



H.C.D.-I (a) Continuation Sheet

Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ W.P.(C) 884/2003</p> <p>SIYA NAND GOLA Petitioner Through : Mr. R.M. Sinha, Adv.</p> <p>versus</p> <p>COMMISSIONER OF INCOME TAX & ORS Respondents Through : Mr. R.D. Jolly, Adv.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE BADAR DURREZ AHMED</p> <p><u>ORDER</u> 13.07.2005</p> <p>%</p> <p>In this petition for a writ of Certiorari the petitioner has assailed correctness of an order dated 24th October, 2002 passed by the Commissioner of Income Tax whereby he has declined to exercise his revisional jurisdiction under Section 264 of the Act and upheld the order of assessment made against the petitioner. The facts giving rise to the petition lie in a narrow compass and may, therefore, be set out as under :</p> <p>The petitioner is engaged in the business of manufacture and sale of Polyester Buttons in the name and style of Glossy Polyester. In the course of assessment proceedings for the assessment year 1998-99, the Assessing Officer noticed that petitioner had shown a sum of Rs.2,76,033/- towards Sundry Creditors. The Assessing Officer directed the petitioner to provide confirmation from the said creditors and to prove that the credits shown against them were genuine. Apart from the said direct</p>



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		<p>the Assessing Officer also issued independent notices to the sundry creditors to obtain their confirmations. Most of these notices were returned unserved with the endorsement that the addressees did not exist on the addresses given on the envelopes. The petitioner assessee, however, took upon himself the task of securing confirmation from the sundry creditors and in the process, obtained confirmation from almost all the creditors except the parties referred to the assessment order. The total amount of credit shown against these parties worked out at Rs.3,59,509/-. The Assessing Officer noticed the absence of confirmations from the said creditors and proceeded to levy tax on the said amount on the basis of a surrender allegedly made by the petitioner.</p> <p>Aggrieved by the order passed by the Assessing Officer, the petitioner preferred a Revision Petition before the Commissioner of Income Tax, Delhi VIII under Section 264 of Income Tax Act, 1961. It was inter alia argued before the Commissioner that the Assessing Officer had committed a mistake apparent on the face of the record as much as he had assumed that there was no confirmation regarding credits shown against 8 different parties referred to in the assessment order. Reliance in this regard was placed by the assessee upon the response received from two of the creditors namely A.E. Enterprises and Mohan Chemicals. It was also contended by the assessee that no surrender as alleged had been made by the assessee before the Assessing Officer and the signatures taken on the margin of the order sheet maintained by the Assessing Officer did not signify the surrender of the disputed amount for taxation purposes.</p> <p>The Commissioner of Income Tax did not find any merit in either one of the above submissions. The Commissioner was of the view that the signatures on the</p>



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		<p>margin of the order sheet maintained by the Assessing Officer were sufficient to constitute a surrender of the amount and that the affidavit filed by the assessee setting out the circumstances in which the said signatures were obtained could not be accepted. In so far as the responses received from the two parties referred to above, the Commissioner found that the responses received from them were contradictory hence unreliable. The Revision Petition was, in that view, dismissed. The present writ petition, as noticed earlier, assails the correctness of the said order.</p> <p>Learned counsel for the petitioner argued that the order of assessment made by the Assessing Officer proceeded entirely on the basis of the alleged surrender made by the petitioner. No such surrender was, according to the learned counsel, made at any stage nor could any such surrender be read in the signatures which the Assessing Officer had obtained on the margin of the order sheet. It was also contended that the Assessing Officer as also the Commissioner had fallen in error in holding that the responses received from Aero Enterprises and Mohan Chemicals were in any way contradictory hence unreliable. The Commissioner had, according to the counsel for the petitioner, failed to exercise his jurisdiction thereby rendering the order made by him liable to be set aside.</p> <p>Mr. Jolly, counsel appearing for the Revenue, on the other hand, submitted that the jurisdiction of the Commissioner under Section 264 and so also that of this court under Article 226 of the Act was limited to finding out whether there was any error of jurisdiction or illegality in the impugned order. He urged that the Commissioner had, on evaluation of the material on record, come to the conclusion that there was a surrender</p>

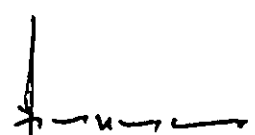



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		<p>made by the assessee and that the said finding could not be interpreted with by us under Article 226.</p> <p>The Assessing Officer has, as noticed earlier, proceeded mainly on the ground that the assessee had surrendered a sum of Rs.3,59,509/- for taxation on account of his inability to provide supporting material to show that the sundry creditors against whom the said amount was shown in his books were genuine. Mr. Jolly, in the course of the hearing before us, produced a xerox copy of the relevant record maintained by the Assessing Officer. From a perusal of the said record, we notice that the surrender allegedly made by the petitioner was on the basis of a letter said to have been filed by the assessee before the Assessing Officer on 26th March, 2001 erroneously recorded as 26th March, 2000. No such letter was, however, admittedly available on record. This aspect was noticed even by the Commissioner of Income Tax in the course of the proceedings before him. If that be so as indeed it appears to us to be the case, the very basis for assuming that there was a surrender disappears. It is not, by reference to the signature on the margin of the order sheet maintained by the Assessing Officer, that a surrender of the amount for taxation was being inferred. The record, on the contrary, refers to a formal letter surrendering the amount for taxation. If the said letter was non-existent, the assumption that any such surrender was made must also vanish. The Commissioner of Income Tax obviously failed to notice this aspect and thereby fell in error in holding that there was a surrender of the amount for taxation purposes. The result is that the order passed by the Commissioner is rendered unsustainable. On the analogy of the above reasoning, the order of assessment must also be held to be equally bad and unsustainable.</p>



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		<p>We accordingly allow this petition; set aside the order passed by the Commissioner as also the order passed by the Assessing Officer dated 28th March, 2005 to the extent the said order has brought to tax a sum of Rs.3,59,509/- shown against the sundry creditors mentioned in the order. We further direct that the petitioner assessee shall appear before the Assessing Officer on the 22nd August, 2005. It shall have three weeks thereafter to produce any material in support of its claim that the 8 alleged sundry creditors mentioned were genuine. It is made clear that in case the petitioner fails to provide the requisite confirmation or produce evidence in support of his claim that the transaction in relation to the alleged 8 sundry creditors mentioned in the order are genuine, the Assessing Officer shall be free to pass a fresh order without offering any further opportunity to the petitioner.</p> <p>Parties are left to bear their own cost.</p> <p>Dasti to both the parties.</p> <p style="text-align: right;">  T.S. THAKUR, J  BADAR DURREZ AHMED, J </p> <p>JULY 13, 2005 pk.</p>