



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ IITC No.17/2000

% Date of Decision : October 30, 2002

COMM.OF INCOME TAX

..... Petitioner
Through Mr.R.D.Jolly with
Mr.Ajay Jha

versus

M/S.SUTLEJ COTTON MILLS LTD.

..... Respondent
Through Mr.O.P.Vaish, Sr.Adv.
with Mr.S.K.Aggarwal
& Mr.Vinay Vaish

CORAM :

HON'BLE MR.JUSTICE D.K.JAIN
HON'BLE MS.JUSTICE SHARDA AGGARWAL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

D.K.JAIN J. (ORAL)

By this petition under Section 256(2) of the Income Tax Act, 1961, (for short the Act) arising out of ITAs No.2081/D/90 & 2206/D/91, pertaining to the assessment year 1986-87, the Revenue seeks a direction to the Income Tax Appellate Tribunal (for short the Tribunal) to state the case and refer the following questions, stated to be one of law, for the opinion of this Court:-



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1. "Whether on the facts and circumstances of the case and in law, the Tribunal has erred in deleting an addition of Rs.99,35,106/- made on account of bogus purchases by the Assessing Officer?".
2. "Whether on the facts and circumstances of the case and in law the Tribunal has erred in not appreciating the facts gathered during the course of assessment proceedings by the A.O.?"

Briefly stated, the facts, giving rise to the present petition, are that during the course of assessment proceedings for the assessment year 1986-87 the Assessing Officer examined the purchases of raw material, made by the assessee from eleven parties, mentioned in the assessment order. Taking into consideration the statements of some of the parties and the explanation furnished by the assessee, the purchases amounting to Rs.1,20,83,413/- were disallowed on the ground that the assessee had failed to prove that the goods were purchased from the parties to whom payments had been made and infact these were also hawala transactions.

Aggrieved, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals). Allowing the appeal partly, the CIT (Appeals) deleted the addition in respect of the purchases made from M/s Kailash Fibres. However, rest of the disallowance/addition in this account was sustained. The assessee took the



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matter in further appeal to the Tribunal. The Tribunal, mainly relying on its order for the assessment year 1985-86 deleted the addition on the ground that the assessee had adduced sufficient evidence in the form of invoices, depot transfer notes, G.Rs. Transporter's affidavit, freight payment advices, etc.

Revenue's application under Section 256(1) of the Act for reference on the aforementioned questions, having been dismissed, the present petition has been filed.

We have heard Mr.R.D.Jolly, learned Senior Standing Counsel for the Revenue and Mr.O.P.Vaish, learned Senior Counsel for the assessee at considerable length.

It is submitted by Mr.Jolly that during the course of survey operations at the business premises of some of the parties, who had purportedly made supplies to the assessee, statements of various persons were recorded, wherein it was admitted that: (i) they had only issued bills to the assessee; (ii) no material was actually supplied and (iii) the proceeds of the cheques received from the assessee, after being deposited in their accounts, were returned in cash to the assessee after deducting their commission for issue of the bills. It is strenuously urged that the



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Tribunal has failed to take into consideration these statements and the findings of the Tribunal based on stereotyped self-serving evidence produced by the assessee are vitiated, giving rise to a question of law. Mr. Vaish, learned Senior Counsel for the assessee, on the other hand, would submit that the Tribunal's findings in this regard being based on cogent material, are essentially findings of fact giving rise to no question of law. Learned counsel asserts that the Tribunal has duly noticed the factum of recording of these statements but in the light of other overwhelming evidence adduced by the assessee, has come to the conclusion that purchases in question were genuine and stood explained.

Having gone through the statements of the suppliers re-produced in the assessment order, we are of the view that the Tribunal has failed to consider the statements of various parties in the proper perspective. At this juncture we say no more lest it may prejudice the assessee. Suffice it to say that the material gathered by the Revenue appears to have been ignored and too much emphasis has been laid on the documents produced by the assessee, which, in our opinion, amounts to misdirection in law, giving rise to a question of law.



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We, accordingly, direct the Tribunal to state the case and refer the following question for the opinion of this Court.

"Whether the Tribunal was correct in law in deleting the addition of Rs.1,02,13,950/- made by the Assessing Officer on account of alleged bogus purchases?"

Any document, forming part of the paper books filed by both the parties before the Tribunal, on which either party wishes to place reliance shall be made a part of the case.

The petition stands disposed of in the above terms. No order as to costs.


D.K. JAIN, J


SHARADA AGGARWAL, J

OCTOBER 30, 2002
PS