



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 926/2006

COMMISSIONER OF INCOME TAX DEL Appellant

Through Mr. R.D. Jolly

versus

M/S RAGHAV ENTERPRISES Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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06.09.2006

The Revenue is aggrieved by an order dated 19th August, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' in IT (SS)A No.155(Del)/2003 relevant for the block period 1.4.1989 to 7.1.2000.

It appears that action was taken against the Assessee under Section 132 of the Income Tax Act, 1961 by conducting a search at its business premises.



The Assessee was then issued a notice under Section 158BC of the Income Tax Act and the Assessee file a return showing Nil income for the block period. The Assessing Officer, after examining the records of the case as well as the inventory of the goods that was made, assessed undisclosed income at Rs.7,80,692/-. It may be noted at this stage that the Assessee did not maintain any stock register and, therefore, the Assessing Officer had to rely upon the inventory that was made during the search.

We called for the inventory because it was not very clear what were the goods that were seized and in what quantity. Learned counsel for the Revenue has filed a copy of the inventory prepared during search.

Returning to the facts of the case, since the Assessee was aggrieved by the order passed by the Assessing Officer, he filed an appeal before the Commissioner of Income Tax (Appeals) who also looked at the inventory and thereafter decided the appeal in favour of the Assessee. The Revenue challenged the order of the Commissioner of Income Tax (Appeals), which was dismissed by the Tribunal and that is how the Revenue is before us in



appeal under Section 260A of the Income Tax Act, 1961.

The inventory shows the Serial No. in Column 1, name of item/description of goods in Column 2, the number of pieces in Column 3, the rate in Column 4 and value in Column 5.

In respect of Serial Nos. 1 to 76 of Annexure 'A-14' of the inventory prepared by the Revenue, the items were in pieces. Items at Serial No. 77 onwards were in packets. However, Serial No. 146 was described as being in pieces. The Assessing Officer erroneously assumed that the items mentioned from Serial No.146 and below were all in pieces, whereas, from a perusal of the inventory it is quite clear that only Serial No. 146 is described in pieces while other items from Serial No. 77 onwards continue to be shown in packets.

The rate for Item at Serial No. 147 is shown as 24 and the Assessing Officer has assumed that since the number of packets against Serial No. 147 consists of 10 pieces each, an assumption, which we do not know from where he got, he calculates the value by multiplying it by 10, although the

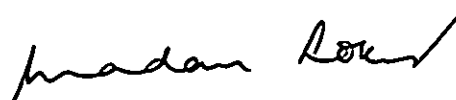


inventory itself shows the value as being 3432. There was no occasion for the Assessing Officer to change the value from 3432 to 34320. This is what the Assessing Office had done in all the items from Serial No. 147 downwards and it is on this basis that he has come to the conclusion that the Assessee had under valued its stocks.

On facts, the assumption made by the Assessing Office are totally unfounded and it is on this basis that the Commissioner of Income Tax (Appeals) and the Tribunal have disagreed with the Assessing Officer.

We find that the question is really one of fact and no question of law, much less, a substantial question of law arises in this case.

The appeal is dismissed.


MADAN B. LOKUR, J


VIPIN SANGHI, J

SEPTEMBER 06, 2006
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