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ITA No.206/2003

HIGH COURT OF DELHI : NEW DELHI

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ITA No.206/2003

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Date of Hearing & Decision : 18 July 2003

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COMMISSIONER OF INCOME-TAX Appellant

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Through: **Ms. Premlata Bansal,**
with Mr.Ajay Jha,
Advocates.

Vs.

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M/S. GUPTA BROTHERS**....Respondents**

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Through: **NEMO.****CORAM:**

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THE HON'BLE MR.JUSTICE D.K. JAIN

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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 is an appeal by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short 'the Act'). The



challenge is to the order, dated 31 May 2002, passed by the Income Tax Appellate Tribunal Delhi Bench 'E' New Delhi (for short the Tribunal) in ITA No.4524/Del/1997, pertaining to assessment year 1993-94. According to the Revenue, the said order involves the following substantial questions of law:

- a) Whether ITAT was correct in law in up-holding the order of CIT(A) without giving its own finding?
- b) Whether ITAT was correct in confirming the order of CIT(A) and thereby deleting the trading addition of Rs.11,15,967/- made by the A.O.?
- c) Whether ITAT was justified in law in deleting the trading addition made by the A.O. on the basis of estimated sales after rejecting the books of accounts maintained by the assessee?
- d) Whether order of ITAT is perverse in law when it passed a non-speaking order?"

The factual background is as follows:

The respondent (hereinafter referred to as 'the assessee') is a registered firm carrying on the business of



trading in ball bearings, etc. For the afore-mentioned assessment year, the assessee filed its return of income on 30 August 1993, declaring a total income of Rs.6, 870/-. Prior to that, on 23 April 1993, a search had been conducted at the business and residential premises of the partners of the assessee and its books of account and some other documents were seized. During the course of assessment proceedings for the relevant assessment year, the assessee was required to explain and co-relate various documents seized during the course of the search, with the books of account. The assessee could not satisfy the Assessing Officer in regard to the difference in sales reflected in the seized documents and the books of account. In the seized documents, total sales reflected were to the tune of Rs.3,33,225/-, whereas, as per the bills, the sales were only to the tune of Rs.1,66,000/-. Thus, treating the balance amount of Rs.1,67,225/- as unexplained, the Assessing Officer added the amount to the total income of the assessee. Besides, on the basis of a slip, seized during the search, on which a sale of Rs.93,387/- as made on 22 April



1993 was recorded, the Assessing Officer estimated the total turn over for the relevant period by five times of the total sales shown by the assessee. The gross profit rate was estimated at 15% in place of 13.49%, declared by the assessee. Accordingly, estimating the turn over of the assessee at Rs.90,71,830/- a gross profit of Rs.13,60,774/- was worked out. Since the assessee had shown the gross profit at Rs.2,44,807/-, the balance amount of Rs.11,15,967/- was added to the income of the assessee on this account as well.

Aggrieved, the assessee preferred appeal to the Commissioner of Income-tax (Appeals). The addition of Rs.1,67,225/- was not contested before the Commissioner. The same was accordingly confirmed. However, in regard to the trading addition, the Commissioner observed that the sale reflected on the rough slip as on 22 April 1993 could not be taken as the basis for estimation of the sales during the assessment year 1993-94 because the slip pertained to the subsequent year. Inter alia, observing that the Assessing Officer had not brought any other relevant



material to support the estimation of the sales and gross profit, the Commissioner deleted the trading addition of Rs.11,15,967/-.

Being aggrieved by the order of the Commissioner, the Revenue carried the matter in further appeal to the Tribunal. Endorsing the view taken by the Commissioner that the sales shown on the slip dated 22 April 1993 could not form the basis for estimation of sales during assessment year 1993-94, because it related to the subsequent year, the Tribunal also took the view that since the Assessing Officer had made a separate addition for the sales recorded in the seized material the books of account of the assessee could not be rejected on the basis of the slip. Thus, the Tribunal came to the conclusion that the estimation of the sales and the gross profit rate by the Assessing Officer for the relevant assessment year was not supported by any document seized during the course of the search. Hence the present appeal.

We have heard Ms.Premalata Bansal, learned counsel for the appellant.

Assailing the order of the Tribunal, learned counsel



has submitted that the Tribunal has failed to record its independent finding on the trading addition. The submission is that it was incumbent on the part of the Tribunal to record its own reasons for dismissing Revenue's appeal and failure to do so has vitiated its order. In support of the proposition that every fact for and against the assessee must be considered and a finding on the question involved should be clearly given by the Tribunal, reliance is placed on the decision of the Supreme Court in Omar Salay Mohamed Sait Vs. Commissioner of Income-tax, (1959) 37

ITR 151

We are unable to agree with learned counsel for the appellant. There is no quarrel with the proposition that the Tribunal being a final fact finding authority, it is required to take into account every fact for and against the assessee with due care and record its finding thereon. Tribunal's order must clearly indicate the issues which arose for determination; the evidence -pro and contra in regard to each one of them and the findings reached thereon. There is no gain saying that if the Tribunal has arrived at certain



conclusions of fact upon consideration of all the evidence and material before it, its finding is final and cannot be interfered with. Nevertheless, if a finding of fact is arrived at by the Tribunal after improperly rejecting evidence or it is based on material partly relevant and partly irrelevant or it is based on no evidence, such finding is vitiated and then a question of law arises. However, having regard to the language of Section 260A of the Act, which uses the phrase "substantial question of law" and not "question of law", a distinction has to be drawn between the said two expressions. As recently observed in Santosh Hazari Vs. Purushottam Tiwari (2001) 251 ITR 84 the tests laid down in Sir Chunilal V. Mehta & Sons Ltd Vs. Century Spinning & Manufacturing Company Limited AIR 1962 SC 1314 to determine whether a question of law raised in a case is "substantial question of law", still hold good. These five tests are whether: (i) it is of general public importance; or (ii) it directly or substantially affects the rights 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) is not free from




difficulty; and (v) it calls for discussion for alternative views.

Applying the aforementioned broad principles on the facts in hand, we are of the considered view that no question of law, much less a substantial question of law, arises from the order of the Tribunal. Though it does appear that the Tribunal has not specifically recorded its own findings on the issues raised but from the order it is clear that it has endorsed the view taken by the Commissioner (Appeals). As noted supra, the Commissioner had recorded in no uncertain terms that except for the slip containing particulars of sale made on 22 April 1993, no other material was brought on record by the Assessing Officer to support the estimation of the sales and gross profit. Admittedly, the sale reflected on the slip pertained to the assessment year 1994-95 and not the year under reference. Thus, in this factual scenario, we find it difficult to hold that Tribunal's alleged failure to return independent findings on the issues raised gives rise to a substantial question of law. The only issue which the Tribunal was required to consider was the implication of the said slip,



seized during the search operation, which has been found to be irrelevant insofar as the accounts for the relevant previous year were concerned.

We are, therefore, of the opinion that the order of the Tribunal does not involve any substantial question of law. Accordingly, we decline to entertain the appeal.
Dismissed.


D.K.JAIN, J.


MADAN B.LOKUR, J.

JULY 18, 2003
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