



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Delivered on: 26.04.2010

+ **ITA 651/2010**

COMMISSIONER OF INCOME TAX-IX.

... Appellant

- versus -

M/S JACKSONS HOUSE

... 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

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. 1817/Del/2009 pertaining to the A.Y. 2003-2004, whereby the appeal filed by the Revenue against the order of CIT(A) was dismissed.

2. The assessee firm, which is engaged in the business of manufacture and export of readymade garments filed return for the Assessment Year 2003-2004 declaring gross profit ratio of 18% as compared to gross profit ratio of 27% shown in the immediate preceding year. A notice under Section 143(2) of Income Tax Act, 1961(hereinafter referred to as the Act) was issued to the assessee, which produced its accounts books as



well as stock register and also furnished the information sought by the Assessing Officer from time to time. The drop in gross profit ratio was attributed to increase in fabric consumption, increase in processing cost such as fabrication, embroidery, dyeing and bleaching and comparatively low increase in the average sale price. The Assessing Officer rejected the accounts under Section 145(3) of Income Tax Act and computed the gross profit at the estimated rate of 28%, considering that the gross profit declared in the immediate preceding year was 27% and made addition accordingly.

3. The Commissioner of Income Tax(Appeals) noted that the assessee had produced a chart before the Assessing Officer, thereby giving statistical analysis for the purpose of verification by him. He noted that the Assessing Officer had not disputed the veracity of the analysis. It was further noted that the samples of different products were produced for verification and it was demonstrated that in the case of blouse, a particular blouse consumed two metres to four metres of cloth. The blouse manufactured during the year in question was also produced for verification along with other blouses and it was found that there was material difference in consumption of cloth for the manufacture of two kinds of blouses. Similar



was found to be the situation in regard to production of shirts, skirts and other garments manufactured during the year. The CIT(A) noted that the Books of Account of the assessee were duly audited and no discrepancy therein had been pointed out by the Assessing Officer. He, therefore, held that since the crucial facts put forth by the assessee, like increased consumption of fabric, increased cost of fabrication, embroidery, finishing & dyeing and bleaching and low increase in sale price as compared to earlier years had been brushed aside, the estimate of gross profit on the basis of the gross profit of the previous year was not justified. The addition made by the Assessing Officer was, accordingly, deleted.

4. The Tribunal relying upon the decision of Supreme Court in **S.N.Namashivayam Chettiar Vs. CIT, Madras**: 38 *ITR* 579 held that if the method adopted by the assessee was a regularly employed method and was such that the income, profit and gain can be properly deduced therefrom, then such method of accounting, as followed by the assessee, cannot be discarded. The Tribunal also noted that the accounts of the assessee were audited and no discrepancy of accounting had been pointed out. It was also noticed that the Act had not prescribed any specific method of maintaining the stock



register and the assessee was maintaining its stock register through which in and out stock movement was clearly verifiable. The Tribunal appreciated that when the assessee is in the business of manufacturing and export of clothes, his raw material would have to be in metres, whereas the finished goods would obviously be in number of pieces and cannot be measured in metres. It was further noted that the Assessing Officer, had not pointed out that consumption of raw material and finished goods did not tally with the past record of the assessee. The Tribunal was of the view that maintenance of a stock register on a daily basis in regard to the issue of cloth and quantification of finished goods cannot be said to be defective. The Tribunal found that the income of the assessee was discernible from the method of accounting followed by it and, therefore, the order passed by the Commissioner of Income Tax(Appeals) did not call for any inference.

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) having



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. 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.

6. As noted by the Commissioner of Income Tax(Appeals) as well as by the Income Tax Appellate Tribunal, the Assessing Officer has not pointed out any specific defect or discrepancy in the accounts books maintained by the assessee. The Accounts Books, 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 were not complete. As regards the assessee not maintaining Stock Register in the form expected by the Assessing Officer, 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 of that nature 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 was then converted into readymade garments by stitching. Our attention has not been drawn to any provision of the Act or to Rules framed thereunder, requiring the assessee engaged in the business of manufacturing and export of garments or all assesses in general having business income, to maintain Stock Register, in a particular form. As found by the Tribunal, the income of the assessee was clearly discernible from the accounting method followed by it. Hence, the accounts of the assessee cannot be said to be defective or incomplete, merely because the Stock Register was not maintained in a particular form. Section 145(3) of Income Tax, therefore, could not have been invoked by the Assessing Officer to the present case.

7. In any case, the question whether the accounts maintained by the assessee were defective and/or incomplete, or not, was a question of fact. Neither the CIT(A) nor the ITAT found the accounts to be defective or incomplete. Both, CIT(A) as well as the Tribunal were satisfied with the Stock Register maintained by the assessee and appreciated the fact the raw



material, i.e., the fabric purchased by the assessee was to be measured in metres, whereas the finished products were to be counted in numbers. No reasonable ground has been made out for this Court to go in to this question and revisit the finding returned by the CIT(A) and the ITAT.

8. The question as to whether the assessee had duly explained the drop in the gross profit ratio or not was a question of fact. It is not as if the assessee did not give any plausible explanation for the fall in gross profit during year in question. He gave a number of reasons in this regard and the explanation given by the assessee having been accepted by the CIT(A) as well as by the Tribunal, it is not for this Court to go into such a question of fact.

9. No substantial question of law, therefore, arises for our consideration in this case. The appeal is, accordingly, dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

APRIL 26, 2010/RS