



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.11.2008

+ **ITA 1275/2008**

**THE COMMISSIONER OF INCOME TAX
CENTRAL – I**

... Appellant

- versus -

P. P. JEWELLERS

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Prakash Kumar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

CM 15570/2008 in ITA 1275/2008

Allowed subject to all just exceptions.

ITA 1275/2008

1. This appeal under Section 260-A of the Income Tax Act, 1961 has been preferred by the revenue being aggrieved by the order dated 04.01.2008 passed by the Income Tax Appellate Tribunal in ITA 314/Del/2004 pertaining to the block period 01.04.1996 to 08.08.2002.



2. The revenue had filed the appeal before the Tribunal on the ground that the Commissioner of Income Tax (Appeals) had erred in deleting the addition of Rs 10,08,597/- made on account of gross profit on suppressed sales, which in turn, arose out of the unexplained shortage of stock found on the date of the search. We note that the Tribunal has examined the factual position in detail and has confirmed the deletion made by the Commissioner of Income Tax (Appeals).

3. The Tribunal noted that the explanation offered by the assessee with regard to the discrepancy in the weight of the gold and diamond jewellery ought to have been accepted by the Assessing Officer. This was because the weight of the jewellery items was taken by the department in bulk which, according to the Tribunal, included items like price tags, threads and studded items. Secondly, the Tribunal was also impressed by the fact that difference in the weight was very small.

4. The Tribunal noted that there was no dispute that the department had adopted the bulk weighing method for weighing the jewellery and thereafter compared the same with the stock register. The Tribunal was of the view that this method suffered from various imperfections inasmuch as it meant that the weighment was not done



maintained by the assessee. The Tribunal concluded that the method of valuation based on such weighment was not foolproof and was also not free from doubt. The Tribunal held that in view of the likely errors associated with such bulk weighing method and also in view of the minor nature of discrepancy in the weights, the Assessing Officer ought to have accepted the explanation of the assessee.

5. We do not find any difficulty in accepting the conclusions arrived at by the Commissioner of Income Tax (Appeals) as well as the Tribunal on this count. Consequently, we hold that the explanation offered by the assessee had been rightly accepted by the Tribunal. We, therefore, are not inclined to interfere with the impugned order and also note that no substantial question of law arises for our consideration.

6. We have not expressed our opinion on the legal issue of suppression of sale and undisclosed income which has been dealt with by the Tribunal because we are of the view that going into that issue would be unnecessary in view of the findings on facts.

The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J