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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th December, 2013

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ITA 464/2013

CIT IV

..... Appellant

Through Mr. Kamal Sawhney, Sr.
Standing Counsel.

versus

GLOBAL GREEN COMPANY LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

The relevant orders have been filed by the appellant. We are inclined to condone delay of 99 days in re-filing of the appeal. Application for condonation of delay in re-filing being C.M.No.15143/2013 is accordingly disposed of.

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act) impugns order passed by the Income Tax Appellate Tribunal (for short, the tribunal) deleting penalty under Section 271 (1)(c) of the Act in relation to assessment year 2001-02.

3. Learned counsel for the appellant submits that there is contradiction between the findings in the impugned order and the order passed by the tribunal in the quantum proceedings. Further, the

tribunal has erred in holding that the assessee has been able to discharge onus under *Explanation 1* to Section 271(1)(c) of the Act.

4. The respondent-assessee was engaged in the business of processing and export of packaged food products like pickle, gherkin, baby corn etc. It had also entered into an agreement for growing vegetables, mushrooms etc. For the assessment year 2001-02, the respondent-assessee had filed return of income on 31st October, 2001 declaring loss of Rs.20,66,59,696/-. Subsequently, the loss was revised to Rs.16,51,59,697/-. In the profit and loss account, the respondent-assessee had made provision for Rs. 59,43,008/- on account of non-saleable and damaged goods. The Assessing Officer did not allow the debit entry observing that the respondent-assessee did not produce evidence for writing off the said amount in the books and at the same time observed that the entry was nothing but a provision for decrease in the value of assessee's assets. He accordingly held that this amount was not an allowable expenditure and was added back. The said finding was affirmed by the Commissioner (Appeals), who observed that the amount was only a provision in the books.

5. The tribunal in the quantum proceedings held that nothing had been brought on record to show on what basis items in question were considered as non-saleable or damaged. The assessee had not produced material with regard to the expiry date etc. It was further

recorded that the assessee had not written off value of the stocks and had simply made a provision. There was no rational basis for the said provision, such as expert opinion etc.

6. In the impugned order, the tribunal has rightly held that the findings in the quantum order though relevant, but cannot be the sole basis for imposing penalty as the assessee has right to produce evidence and discharge onus under *Explanation 1* to Section 271(1)(c) and seek exoneration from imposition of penalty. Before the tribunal, the respondent-assessee had stated and established that they were engaged in the business of food processing and packaging, for exports. Food items were perishable in nature and had expiry date beyond which they could not be sold and, therefore, the non-saleable/expired stock needed to be discarded. Reference was made to Food Products Order (FPO) 1955, Section 3 of the Essential Commodities Act, 1955, Food Safety and Standards Act, 2006, etc. Products manufactured by the respondent-assessee were mainly exported to the USA and, therefore, compliance of FDA regulations, one of the most stringent requirements, was required. Details of items, which were written off, were set out, explained and elucidated. The items included caps and cartons which had become unusable due to change in customer's specifications, change in brand name or difference in quantities etc. Details and particulars of items were made available and ascertained.

Tribunal has noticed that the respondent assessee was eligible for deduction under Section 10B of the Act and, therefore, there was no cause or reason for the assessee to deliberately write off saleable goods which could be exported in the books of accounts as non-saleable.

7. Tribunal in the impugned order has referred to the observation of the Assessing Officer on decrease in value of assessee's assets and observed that if there was decrease in the value of assets, the closing stock has to be valued at market price and not necessarily at cost price. The assessee had filed before the tribunal stock summary which contained necessary/relevant details. It is recorded that these details were not filed during the course of assessment proceedings.

8. In view of the factual findings recorded by the tribunal, accepting the explanation furnished by the assessee, we do not think that any substantial question of law arises for consideration. The said findings are factual. The appeal is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

DECEMBER 10, 2013
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