



\* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.36/2008**

Judgment reserved on : 30<sup>th</sup> April, 2008

% Judgment delivered on: 28<sup>th</sup> May, 2008

DHARAM PAL DHINGRA,  
PROP. DHARAMPAL DHINGRA  
ELECTRONICS  
3 OLD LAJPATRAI MARKET  
DELHI

...Appellant

Through : Mr. Abhishek Maratha, Adv.

Versus

COMMISSIONER OF INCOME TAX  
DELHI-XVII, MAYUR BHAWAN,  
NEW DELHI

....Respondent

Through : Ms. Rashmi Chopra, Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

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

**MANMOHAN SINGH, J.**

1. This appeal is preferred under Section 260 A of the Income Tax Act, 1961 (the Act) against the order dated 9<sup>th</sup> February 2007 passed by Income Tax Appellate Tribunal (ITAT) in the M.A. No. 791/(Del)/2006 in IT(SS) NO. 269/(Del)/2001 for the block period



No.791/(Del)/2006 of the appellant and allowed the M.A. No.626(Del)2006 filed by the Department as consolidated order.

2. Brief facts relevant for the purpose of deciding this appeal are that the appellant is the sole proprietor of M/s Dharampal Electronics with his business premises situated at 33, Old Lajpatrai Market, Delhi-6. The residence of the appellant is located at U-153, Shakarpura, Delhi-92 and he is engaged in the business of trading as wholesaler of CDs and audio cassettes. During the search and seizure operation under Section 132 of the Act on 28<sup>th</sup> September, 1998, a diary and loose papers were seized by the Income Tax Department from the residential premises of the appellant which contained some entries written by Jitender Dhingra, the son of the Assessee. The Assessee addressed a letter to the Assessing Officer on 19<sup>th</sup> September, 2000 stating that the total sales worked out at Rs.3,74,138/- may be assessed as the Assessee's income from undisclosed sources.
3. The Assessing Officer held that the total amount of Rs.3,74,138/- be added as undisclosed income of the Appellant, vide the assessment order dated 27<sup>th</sup> September, 2000. Appellant preferred an appeal against the order of Assessing Officer to the Commissioner of Income Tax (Appeals) who held that only 2.5% of the total amount of sales i.e. Rs.3,74,138/- be computed and taxed as undisclosed income in the hands of Appellant.
4. The Department aggrieved by this order preferred an appeal before ITAT. After hearing the said appeal, the ITAT accepted the



undisclosed income of the Assessee. The reasons for allowing the appeal given by the ITAT are mentioned in para 5 of the said order. The relevant part of the said order is given hereinbelow :

“5. We have carefully considered the rival submissions. Search in the case of the assessee was conducted on 24.9.1998. After about two years the assessee addressed a letter to the AO on 19.9.2000, inter-alia, stating that the total sales worked out at Rs.3,74,138/- may be assessed as the assessee’s income from undisclosed sources. This letter was further reinforced by a letter of the same date addressed to the AO by the son of the assessee. By this admission the assessee pre-empted further enquiry and probe into the affairs by the AO and the matter was treated as concluded. Generally, an admission is the best evidence that an opposing party may rely upon though not conclusive. Reference in this respect may be made to the judgments reported in 168 ITR 375 (Bom.), 122 ITR 926 (All.), 210 ITR 682 (M.P.) and 219 ITR 235 (Ker.). Hon’ble Delhi High Court in the case of Durga Timber Work’s Vs. CIT, 79 ITR 63 (Del) and Hon’ble Punjab & Haryana High Court in the case of Mahavir Metal Works Vs. CIT, 92 ITR 513 have held that where an assessee himself voluntarily concedes that a particular item represented his income and surrender such income for the purpose of assessment, there is nothing further left for the Department to prove it as assessee’s income. It is no doubt true that the presumption raised by an admission is not irrebutable. It is open to a party to show the contrary by adequate evidence. Until the presumption is rebutted the fact admitted by the party must be taken to be established. In the instant case no material has been brought on record by the assessee to show that there were corresponding purchases also outside the books of accounts. It is also not proved by the assessee that the sales do not comprise of purchases already debited to the assessee’s books of accounts.”

Before ITAT and in this Court the Department has relied upon a judgment of this Court in *CIT vs. La Medica (2001)* 250 ITR 575 (Delhi).



5. Thereafter, it appears that the Assessee did not challenge the order dated 20.4.2005 of the ITAT but initiated proceedings under Section 254(2) of the Income Tax Act, 1961 by filing an application being M.A. No.791/(Del)/2006. The said M.A. No.791/(Del)/2006 was dismissed by the ITAT in IT (SS) No.269/(Del)/2001 vide order dated 9<sup>th</sup> February, 2007.
6. It was argued by the appellant in the rectification proceedings in M.A. that the addition of the whole amount of sale as undisclosed income without deducting the amount of the undisclosed purchase amounts to an error apparent on the face of the record and is therefore liable to be rectified under Section 254 (2) of the Act. Learned counsel for the Appellant relied upon the judgment of High Court of Madhya Pradesh in *CIT V Balchand Ajit Kumar (2003) 263 ITR 610(M.P)* and the judgment of High Court of Gujarat in *CIT V President Industries (2002) 258 ITR 654 (Guj)*. It was contended that undisclosed income liable to be taxed should only be 2.5 % i.e the gross profit rate and not the whole amount of sales. In *Balchand Ajit Kumar* Case (supra) it was held that total sale could not be regarded as profit of the Assessee and the gross profit rate has to be adopted. It was further contended that *La Medica's* case doesn't apply to the facts of present case, it is entirely different from the present case in facts and the issue involved as well.
7. We are of the view that the judgments cited by the appellant were not applicable in the facts and circumstances of the present case on



the undisclosed sale which was further re-enforced by a letter of his son addressed to the Assessing Officer. It was also categorically observed by the Tribunal that there was no material brought on record by the Assessee to show that there was corresponding purchase also outside the books of accounts.

8. We consider that where there is no evidence produced by the Assessee for undisclosed purchases, there can be no presumption regarding undisclosed purchases, in favour of the Assessee. As there is no detail regarding unaccounted purchases corresponding to the unaccounted sales, whole amount of undisclosed sale i.e Rs. 3,74,138/- will be added in the undisclosed income of the Assessee. There will be no question of applying gross profit rate of 2.5 % of the undisclosed sales as the undisclosed purchases have not been proved.

9. In view of the above facts and circumstances of the case no substantial question of law arises for consideration against the impugned order dated 9<sup>th</sup> February, 2007 passed by ITAT in M.A. No.791/(Del)/2006. Hence the appeal is dismissed but no order as to costs.

**MANMOHAN SINGH, J**

**MAY 28, 2008**

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**MADAN B. LOKUR, J**