



* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 08.09.2008
 % Judgment delivered on : 06.11.2008

+ **ITA No. 428/2007**

**COMMISSIONER OF
 INCOME TAX DELHI-II**

..... **Appellant**

-versus-

JINDAL VEGETABLES PRODUCTS LTD

..... **Respondent**

Advocates who appeared in this case:

For the Appellant : Mr R D Jolly
 For the Respondent : Ms Bhakti Pasrija

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
 HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

RAJIV SHAKDHER, J

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The Revenue has preferred the present appeal against the judgment of the Income Tax Appellate



Tribunal (hereinafter referred to as the “Tribunal”) dated 11.8.2006 passed in ITA No 1567/Del/2001, in respect of, the assessment year 1997-98. The Revenue, being aggrieved by the impugned judgment, has primarily raised the following two issues in the appeal which, according to it, raises substantial questions of law:-

(i) Whether the Tribunal had wrongly deleted the addition of Rs 22,67,980/- made by the Assessing Officer by disallowing the claim of depreciation made by the assessee, in respect of, certain machinery items supplied by one Deepak Glycerides Process India (P) Ltd?

(ii) Whether the Tribunal had erred in deleting an addition of Rs 39,46,250/- made by the Assessing Officer by disallowing the claim of the assessee, in respect of, expenditure made by assessee on purchase of machinery, on the ground that, they were both outside the books of accounts and unexplained?

1.1 According to us both these issues involve appreciation of evidence placed before the authorities below. Both the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] and the Tribunal after closely examining the evidence placed before them returned findings of fact in favour of the assessee.



2. Before us, however, the learned counsel for the Revenue sought to submit that the findings of the authorities below were perverse. To appreciate this submission of the Revenue, we examined for ourselves the orders of the authorities below. After doing so, we are of the opinion that the impugned judgment deserves to be sustained for the reasons given hereinafter. But before we delineate the reasons for our conclusion, the following facts are required to be noted:-

2.1 The assessee had filed a return under Section 115JA of the Act on 28.11.1997, declaring an income of Rs 36,74,512/-. The Assessing Officer issued notices to the assessee under Section 143(2) of the Act. The return of the assessee was processed under Section 143(3) of the Act. Consequent thereto, the assessee participated in the proceedings before the Assessing Officer through his authorized representative.

2.2 The Assessing Officer in the course of the assessment proceedings raised queries in respect of eight items of machinery, which are referred to hereinafter. The assessee was asked to furnish details of such items alongwith bills and vouchers. The assessee furnished details vide letter dated 30.07.1999. A perusal of the bills demonstrated that the eight items of machinery, in respect of, which a



query had been raised by the Assessing Officer had been purchased from one, Deepak Glycerides Process (India) Pvt. Ltd. The assessee had claimed 100% depreciation on the eight items of machinery. The details of items on which the assessee had claimed 100% depreciation as given in the assessment order are as follows:-

<u>Name of item</u>	<u>Bill No.</u>	<u>Date</u>	<u>Amount</u>
H.P.Cylinder	262	03.09.1996	3,58,750
Temperature & Controllers	255	01.07.1997	49,610
Sensers	-do-	-do-	20,295
Air Heat Recovery Unit	250	22.06.1996	1,99,875
Dust Collector Water TA	249	22.06.1996	5,38,125
Heat Exchanger	256	01.07.1996	1,10,700
Water Oil Separator	253	24.06.1996	1,02,500
H.P.Cylinder	241	02.05.1996	7,19,000



2.3 It was the case of assessee that the said items of machinery had been purchased from Deepak Glycerides Process India (P) Ltd.

2.4 The Assessing Officer, in order to verify the claim of the assessee, sought the help of DDI (Investigation), Kanpur. The report of DDI (Investigation) Kanpur was accompanied by a copy of the statement of one, Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd, wherein he denied having supplied any goods to the assessee except those mentioned in Bill Nos 239 dated 03.07.1996 and 242, dated 22.07.1996. Shri Deepak Chauhan claimed to have supplied machinery to other parties against the bill numbers referred to hereinabove. Based on this, the Assessing Officer came to the conclusion that the aforesaid items on which 100% depreciation has been claimed by the assessee were not supplied by Shri Deepak Chauhan. For this purpose the Assessing Officer relied heavily on the statement of Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd. Accordingly, 100% depreciation claimed on the items referred to hereinabove amounting to Rs 22,67,980/- was added back by the Assessing Officer.



2.5 As regards the addition of sum of Rs 39,46,250/-, the Assessing Officer again relied upon the statement of Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd, wherein as indicated above, he denied having supplied any goods except those which were mentioned in two bills bearing numbers 239 and 242. In the context of this aspect of the matter, the Assessing Officer recorded the stand of the assessee wherein, the assessee accepted the fact that the goods referred to in bill number 242 had been received by it. The assessee, however, claimed that the goods referred to in bill number 242 formed part of the bills bearing number 243 and 246, and were included in the sum of Rs 1.24 crores, being the total purchases made for the factory, and hence, was expenditure which stood reflected in the books of account; contrary to what the Assessing Officer had held.

