



16 to 18.

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

16.

+ ITA 166/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Rashmi Chopra, Advocate.

versus

RAJDHANI FLOOR MILLS LTD Respondent
Through: Mr. R.P. Garg, Advocate with
Mr. K.N. Ahuja, Advocate.

With

17.

+ ITA 922/2010

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, Advocate.

versus

RAJDHANI FLOOR MILLS LTD Respondent
Through: Mr. R.P. Garg, Advocate with
Mr. K.N. Ahuja, Advocate.

And



18.

+ ITA 940/2010

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, Advocate.

versus

RAJDHANI FLOOR MILLS LTD Respondent
Through: Mr. R.P. Garg, Advocate with
Mr. K.N. Ahuja, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
15.09.2010

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Regard being had to the identitic nature of the controversy involved in these appeals they have been heard analogously and are being disposed of by a singular order.

For the sake of clarity and convenience the fact in ITA No.166/2010 are adumbrated herein.

At the very outset, we may state with profit though the Revenue by assailing the order dated 20th March, 2009, a composite order



passed by the Income Tax Appellate Tribunal, Delhi Bench (in short, “tribunal”) in two appeals namely, ITA No. 3233/Del/2006 and ITA No.3461/Del/2006 pertaining to the assessment years 2004-2005 and 2005-2006, has raised number of questions.

Ms. Rashmi Chopra, learned counsel for the appellant fairly stated that the substantial question that would arise for consideration is as follows:-

- i) Whether the order of the ITAT is vitiated in perversity inasmuch as it based the GP rate of the present year on the rate as disclosed by the assessee in preceding year ignoring the rate as itself declared for the year under consideration?

We have heard Ms. Rashmi Chopra, learned counsel for the appellant and Mr. R.P. Garg, learned counsel for the respondent.

The basic facts are that the respondent-assessee is engaged in the business of manufacturer of ‘Besan’ and the input in the manufacture in Gram.

In course of assessment proceedings under Section 143(3) of the Income Tax Act, 1971 (for brevity, “the Act”), the respondent-assessee indicated that the gross profit was 6.59%, the Assessing



Officer on the basis of documents made available to him determined it as 9.5%.

Being aggrieved, the respondent-assessee preferred an appeal and the CIT(A) after discussing the material brought on record and keeping in view the profits shown by the respondent-assessee in respect of last three years, determined it as 7%. The said order was assailed by the revenue as well as the assessee.

The tribunal after taking note of the fact and the findings recorded by it and also analyzing the chart pertaining to the assessment years 2001-2002, 2002-2003 and 2003-2004 came to hold as follows:-

“15. After hearing both the parties and considering the totality of the facts and circumstances of the case, we are of the considered view that no such estimation of GP of adopting the GP rate at 7% is called for. It is not in dispute that the plastic bags are consumable items consumed by the assessee for the purposes of packing the goods. In other words, the plastic bags were used as packing material. It is not in dispute that the packing material are day to day expenditure necessary to be incurred by the assessee for the purpose of packing the goods to be sold by the assessee. The assessee does not deal in purchase and sale of packing material. The packing material in the nature of plastic bags are consumable items for the assessee and, therefore, it was a bonafide practice on the part of the assessee not to



include the consumable items in the closing stock. It is not in dispute that the plastic bags being consumable items are not included in the closing stock. It is also not in dispute that the plastic bags being consumable items were also not included in the opening stock of the current year. Therefore, the fact that the plastic bags lying in hand were not included in the closing stock can, in the facts and circumstances of the case not be made a basis to make addition by estimating the GP at higher rate as compared to the GP declared by the assessee. In the present assessment year, the assessee has declared the gross profit at 6.55%, which is slightly lower by 0.04% as compared to the GP rate of 6.59% declared in the immediate preceding assessment year. However, it is pertinent to note that the sales in the current year has been increased to 89.18 crores from 79.92 crores declared in the immediate preceding assessment years. Thus, the sales in the present assessment year has been increased by 11.5% as compared to immediate preceding year. In the light of the increase in sales, the fall of GP by 0.04% is very nominal and negligible. It is well settled that it cannot be assumed that even in an ordinarily well run business, the profit would always be uniformly good or uniformly the same. One cannot be expected to earn or make same profit in all the year. Therefore, the fall of GP by nominal percentage on 0.04% as compared to immediately last year cannot be a basis to make any addition to the book result declared by the assessee, when no specific instances of suppression of sales or inflation of purchases or any serious irregularity in the books of account maintained by the assessee are detected. In the light of the discussion made above, we, therefore, delete the addition on account of GP rate sustained by the ld. CIT(A). The A.O. shall modify the assessment order accordingly. Thus, this decision sustained by the ld. CIT(A) relating to the addition on account of GP is decided in favour of the assessee and against the revenue.”



In our considered opinion, all the authorities have applied their own guess work as is manifest from the fact that the Assessing Officer determined it 9.5%, the first Appellate Authority determined it 7% and the tribunal accepted the declaration of the respondent-assessee as 6.59% to be correct.

In view of the aforesaid, we are of the opinion that no substantial question of law arises for consideration and accordingly, the appeals stand dismissed without any order as to costs.

A handwritten signature in black ink, appearing to read "Manmohan J.", positioned above the printed name.

CHIEF JUSTICE

A handwritten signature in black ink, appearing to read "Manmohan J.", positioned above the printed name.

MANMOHAN, J

SEPTEMBER 15, 2010

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