IN THE HIGH COURT OF DELHI

I.T.A. No. 103/2003

Judgment reserved on : February 21, 2005
Date of Pronouncement : March 2nd, 2005

The Commissioner of Income Tax ....Petitioner
Through: Mr.R.D. Jolly, Advocate.

Versus

Ameeta Mehra ....Respondent
Through: Mr. M.S. Syali, Sr. Advocate, with Mr. Satish Khosla and Mr. M.K. Giri, Advocates.

CORAM :
HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

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

SWATANTER KUMAR, J.

For orders see, I.T.A. No. 129/2003.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
(JUDGE)

March 2nd, 2005
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IN THE HIGH COURT OF DELHI

I.T.A. No. 129/2003

Judgment reserved on : February 21, 2005
Date of Pronouncement : March 2nd, 2005

The Commissioner of Income Tax

....Petitioner

Through : Mr. R.D. Jolly, Advocates.

Versus

M/s. Usha Stud & Agriculatural Farms Pvt. Ltd.

....Respondent

Through: Mr. M.S. Syali, Sr. Advocate, with Mr. Satish Khosla and Mr. M.K. Giri, Advocates.

AND

I.T.A. No. 565/2004, I.T.A. No. 235/2002, I.T.A. No. 237/2002, I.T.A. No. 250/2002, I.T.A. No. 311/2002, I.T.A. No. 103/2003, I.T.A. No. 105/2003, I.T.A. No. 106/2003, I.T.A. No. 107/2003, I.T.A. No. 123/2003, I.T.A. No. 127/2003, I.T.A. No. 409/2003, I.T.A. No. 499/2003, I.T.A. No. 458/2004, I.T.A. No. 485/2004, I.T.A. No. 722/2004, I.T.A. No. 758/2004

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CORAM :

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

1. Whether reporters of local paper may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not?

3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

1. Same questions arise for consideration in the above referred 18 appeals, which relate to the same assessee, for the same activity, of course for different assessment years. Thus, it will be appropriate to dispose of all these 18 appeals by a common judgment. While disposing of all these petitions by a common judgment, we would be referring to the facts of I.T.A. No. 129/2003.

2. The Assessee company, respondent herein, is a private limited company carrying on the business of breeding and maintenance of horses. It also carries on agricultural activity, the produce of which is used as feed and fodder for the horses.

During the relevant assessment year the respondent-company filed the return of income declaring a loss of Rs.37,078/- and net agricultural income of Rs.12,41,904/-. As per records, the Assessee maintained a single composite account for both the business of horses and the agricultural activities. After issuing a notice to the assessee, the Assessing Officer called upon the respondent-company to explain the valuation of stock of horses, permission of including waste as a receipt, and the manner of computation of agricultural income and also the question with regard to depreciation. Show cause notice was issued to the respondent-company on 21st March, 1989 whereafter the Assessing Officer made certain additions in the taxable income while considering various aspects thereof. However, in the present appeal, we are concerned only with two heads, i.e suppression in valuation of horses born in stud farm and depreciation on horses purchased during the period in question. The Assessing Officer while arriving at the conclusions noticed in this judgment calculated and added the value of the foals born at Rs. 03,21,108/- as well as the value of the horses born in the preceding years at Rs.17,70,034/-, thus making a total of Rs.20,91,142/-. The reasoning given by the Assessing Officer

can be usefully referred at this stage, in this regard.

> " The assessee has not accounted for any value for the foals born in the stud farm during the year. When questioned as to why the value of the foals is taken at NIL, the assessee replied that it has been valuing the animals at cost or market value, whichever is less, and that these foals have no cost at all. Besides, the assessee insisted on the point that it has been valuing his stock in this manner although and the department has accepted this method. It is a fact that the department has accepted the method is incorrect and opposed to any principle of costing known to the world. Moreover, the assessee's argument that it has been following this method although also is not altogether correct inasmuch as the assessee followed a different method of valuation till the assessment year 1975-76. Till the asstt. Year 1975-76, income from livestock breeding was exempt and so the assessee valued the foals at the net realisable value. But from the asstt. Year 1976-77, the law was amended and income from livestock breeding was subjected to tax. Pursuant to this change in law, the assessee also changed its method of valuation of foals. It switched over to the method of valuing foals born and held at nil from the asstt. Year 1976-77. Thus the switch-over from the correct to the incorrect method of valuation was a matter of convenience to the assessee intended to avoid payment of tax."

