



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Delivered on: 26.04.2010

+ **ITA 681/2010**

COMMISSIONER OF INCOME TAX-IX.

... Appellant

- versus -

M/S JAS JACK ELEGANCE EXPORTS.

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchii Aggarwal

For the Respondent :

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J.(ORAL)

1. This is an appeal against the order of the Income Tax Appellate Tribunal dated 11.9.2009, in ITA No. 1818/Del/2009 pertaining to the A.Y. 2004-2005 whereby the appeal filed by the Revenue against the order of CIT(A), was dismissed.

2. The respondent/assessee filed return showing income of Rs.49,40,500/- for the A.Y.2004-2005. The return was picked up for scrutiny and notice under Section 143(2) of Income Tax Act, 1961, (hereinafter referred to as the Act) was issued to the assessee. The assessee firm is engaged in the



business of manufacturing and export of readymade garments and had declared gross profit @ 12.08% during the A.Y.2004-2005 as against gross profit of 12.37% declared by it for the A.Y. 2003-2004 and gross profit of 17.58% declared for the A.Y.2002-2003. The assessee claimed that the fall in gross profit ratio was due to reduction in margin, in order to increase sales. The assessee was asked to produce Books of Account and relevant registers. The Books of Account as well as certain vouchers were produced, but, the stock register was not produced, claiming that no such register was being maintained. The assessee had claimed fabrication charges amounting to Rs.37,54,215, finishing & dyeing charges amounting to Rs.25,00,989 and embroidery expenses of Rs.55,85,683/-, details of which were furnished to the Assessing Officer. It was asked to produce the parties to whom charges amounting to Rs.20,000/- or more were paid on account of fabrication, embroidery, finishing & dyeing. The assessee, however, did not produce any of those parties on the ground that it had closed down its business and was not in contact with any of them. The Assessing Officer rejected the Books of Account produced by the assessee and computed income of the assessee, taking the gross profit ratio at 17.58%,



which was the gross profit percentage declared for the A.Y.2002-2003. Addition of Rs.24,40,898/- was, accordingly, made by the Assessing Officer.

3. In the appeal filed by the assessee, it is pointed out to the Commissioner of Income Tax(Appeals) that no defect in the accounts books was found by the Assessing Officer and the gross profit rate for the assessment year in question was almost similar to the gross profit rate declared in the immediate preceding year. CIT(A) noted that the Books of Account of the assessee were audited and no discrepancy in those books had been pointed out by the Assessing Officer. He held that the gross profit ratio assumed by the Assessing Officer was vitiated, since the Department itself had accepted gross profit ratio of 12.37% in the immediate preceding year and the principle of continuity and consistency had been ignored. Relying upon the decision of Punjab & Haryana High Court in **CIT Vs. Om Overseas**: (2008) 173 Taxman 185 (P&H) and **CIT Vs. Ludhiana Steel Roll Mills**: (2007) 295 ITR 111 (P&H), it was held that estimation of gross profit on the basis of gross profit ratio declared by the assessee two years ago, was not justified. Accordingly, the addition made by the Assessing Officer was deleted.



4. While dismissing the appeal filed by the Revenue against the order of CIT(A), the Tribunal noted that the Assessing Officer had not found any defect in the books of accounts maintained by the assessee. The Tribunal was of the view that maintenance of Stock Register, which shows consumption of raw material and production of finished goods by applying the same measurement was not feasible, considering the nature of the business of the assessee. It was further noted that the fabric was measured in metres and was thereafter stitched to make garments which have to be counted in pieces. The Tribunal also pointed out that the Assessing Officer had not been able to point out any difference in the consumption of raw material and production of finished goods, when compared to the earlier years. The Tribunal, therefore, concluded that the finding recorded by Commissioner of Income Tax(Appeals) was on the right footing.

5. Section 145(3) of Act provides for assessment in the manner prescribed in Section 144 of the Act, where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or where either the method of accounting provided in sub-Section (1) or the accounting standards as notified under sub-Section (2) have



not been regularly followed by the assessee. This is not the case of the Revenue that the assessee had not followed either cash or mercantile system of accounting stipulated in sub-Section (1) of Section 145 of the Act. This is also not the case of the Revenue that the Central Government had notified any particular accounting standards to be followed by manufacturers and exporters of readymade garments. Hence, the second part of sub-Section (3) of Section 145 does not apply to this case. As noted by the Commissioner of Income Tax(Appeals) as well as by the Income Tax Appellate Tribunal, the Assessing Officer had not pointed out any defect in the Accounts Books maintained by the assessee, which, admittedly, were produced before the Assessing Officer for his consideration. This is also not the finding of the Assessing Officer that the account of the assessee was not complete. No provision either in the Act or in the rules requiring an assessee carrying business of this nature, to maintain a Stock Register, as a part of its accounts has been brought to our notice. As regards non-production of Stock Register, the assessee has given an explanation which has been accepted not only by the Commissioner of Income Tax(Appeals) but also by the Tribunal and both of them have given a concurrent finding of fact that



maintaining Stock Register was not feasible considering the nature of the business being run by the assessee which was engaged in the business of manufacturing readymade garments by purchasing fabric which was then subjected to embroidery, dyeing and finishing and then converted into readymade garments by stitching. Section 145(3) of the Act therefore could not have been applied by the Assessing Officer to the present case.

6. As regards failure of the assessee to produce the persons to whom payments were made by the assessee for fabrication, embroidery and dyeing & finishing, etc., the Assessing Officer was at liberty to summon any or all of them in case he wanted to verify the genuineness of the payments made to them. No such course of action was, however, adopted by him. Failure of the assessee to produce those persons could not have been a ground for rejecting the accounts under Section 145(3) of the Act.

7. The Assessing Officer did not point out any difference in the consumption of raw material and production of finished goods when compared to earlier years. The Assessing Officer did not say that after comparing the raw material consumed and finished goods produced in the previous years with the raw



material consumed and the finished goods produced in the year in question, he had found that the number of finished goods pieces actually produced by the assessee should have been more than the number of pieces declared in the account books produced before him.

8. Another important aspect of this case is that, admittedly, the gross profit percentage declared by the assessee in the assessment year 2003-2004 which was the immediate preceding year, was more or less the same as was declared in the assessment year 2004-2005, to which this appeal pertains. However, the Assessing Officer, instead of applying the gross profit ratio declared in the immediate preceding year, applied the gross profit ratio declared in the assessment year 2002-2003, thereby failing to maintain the accepted principle of continuity and consistency. No ground at all has been given by the Assessing Officer for deviating from this accepted principle of assessment.

9. In any case, the question whether fall in gross profit stood explained by the assessee or not is a question of fact. Both, the ITAT as well as CIT (Appeals) have accepted the explanation given by the assessee. This Court cannot disturb finding of fact unless some perversity is pointed out in the



finding of the Tribunal which is otherwise the final authority on facts. No substantial question of law arises for our consideration in this case. The appeal is, accordingly, dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

APRIL 26, 2010
RS/