



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision : September 5, 2007

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ITA 882 of 2007

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ANIL BAGLA

..... Appellant

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Through Mr. Arvind Nayyar with Mr. B.Narain,
Mr. Vikas Kumar and Mr. Piyush Sharma, Advocates

versus

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COMMISSIONER OF INCOME TAX

..... Respondent

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Through Ms. Prem Lata Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? YES
2. To be referred to the reporter or not? YES
3. Whether the order should be reported in the Digest? YES

ORDER

MADAN B. LOKUR, J. (ORAL)

1. The Revenue is aggrieved by an order dated 31st May, 2007 passed by the Income Tax Appellate Tribunal ('Tribunal'), Bench D, New Delhi in ITA No. 950/Del/2005 for the relevant Assessment Year 2001-02.



3. The first question pertains to a gift of Rs.2 lakhs stated to have been made by one Shri Rajesh Gulati to the Assessee on 24th March, 2001. The Tribunal did not accept the genuineness of this gift for the reason that on his examination by the Assessing Officer, Shri Rajesh Gulati stated that he knew the Assessee since 1998 but after the death of his father, he (Rajesh Gulati) had never met the Assessee nor did he know anything about the family members of the assessee. The Assessee has also never visited the house of Shri Rajesh Gulati. The Tribunal was of the view that under the circumstances, it would be quite unnatural for a person who had never contacted the donee or known any member of the family to make a gift without any apparent love, affection or other cause.

4. The Assessee is aggrieved by the impugned order of the Tribunal and has preferred this appeal.

5. We are of the view that the interpretation of the material on record by the Tribunal is a possible view to take. Therefore, we find that there is no reason to interfere in this matter since no substantial question of law arises.

6. Learned counsel for the Assessee has relied upon the decision of the Gujarat High Court in *Murlidhar Lahorimal v. Commissioner of Income Tax [2006] 280 ITR (Guj)* to contend that the Tribunal has proceeded on



on the material on record it has come to the conclusion that the gift does not appear to be genuine. The decision cited by learned counsel for the Assessee is clearly distinguishable in its application to the facts of the case on hand.

7. The second issue being urged by learned counsel for the Assessee is with regard to the rate of gross profit which has been taken by the AO as 11.2% and declared by the Assessee as 10.09%. The Tribunal reversed the decision of the CIT (A) which had held in favour of the Assessee and restored the decision of the AO on this point.

8. We find from a perusal of the record that the Assessee had not produced any books of accounts or stock register etc. before the Assessing Officer. It is too late in the day for the counsel for the Assessee to assert that the books of account were in fact furnished when the record shows to the contrary. In any event, no such plea was taken before the Tribunal. The submissions made by learned counsel for the Assessee that there was a fall in the rate of gross of profit in the business of trading of raw rubber was found to be unsubstantiated by any material on record. In this view of the matter, we hold that the Tribunal took the correct view that the Assessee having failed to produce any material to substantiate his explanation to the contrary, the rate of gross profit applied by the Assessing Officer had to be



9. Learned counsel for the Assessee has relied upon the decision of the Calcutta High Court in *Ashoka Refractories P. Limited v. Commissioner of Income Tax [2005] 279 ITR 457 (Cal)* to contend that mere non-production of records would not be fatal. In the absence of any other material that has been placed by the Assessee before the Assessing Officer, to show that there was a fluctuation in the prices of raw rubber and that the trading activities of the Assessee had declined, we do not think the said judgment would be applicable. It is essentially a question of fact as to what gross profit rate should be applied. No hard and fast rule can be laid down in this regard. We find no error having been committed by the Tribunal in regard to the rate of gross profit.

10. The third and fourth issues raised by learned counsel for the Assessee pertain to the gift of Rs.2.75 lakhs stated to have been made by Shri D.R. Jain to the Assessee and addition of Rs.91,045/- towards household expenses respectively. On both issues, the Tribunal has remanded the matter to the file of the Assessing Officer to examine the matter afresh. In the case of the gift given by Shri Jain, the Tribunal has required the Assessing Officer to pass a fresh order after examination of the donor. We are of the view that as regards the third and fourth issues, no substantial question of



11. There is no merit in the appeal. Accordingly, this appeal is
dismissed.

Madan Lokur
MADAN B. LOKUR, J

S. Muralidhar
S.MURALIDHAR, J

SEPTEMBER 05, 2007

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