3. On the question of depreciation on purchase of horses, the allowance on that behalf was disallowed to the extent of Rs.62,976/-.

4. Being dissatisfied with the above findings recorded by the Assessing Officer in his order dated 31st March, 1989, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) which was allowed by the First Appellate Authority, which disturbed the above findings recorded by the Assessing Officer and particularly held that the method of accountancy adopted by the respondent-company was in no way offending the provisions of law. While granting relief to the assessee, the appellate authority held as under:-

> " With regard to the valuation of foals, I am of the opinion that such a valuation in regard to the assessment year under consideration is not called for when the valuation done by the appellant has been accepted consistantly from asstt. Year 1976-77 to 1985-86. The fact that the assessments have since been reopened does not by itself establish that the valuation done by the appellant is defective because the reopening of the assessment is only on the ground that the 'Assessing Officer has a reason to believe' that income has escaped assessment, certain event must take place/certain evidence must be placed on record before the belief an be converted in the fact. In this regard I am of the opinion that the method of valuation followed by the appellant should not have been disturbed by the assessing authority unless there was cogent material for doing the needful. The sale proceeds of the foals are being accounted for by the assessee on sale and it had not been included in the valuation of

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> the foals in its opening stocks. In holding that the valuation as done by the assessee should not have been disturbed by the assessing officer, I gain strength from the order of the ITAT in the case of Smt. Mahendra Kumari."

5. Both the assessee as well as the Department being dissatisfied with the order of the First Appellate Authority, preferred an appeal before the Income Tax Appellate Tribunal against the order of the First Appellate Authority dated 9th February, 1990. The Tribunal partly accepted the appeals filed by the assessee in regard to other issues, but the appeal of the department in regard to the material question, which is involved in the present appeals was dismissed. Commenting upon the issues for the relevant years, the Tribunal held as under:-

> "Shri Ganeshan retreated that law is well settled that if an assessee's method of accounting has been accepted regularly for a number of years as the basis for his assessment, the ITO shall not be justified if he for any particular years, refuses to accept such method as the basis of assessment for the year. He placed reliance on various case laws....
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> ....We have considered the rival submissions. The appellant has adopted a consistent method of not taking into account any cost of acquisition of foals. The entire sale proceeds have been

admitted as its income. When there are two views by the two judgements referred above then one in favour of the assessee should be taken. Even the revenue had accepted it for number of years. At present the dispute before us is for years pertaining to the asst. years 1986-87, 1991-92, 1992-93 and both parties have no grievance in earlier years of other intervening years. When a calf is born, it has nil value and all the expenses on account of fooding, medicines and other expenses are on account of the value of foals would be nil only. We, therefore, hold that the CIT (A) is justified in deleting the notional valuation of foals. This ground of revenue fails.

The next controversy is same as the valuation of foals. Under this ground the appellant had shown net realisable value of boodmares as against th cost actually incurred by it while purchasing them. Ld. DR stated that "under the IT Rules, no depreciation is allowable on live stock. The claim of the assessee is as such not in order". In reply, Shri Ganeshan submitted that the appellant has shown net realisable value of broodmares as against cost. The Department has accepted net realisable value in the past and intervening years and also in subsequent years. When such animals were sold then the sales proceeds were admitted by the appellant as income. It was pointed out to us that by making such addition there was double addition. Taking into account the totality of circumstances. This ground of appeal is dismissed....

....The next ground of appeal is the claim of depreciation on a flat at Bangalore. The claim was rejected on the ground the flat is not registered in the name of the appellant. During the course of hearing, Sr. DR submitted that flat

was not used for the purposes of business and no evidence was produced before us. The ld. Counsel submitted that the objection of the department is erroneous in view of the judgment of the Supreme Court in the case of Mysore Mineral - 239 ITR 775. With regard to the use of the flat, it is submitted that the directors have gone to Bangalore and the appellant has earned income from the participation of its horses at Bangalore races. Moreover, for the assessment years 1987-88 to 1990-91, the revenue has consented allowance of depreciation. We, therefore, direct the depreciation be allowed as the appellant has admitted income from the races at Bangalore. It is, therefore, reasonable to presume that flat has been used for the purposes of the business."

