

No addition on basis of remand report by AO if he failed to verify authenticity of facts on merits

Summary – The High Court of Delhi in a recent case of Bhagat Steel & Forging (P.) Ltd., (the Assessee) held that where Assessing Officer submitted remand report after a gap of more than six months and said report did not deal with merits submitted by assessee, addition was not to be allowed

Facts

- The best judgment assessment order under section 144 recorded that notices under section 143(2) were issued and served by affixture. Thereafter, questionnaire was issued alongwith notice under section 142(1), but no compliance was made. Another notice was sent at the address of the assessee-company, but there was no response. Addition of Rs. 90, lakhs was made on account of fresh investments as details with regard to the same were not available. The Assessing Officer noticed that there was increase in liabilities but he did not make any adjustment or addition on the said account. The loss return of Rs. 3.67 lakhs was thus subject to addition of Rs. 90 lakhs and the net income was assessed at Rs. 86.32 lakhs.
- On appeal, the Commissioner (Appeals) referred to the documents placed on record and the contention of the assessee that investment of Rs. 90 lakhs in the two sister concerns; could be easily explained. He observed that the payments were made by way of cheque or by bank transfer. The assessee had established sources in the form of secured loan from Bank unsecured loan lakhs and advance for sale of land from unrelated and a third party. Accordingly, the addition was deleted on merits holding that the investment stands explained.
- On second appeal, the Tribunal indicted that the Departmental Representative had proceeded and argued on the basis that the Commissioner (Appeals) had annulled the assessment, which was factually incorrect. As noticed, the Commissioner (Appeals) examined merits and deleted the addition on merits.
- On appeal to the High Court:

Held

- When the matter had come up for hearing it had been asked the revenue to state and consider whether the Commissioner (Appeals) had called for remand report on the contention raised by the assessee that investment of Rs. 90 lakhs was made from the advance received of Rs. 2 crores from 'A'. As noticed above, the original file has been produced. It is stated by the revenue that the agreement between the assessee and 'A' is not on record. What is available on record is letter written by the Commissioner (Appeals) to the ITO. The said letter refers to the manner in which the service was effected without ascertaining the proper address of the assessee. The Assessing Officer was required to submit a remand report verifying the authenticity of facts on merits stated by the assessee. The Assessing Officer was required to verify the books of account as is done in scrutiny

cases. In case any irregularity in the books of account was noticed, remedial action it was stated would be taken at the first appellate stage.

- The remand report it appears was submitted after a gap of more than six months. The said remand report refers to the issue with regard to address and service of notice. It does not deal with the contention of the assessee on merits. It is silent on the said aspect.
- The revenue was the appellant before the Tribunal and in case there was any error or mistake as relevant papers had not been forwarded to the Assessing Officer for remand, this factum should have been highlighted. It was not stand and highlighted before the Tribunal why the remand report did not deal with the merits. The Tribunal in view of the factual finding recorded by the Commissioner (Appeals) and as the revenue was not able to controvert and deny the said finding, had no option but to dismiss the appeal.
- In view of the aforesaid factual position, there is no reason to interfere with the order of the Tribunal. This case again reveals that the record maintenance by the revenue is not of a desired and acceptable level. The file in question produced is page numbered, but it is apparent that several papers and documents are missing. The revenue cannot claim that they had not received letters and the application under rule 46A as these are specifically mentioned by the Assessing Officer himself in his letter. The first letter asking for remand report took the Assessing Officer more than six months to respond to the said letter, but the response was not complete. It did not refer to the merits and only dealt with the question of change of address. In view of the aforesaid factual position, the appeal is dismissed.