HIGH COURT OF DELHI : NEW DELHI

\+ ITA No.267/2003

% *Date of Hearing & Decision : 30 July 2003*

\# **COMMISSIONER OF INCOME-TAX .... Appellant**

! **Through: Mr. Sanjiv Khanna with Mr.Ajay Jha, Advocates.**

Vs.

$ **MS. SHEHNAZ HUSSAIN ...Respondent**

^ **Through: NEMO.**

CORAM:

* THE HON'BLE MR.JUSTICE D.K. JAIN
* THE HON'BLE MR.JUSTICE MADAN B. LOKUR

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

*** D.K. JAIN, J.(Oral)**

This appeal by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short 'the Act') is directed against the order, dated 11 October 2002, passed by the Income Tax Appellate Tribunal Delhi Bench 'E' New Delhi (for short 'the

Tribunal') in ITA No.1911/Del/1998, pertaining to the assessment year 1991-92.

2. The background facts giving rise to the appeal, which need to be noted, are as under:

The respondent (hereinafter referred to as the 'assessee') is an individual, deriving income from manufacture and sale of ayurvedic herbs. Search and seizure operations, under Section 132 of the Act were conducted at the business premises of the assessee on 10 September 1990. An inventory of the stocks of the finished products and packing cartons of the two proprietary concerns of the assessee, namely, M/s.Shahnaz Herbal and M/s.Shahnaz Ayurvedic was taken and value of the finished products as well as packing material was worked out.

During the course of assessment proceedings, the assessee was required to reconcile the value of the finished stocks and packing material determined at the time of search with the entries in the books of account. Not being satisfied with the explanation furnished by the assessee, the Assessing Officer recasted the trading account. The value of stock in hand of the afore-noted two concerns, as on 10 September 1990, i.e. the date of search, was worked out at Rs.26,18,843/- . The difference in the value of stock inventory as on 10 September 1990 prepared

by the assessee and the department, amounting to Rs.6,64,527/-, was thus added to the total income of the assessee as unexplained investment in stocks. A similar addition of Rs.1,78,314/- was made as unexplained investment on stocks of packing material.

Aggrieved, the assessee challenged the said said additions by preferring an appeal to the Commissioner of Income-tax (Appeals). Vide order dated 28 September 1994, the Commissioner set aside the assessment and restored the matter back to the Assessing Officer, with a direction to him to decide the issue afresh after granting further opportunity to the assessee to explain her stand on both the accounts. However, both the said additions were repeated by the Assessing Officer on the ground that no fresh evidence had been adduced by the assessee in respect of the discrepancies noticed.

Being aggrieved, the assessee again preferred appeal to the Commissioner. Observing discrepancies in the method of valuation of the stocks, namely, the search party had valued the stock of finished goods at its tag price after deducting 55% gross profit rate whereas from the documents furnished by the assessee before him it was clear that maximum retail price also included retailers margin of profit; the gross profit of the

assessee for the year 1991-92, which was 72%, had to be deducted from the value of the stock so determined; and that the assessee had calculated the value of the finished product after applying the G.P. rate of the current year, whereas the Assessing Officer had not brought on record any evidence to substantiate the basis of the gross profit rate applied by him in the case of M/s.Shahnaz Ayurvedic, the Commissioner held that the addition could not be sustained. Accordingly, he deleted the addition of Rs.6,64,527/- . As regards the second addition with regard to the stock of the cartons, the Commissioner again accepted the stand of the assessee that this material had been received before 10 September 1990, i.e., the date of search, but the bills for the same were received later, which were fully recorded in the books of account.. The Commissioner found that there was not a single item which had not been taken into consideration by the assessee and the additions had been made in a routine manner without taking into consideration sufficient evidence produced by the assessee to substantiate her claim that these amounts were duly included in the trading account.

Being dissatisfied with the appellate order, the Revenue took the matter in further appeal to the Tribunal but without any success. Hence the present appeal.

3. According to the appellant the impugned order involves the following substantial questions of law:

> "1. Whether the order of ITAT dated 11.10.2002 upholding deletion of addition of Rs.6,64,527/- on account of stock of finished products and Rs.1,78,314/- on account of cartons stocks is contrary to facts on records and is perverse as it ignores and does not deal with the observations and findings of the AO ?"
>
> "2. Whether the Ld. ITAT was right in law in holding that the additions of Rs.6,64,527/- and Rs.1,78,314/- on account of discrepancies in stocks will amount to double addition as additions have been made on account of unrecorded sales ?"

4. We have heard Mr.Sanjiv Khanna, learned senior standing counsel for the Revenue. Learned counsel submits that the order of the Tribunal is perverse in as much as it has failed to take into consideration the material brought on recored by the Assessing Officer while making the subject additions. Learned Counsel would also submit that the difference in the figures of the value of finished goods estimated by the Department and declared by the assessee being substantial, it could not be deemed to have been explained by the assessee by merely taking the stand that the difference was on account of estimate only, as held by the Commissioner and affirmed by the Tribunal.

Learned counsel has also urged that no evidence having been furnished by the assessee in support of its claim that the value of the closing stock of finished products as well as the packing material, namely, the cartons, was correctly reflected in the books of account, finding of the Tribunal to the contrary is perverse, being based on no evidence. It is, thus, asserted that the impugned order involves substantial questions of law.

5. We are unable to agree with the learned counsel. What can be the subject matter of examination in an appeal under Section 260A of the Act is a substantial question of law. The test to determine whether a question of law raised in a case is a substantial question or not was laid down over four decades ago by the Constitution Bench in Chunilal V.Mehta & Sons Ltd. (Sir) Vs. Century Spinning & Manufacturing Co. Ltd., **AIR 1962 SC 1314.** It was said that the proper test would be whether: (i) it is of general public importance; or (ii) it directly or substantially affects the rights of of the parties; or (iii) it is an open question in the sense that it is not finally settled by the Supreme Court; or (iv) it is not free from difficulty and (v) it calls for discussion of alternative views. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be giving rise to a

substantial question of law. These very broad tests have been reiterated in a catena of subsequent decisions of the Apex Court and various High Courts.

6- Applying the above tests to the facts in hand, we are of the view that no question of law, mush less a substantial question of law, is involved in the instant case. In the present case, while affirming the view taken by the Commissioner, the Tribunal has, inter alia, observed that since the value of the finished stock actually found was determined not only at cost, there was scope for taking its value on the higher side, particularly, when admittedly the value of the stock of finished goods as per books was worked out by the search party on estimate and hypothetical basis and that the adjustment made by applying estimated GP rate could not be considered as a concrete and fool proof calculation of the value of stock of finished goods and, therefore, there was scope for difference arising on estimate. The Tribunal has noted that the assessee had furnished detailed reconciliation before the Assessing Officer during the course of assessment proceedings, in which no specific discrepancy was pointed out by the Assessing Officer. Thus, while affirming the view taken by the Commission, the Tribunal has held that both the additions were made on estimate

and hypothetical grounds without any concrete material or evidence and the assessee has specifically and convincingly explained and reconciled the stock. No material has been brought on record by the Revenue to controvert the said findings of the Tribunal. Having regard to these concurrent findings of fact recorded by both appellate authorities below, the decision of the Tribunal cannot be said to be giving rise to a question of law. The Tribunal has reached the aforementioned conclusion upon examination of the relevant material. We find it difficult to hold that its findings are perverse in any manner. No question of law, much less a substantial question of law, arises from the order of the Tribunal.

7. Resultantly, we decline to entertain the appeal. Dismissed.

D.K.JAIN, J.

MADAN B.LOKUR, J.

JULY 30, 2003
"SS"