6. The above is the concurrent view taken by the First Appellate Authority as well as the Income Tax Appellate Tribunal. It has been specifically held that the manner and methodology of accountancy adopted by the assessee company was correct and did not violate any provisions of the Act or in any way result in avoidance of payment of tax. The basic controversies raised in the present case primarily relate to the foals born in the relevant assessment year and the depreciation claimed on the horses. Both these aspects are based on factual determination and do not *prima facie* disclose any legal controversy. It is a settled principle that in regard to matters of fact, the appellate tribunal

would normally be the final authority unless the findings arrived at by the authority was so perverse as to render the principles of law applicable, ineffective and inoperative. In the present case, the assessee had been fully reflecting the sale price received by the assessee after a year or two of the birth of the foals. The entire sale consideration, without adding any amount on account of expenditure upon them during the interregnum period, the entire income received has been shown as taxable by the assessee. In these circumstances, the learned Counsel appearing for the appellant-Department before us, was unable to show as to what prejudice is caused to the Revenue. It is not appropriate for this Court to travel into determination of questions which are primarily factual and are based upon evidence. Where the authorities had taken a concurrent view in regard to the factual matrix of the case, there would be hardly any scope for this Court to interfere in such order. The question in regard to the method of valuation adopted by the assessee, maintenance of accounts and other such ancillary questions have been treated to be questions of fact rather than questions of law. Reliance in this regard has correctly been placed by the Counsel appearing for the respondents upon the judgment of

this Court in the case of **Bishan Singh Didar Singh vs. Commissioner of Income Tax [1999] 106 TAXMAN 78 (DELHI)** where the Court held as under:-

> "Having heard the learned counsels for the parties, we are of the opinion that the questions suggested by the assessee do not arise as questions of law from the order of the Tribunal. That method of valuation adopted by the assessee did not correctly enable assessment of the income is purely a finding of fact. In *CIT v. British Paints India Ltd.* [1991] 199 ITR 44/54 Taxman 499, the Supreme Court has held:
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> > "Section 145 confers sufficient power upon the Assessing Officer-nay, it imposes a duty upon him-to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where accounts are prepared without disclosing the real cost of the stock-in-trade, albeit on sound expert advice in the interest of efficient administration of the business, it is the duty of the Assessing Officer to determine the taxable income by making such computation as he thinks fit.
> >
> > What is the profit of a trade or business is a question of fact and it must be ascertained, as all facts must be ascertained, with reference to the relevant evidence, and not on doctrines or theories....."

It is not disputed that LIFO and FIFO are both

normally accepted methods of valuation. The Assessing Officer further found that FIFO method of stock valuation was required to be adopted for the purpose of finding out the correct profits of the assessee as in the facts and circumstances of the case the LIFO system did not reflect the correct value of the stock."

7. Even in the case of **Commissioner of Income Tax vs. Shere Punjab Silk Store 1981 Tax 63 (1)-37**, while declining to entertain the reference and returning the same on facts, this Court also held that in regard to question relating to mated additions to the income for want of proper stock tally, the Tribunal's finding that the business and maintenance of accounts were such in that business that exact tally may not be possible except the basis of the total quantity purchased and sold. In these circumstances, there was no question of law and the view of the Tribunal was based on fact. Applying this principle to the facts of the present case we have already noticed that it is not in dispute that the assesse pays tax on the total sale consideration of the foals after a period of 2-3 years without claiming any expenses on that account.

8. The inevitable conclusion of the above discussion is

that the present appeal does not raise any questions of law as contemplated in the judgment of this Court in **Commissioner of Income-tax Vs. S.R. Fragnances Ltd. 270 ITR 560.** Accordingly, the appeals are dismissed, while leaving the parties to bear their own costs.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
(JUDGE)

March 3rd., 2005
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