2.6 The Assessing Officer, however, rejected the evidence produced by the assessee and accordingly made an addition towards unexplained expenditure, in respect of, two machines stated to have been supplied by Deepak Glycerides Process India (P) Ltd amounting to Rs 39,46,250/-. The assessment was completed under Section 143(3) of the Act.



3. Aggrieved by the assessment order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals) [hereinafter referred to as the CIT(A)]. The CIT(A) examined the evidence produced by the assessee in detail after which he came to a categorical conclusion that the statement of Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd was not credible. The CIT(A) categorically noted that the assessee was not given any opportunity to cross-examine the supplier of the said items of which depreciation had been claimed i.e., Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd. The CIT(A) accepted the evidence produced by the assessee in the form of bills, invoices, bank details whereby payments have been demonstrably made to the supplier, i.e., Deepak Glycerides Process India (P) Ltd. The CIT(A) disagreed with the conclusion of the Assessing Officer that the money was being funnelled back to the assessee only because of the fact that, the payments which were made by the assessee towards supply of machinery were withdrawn in cash immediately after receipt of payments. The CIT(A) was of the view that without any further evidence it could not be concluded that the money flowed back to the assessee.



3.1 As regards the other aspect with regard to the addition of unexplained expenditure, the CIT(A) observed that the reliance placed by the Assessing Officer on bills no 239 & 242 purportedly issued by the supplier revealed that they referred to the same challan numbers and GR numbers even though they bore different dates.

3.2 The CIT(A) in fact accepted the stand taken by the assessee that the machinery mentioned in bill number 242 had in fact been supplied by Deepak Glycerides Process India (P) Ltd even though under a different bill number. In these circumstances, the CIT(A) came to the conclusion that the Assessing Officer had erred in treating the value of the said purchases as unexplained expenditure by the assessee. The CIT(A) concluded that the statements of Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd were unreliable, and on the other hand, the evidence produced by the assessee in the form of relevant invoices, correspondence with the supplier, as well as, sales tax declaration form given by the said supplier, and also, the fact that transactions were duly reflected in the books of accounts of the assessee lent credence to the stand taken by the assessee. Based on the aforesaid, the CIT(A) deleted both the



additions in the sum of Rs 22,67,980 /- towards denial of depreciation claimed by the assessee, as well as, a sum of Rs 39,46,250/- towards unexplained expenditure.

4. Being aggrieved, the Revenue preferred an appeal to the Tribunal. By the impugned judgment, the Tribunal dismissed the appeal of the Revenue. The Tribunal has given its utmost consideration and thought to the evidence produced by the assessee. The reasons for dismissing the appeal of the assessee are recorded, in detail, in paragraph 8 of the impugned judgment.

5. We have heard the learned counsel for the Revenue. After perusing the orders, we find that the Tribunal has correctly concluded as follows:-

(i) no reliance can be placed on the statements made by Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd as the statements were inherently contradictory and unreliable;

(ii) no opportunity was given to the assessee by the Assessing Officer to examine Shri Deepak Chauhan;



(iii) eventhough the books of accounts for the relevant year were available, Shri Deepak Chauhan, Managing Director of Deepak Glycerides Process India (P) Ltd did not produce bills and vouchers by holding forth that same had been lost;

(iv) two bills bearing Nos. 239 and 242, issued on two different dates i.e. 3.7.96 and 22.7.96, were filed by Shri Deepak Chauhan, claiming that the said bills were raised on the assessee company for supply of certain items of machinery. The bills, however, contained the same delivery challan number, as well as, lorry receipt number. As against this, the assessee had claimed that the machinery stated to have supplied were actually supplied to the assessee under Bill No.243 which has been duly recorded in the books of accounts of the assessee;

(iv) the payments with respect to eight bills referred to hereinabove which added upto, a sum of Rs 22,67,980/- and against which, 100% depreciation had been claimed, were paid by way of account payee cheques/drafts which were duly confirmed by the bankers of the assessee. This evidence was not put by the Assessing Officer to Shri Deepak Chauhan at any point in time. The Assessing Officer by solely relying upon the information received from the



bankers of the suppliers, that the amount paid by the assessee company had been withdrawn in cash questioned the genuineness of the purchase of eight items of machinery, without appreciating that the supplier, Deepak Glycerides Process India (P) Ltd, has neither denied receipt of payments from the assessee company, nor stated that the said money was returned to the assessee company in cash, as concluded by the Assessing Officer.

6. In view of the aforesaid findings of fact, we have no difficulty in sustaining the order of the Tribunal. There is no question of any perversity in the findings of fact. There is, in our opinion, no question of law, much less a substantial question of law, which has arisen for our consideration. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

November 06, 2008
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