haryana & Ors. vs. Khalsa Motor Limited & Ors., (1990) 4 SCC 659*** has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in ***Hero Vinoth (Minor) vs. Seshammal, (2006) 5 SCC 545*** has also held that "*in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible*." It has also

held that there is a difference between a ‘question of law’ and a ‘substantial question of law’.

15. Consequently, this Court finds that no substantial question of law arises for consideration in the present appeal and accrordingly the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 20, 2022
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