

**HIGH COURT OF DELHI : NEW DELHI****+ ITA No.18 of 2005**Judgement reserved on: May 11, 2005% Judgement delivered on: July 7, 2005# The Commissioner of Income Tax
Delhi-IV, C.R. Building
New Delhi

...Appellant

! Through Mr. R.D. Jolly with
Mr. Vishnu Sharma, Advs.

Versus

\$ M/s Durant Refrigeration (Pvt.) Ltd.
32, Hanuman Road
New Delhi

...Respondent

^ Through Mr. Salil Aggarwal with
Mr. Prakash Kumar, Advs.

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**
HON'BLE MR. JUSTICE MADAN B. LOKUR



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|---|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgement? | Yes |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgement should be reported in the Digest? | Not necessary |

* **MADAN B. LOKUR, J.**

The Appellant is aggrieved by an order dated 19th December, 2003 passed by the Income Tax Appellate Tribunal, Delhi Bench D, New Delhi (for short the Tribunal) in ITA No.1985/Del/99 for the assessment year 1995-96.

2. The Appellant says that the Respondent had claimed purchase of 505 oxygen gas cylinders at Rs.2,800/- each from M/s Puja Gases Ltd. for a total consideration of Rs.14,14,000/-. These gas cylinders were said to have been leased out to M/s Hotz Industries (Pvt.) Ltd., a sister concern of the Respondent and in its



return the Respondent claimed 100% depreciation on these gas cylinders.

3. The assessing officer came to the conclusion that M/s Puja Gases Ltd. was not in existence since the address furnished by the Respondent was a fake address. The statement of one Mr. A.S. Chowdhry, the proprietor of M/s Puja Gases Ltd. was recorded by the assessing officer which, according to him, also established that the entire transaction was a bogus one. The assessing officer, therefore, disallowed the claim of the Respondent of depreciation of Rs.14,14,000/- as well as the lease rentals said to have been earned by the Respondent.

4. The Respondent filed an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] who accepted the contentions of the Respondent and decided in its favour by an



order dated 1st February, 1999. The CIT (A) held the transaction to be genuine.

5. The Appellant thereafter appealed to the Tribunal which dismissed the appeal by the impugned order.

6. The Tribunal has taken into consideration various documents that were placed on record by the Respondent including the bills and delivery challans of M/s Puja Gases Ltd. for the sale and delivery of 505 gas cylinders. The payment of Rs.14,14,000/- for the purchase of gas cylinders was made by the Respondent by a cheque drawn in favour of M/s Puja Gases Ltd. and receipt of payment was certified by M/s Puja Gases Ltd. by a letter dated 9th October, 1997. The proprietor of M/s Puja Gases Ltd. Mr. A.S. Chowdhry also gave an affidavit stating that he sold 505 gas cylinders to the Respondent. The Tribunal also considered the



statement of Mr. A.S. Chowdhry recorded by the assessing officer.

7. On a consideration of the facts of the case, the Tribunal noted that even though Mr. A.S. Chowdhry was a proprietor of M/s Puja Gases Ltd., the entire business was managed by his son Satinder Chowdhry, who had unfortunately died in the meanwhile on 13th May, 1997. It was noted that Mr. A.S. Chowdhry was an old and broken man and was not aware of the business transactions being carried out by M/s Puja Gases Ltd., which company was being run and managed exclusively by his son.

8. The Tribunal was also of the view that the buyer (the Respondent) is really concerned with receipt of his goods and not so much about the existence of the seller. The Respondent had received the goods for which he had made payment by a cheque which was in fact encashed by M/s Puja Gases Ltd. Whether this



organisation gave a correct address to the Respondent or not or paid its taxes such as sales tax etc. was not strictly the concern of the Respondent. It was noted that as soon as the Respondent was put to notice about the fake address of M/s Puja Gases Ltd., efforts were made by the Respondent to find out the correct address but to no avail. Eventually, the proprietor of M/s Puja Gases Ltd., Mr. A.S. Chowdhry was traced out and his statement recorded. Unfortunately, Mr. A.S. Chowdhry was unable to render any substantial assistance but this did not mean that the transaction entered into by the Respondent and M/s Puja Gases Ltd. was a sham or bogus transaction. The Tribunal also noted that while there may have been some discrepancies brought out during the inquiry conducted by the assessing officer such as the fact that the signatures of Mr. A.S. Chowdhry as appended in the affidavit and his statement are different from those appearing on the bills and challans, not too much emphasis can be laid on this fact. As long



as it is accepted that the business of M/s Puja Gases Ltd. was managed by Satinder Chowdhry on behalf of Mr. A.S. Chowdhry, minor discrepancies and contradictions can be ignored, as long as there was adequate documentation to show that the sale of 505 gas cylinders was made in favour of the Respondent by M/s Puja Gases Ltd. On a careful analysis of the entire evidence, the Tribunal was of the view that the assessing officer had acted on suspicions and inferences and, therefore, there was no reason to allow the appeal filed by the Revenue.

9. Having heard learned counsel for the parties, we are of the view that no fault can be found with the opinion expressed by the Tribunal. It is quite possible, on the material on record, to have two views about the genuineness of the transaction but as long as there is no perversity in the view taken by the Tribunal, it cannot be said that merely because the view of the Tribunal may be



erroneous, a substantial question of law would arise for consideration. The documents on record as well as the statement of Mr. A.S. Chowdhry which are adequately discussed by the Tribunal show that the view taken by it is possible and that the transaction for the purchase of 505 gas cylinders did take place. This is essentially a finding of fact which is based on the material on record and in our view this does not, by itself, raise a substantial question of law.

10. During the course of arguments, learned counsel for the Respondent placed before us a synopsis of his submissions in which it is stated that lease rentals declared and received by the Respondent in terms of an agreement with M/s Hotz Industries (Pvt.) Ltd. have been accepted by the assessing officer for subsequent assessment years, that is, 1996-97, 1997-98 and 1998-99. This being so, we are of the view that the impugned order does



not call for any interference.

11. The appeal is dismissed.

Madan Lokur
(Madan B. Lokur)
Judge

July 7, 2005
ncg

Swatanter Kumar
(Swatanter Kumar)
Judge

Certified that the corrected copy
of the judgment has been
transmitted in the main Server.

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