

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 155/CHD/2018

निर्धारण वर्ष / Assessment Year : 2008-09

M/s SEL Manufacturing Co. Limited, 274, G.T.Road,Dhandasri Khurd, Ludhiana	बनाम	DCIT, Central Circle-III, Ludhiana
स्थायी लेखा सं./PAN NO: AAHCS9189E		
Appeal against the order of CIT(A)-2, Jalandhar dated 21.12.2017		

आयकर अपील सं./ ITA No. 301/CHD/2018

निर्धारण वर्ष / Assessment Year : 2008-09

DCIT, Central Circle-III, Ludhiana	बनाम	M/s SEL Manufacturing Co. Limited, 274, G.T.Road,Dhandasri Khurd, Ludhiana
स्थायी लेखा सं./PAN NO: AAHCS9189E		
Appeal against the order of CIT(A)-2, Jalandhar dated 21.12.2017		

निर्धारिती की ओर से/Assessee by : Sh. Ashwani Kumar , & Sh. Aditya Kumar, CAs
राजस्व की ओर से/ Revenue by : Sh. Ashish Gupta, CIT DR

&

आयकर अपील सं./ ITA No. 156/CHD/2018

निर्धारण वर्ष / Assessment Year : 2009-10

M/s SEL Manufacturing Co. Limited, 274, G.T.Road,Dhandasri Khurd, Ludhiana	बनाम	DCIT, Central Circle-III, Ludhiana
स्थायी लेखा सं./PAN NO: AAHCS9189E		
Appeal against the order of CIT(A)-2, Jalandhar dated 21.12.2017		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
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निर्धारिती की ओर से/Assessee by : S/Sh. Ashwani Kumar & Sh. Aditya Kumar, CA
राजस्व की ओर से/ Revenue by : Sh. Ashish Gupta, CIT DR

सुनवाई की तारीख/Date of Hearing : 20.09.2018

उदघोषणा की तारीख/Date of Pronouncement : 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned cross appeals have been preferred by the assessee and Revenue against the order of the Commissioner of Income Tax (Appeals), Jalandhar [hereinafter referred to as CIT(A)]. First, we shall deal with the appeal of the assessee in **ITA No. 155/Chd/2018**.

ITA No. 155/Chd/2018

2. The assessee in this appeal has taken two grounds. Ground No.1 is legal ground agitating the action of the CIT(A) in upholding the action of the Assessing officer in framing assessment u/s 153A of Income-tax Act, 1961 (in short 'the Act'). Ground No.2 is on merits, agitating the action of the CIT(A) in upholding the disallowance of Rs. 5,52,000/- u/s 36(i)(iii) of the Income Tax Act which was already disallowed by the assessee in the return of income filed u/s 153A of the Act.

3. The brief facts of the case are that the original assessment in this case was framed u/s 143(3) of the Act, wherein, the Assessing officer has made disallowance of Rs. 49,00,926/- u/s 36(1)(iii) of the Act. However, in appeal, the Ld. CIT(A) restricted the said disallowance to Rs.5,52,000/-. Thereafter, a search action was carried out in the case of the assessee pursuant to which the assessment was framed by the Assessing officer u/s 153A of the Act. In the fresh assessment u/s 153A of the Act, the Assessing officer again confirmed the disallowance u/s 36(i)(iii) of the Act

at Rs. 49,00,926/- despite the fact that in appeal against the original assessment framed by the Assessing officer, the Ld. CIT(A) had restricted the said disallowance to Rs. 5,52,000/-. The Assessing officer observed that the Department had moved an appeal before the ITAT against the order of the CIT(A) against the original assessment order, hence he stuck to the amount of original disallowance made on this issue in the assessment order.

4. The Ld. Counsel for the assessee has brought our attention to the order of the Tribunal passed in the appeal of the Department in respect of the addition made in the original assessment proceedings, whereby, the Tribunal vide order dated 7.02.2017 passed in ITA No. 106/Chd/2012 along with other appeals has upheld the order of the CIT(A) in restricting the disallowance to Rs. 5,52,000/- against the disallowance made by the Assessing officer of Rs. 49,00,926/-. Since the Assessing officer in the assessment framed u/s 153A of the Act had reconfirmed the disallowance made of Rs. 49,00,926/-, as was made in the original assessment proceedings u/s 143(3) of the Act, the assessee preferred appeal before the CIT(A). However, the Ld. CIT(A) observing that the appeal of the Revenue against the order of the CIT(A) in respect of original assessment proceedings has been dismissed, he therefore, restricted the disallowance as per the order of the CIT(A) in first round at Rs. 5,52,000/-.

5. Now coming to the present appeal of the assessee. So far as the legal ground that the assessment should not have been framed u/s 153A of the Act is concerned, we find that no addition has been made by the Assessing

officer in this case. That he has simply retained the additions as were made in the original assessment. So far as the order of the CIT(A) in the first round restricting the disallowance at Rs. 5,52,000/- as against the addition made by the Assessing officer at Rs. 49,00,926/- is concerned, the Ld. CIT(A) in the impugned order has simply retained the disallowance which was retained by the CIT(A) in the first round. The assessee has also mentioned in its grounds of appeal that he has also suo moto disallowed the said amount in the return filed u/s 153A of the Act. Under these circumstances, there is no grievance left with the assessee in this case. However, it is clarified that if the assessee has already disallowed the said amount of Rs. 5,52,000/- in the return filed u/s 153A of the Act, no further disallowance will be attracted. Subject to the above observations, the appeal of the assessee is hereby dismissed.

ITA No. 301/Chd/2018 (A.Y.2008-09)

6. At the outset, the Ld. Counsel of the assessee has submitted that the tax effect involved in the present case is less than Rs. 20 lacs. The Ld. DR has also fairly admitted that CBDT Circular No. 3/2018 is applicable to this appeal, hence, this appeal of the Revenue is liable to be dismissed.

7. It may be noted that CBDT vide Circular No. 3/2018 dated 11.07.2018 has revised the monetary limit upto Rs.20 lacs for filing appeals by the Department before the Tribunal and further vide para 13 of the said Circular it has been clarified that said circular is applicable retrospectively to the pending appeals also. The Hon'ble Punjab & Haryana High Court in the case of "Principal CIT of Income Tax Vs. Surinder Kumar Singhal" ITA No 406-2016 (O&M) vide order dated 30.1.2017 while further relying upon the decision of the Hon'ble Supreme

Court in the case of “CIT Vs. Dhanalekshmi Bank Ltd.” (2015) 373 ITR 526 (SC), has dismissed the appeal of the Revenue without going into the merits due to low tax effect leaving the question of law open. In view of the CBDT Circular No. 03/2018 (supra) and in the light of the above referred to decision of the Hon'ble Jurisdictional Punjab & Haryana High Court (supra), the present appeal of the Revenue is dismissed due to low tax effect.

It is, however, clarified that the dismissal of the above appeal shall not be taken to be affirmation of the order of the CIT(A) on merits. The legal issue raised by the Revenue is being left open to be adjudicated in an appropriate case.

ITA No. 156/Chd/2018 (A.Y.2009-10)

8. At the outset, Ld. Counsel for the assessee has submitted in writing that the assessee is not interested in pursuing the appeal, as such, he intends to withdraw the present appeal. The Ld. DR has no objection for the said withdrawal.

In view of the above, we grant permission to the assessee to withdraw the appeal. Consequently, the appeal of the assessee is hereby dismissed as ‘Withdrawn’.

In the result, the appeals filed by the assessee and Revenue are hereby, dismissed.

Order pronounced in the Open Court on 28.11.2018.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 28.11.2018

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar