



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.04.2010

+ **ITA 235/2005**

THE COMMISSIONER OF INCOME TAX ... Appellant

- versus -

M/S LALSONS ENTERPRISES ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms P.L. Bansal

For the Respondent : Mr Ajay Vohra, Ms Kavita Bansal and Mr Sriram Krishna

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 ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The Revenue is aggrieved by the order dated 27.03.2003 passed by the Income Tax Appellate Tribunal in ITA 2144/Del/2002 relating to the assessment year 1998-99. The Revenue proposed the following four questions which, according to it, are substantial questions of law and require determination of this Court:-

“A) Whether the ITAT was correct in law in holding that CIT had illegally assumed



B) Whether the ITAT was correct in law in holding that interest income of Rs17,01,974/- is eligible for deduction u/S 80 HHC of the Act?

C) Whether the ITAT was correct in law in holding that interest of Rs18,53,916/- paid to the Bank was not to be disallowed on the ground that the assessee had diverted its funds to M/s Damas Jewels?

D) Whether the ITAT was correct in law in holding that the finding of the CIT on account of addition for excess stock amounting to Rs9,59,425/- and on account of shortage of stock amounting to Rs88,26,126/- is not sustainable?”

2. Question ‘B’ was common to several other appeals. The said question was ultimately decided by virtue of a common judgment passed by a Division Bench of this Court in ITA 166/2000 titled ‘CIT v Shri Ram Honda Power Equipments on 12.01.2007. The said decision has since been reported in 289 ITR, 475 (Del). Consequently, this Court noted in its order dated 04.04.2007 that question ‘B’ as proposed by the Revenue had already been answered and the matter was, thereafter, listed for admission with regard to questions ‘A’, ‘C’ and ‘D’. The matter has been taken up from time to time. We have now heard counsel for the parties on the proposed questions A, C and D.

3. Proposed question ‘C’ pertains to the issue of interest of Rs18,53,916/-, which was paid by the assessee to the bank and had been disallowed by the Commissioner of Income Tax in proceedings under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the said



Damas Jewels and Lal Jewels. The plea of the assessee was that while it is true that the assessee had borrowed funds from the bank and had paid interest on the said funds, no loans were extended to M/s Damas Jewels and that there were only mutual advances made by the assessee as well as Damas Jewels in the normal course of business for the purposes of business. Therefore, there was no question of disallowance of the interest paid to the bank in respect of the funds borrowed by the assessee. Insofar as Lal Jewels is concerned, the learned counsel for the assessee pointed out that there may have been mutual loan transactions but, the interest payable by the assessee was much greater than the interest due from Lal Jewels and, therefore, there could be no disallowance on this count. The learned counsel for the assessee respondent drew our attention to paragraphs 5, 7 and 8 of the impugned order to indicate the stand taken by the respondent assessee before the Tribunal. It was pointed out that the assessee had a business relationship with Damas Jewels inasmuch as the assessee purchased pure gold from the said concern and also got jewellery fabricated from Damas Jewels against payment for making charges. The learned counsel drew our attention to the fact that a copy of the ledger accounts of Damas Jewels as appearing in the books of the assessee was placed before the Tribunal in the paper book at pages 142-156, which would go to indicate that the amounts advanced from time to time were in the course of business and that there was no practice between Damas Jewels and the assessee for paying/charging interest on the inter-party outstanding balances. With regard to the transactions with Lal



receiving funds from the said Lal Jewels intermittently during the year in question and on which no interest was charged by either party. He submitted that the non-charging of interest was on account of commercial expediency. It was submitted that the interest, if payable, to Lal Jewels would be Rs4,59,502/- as against the interest receivable from Lal Jewels to the tune of Rs64,150/-. Since the interest payable would be much higher than the interest receivable, there was no question of making any disallowance on the interest paid by the assessee on the funds received from the bank.

4. The Income Tax Appellate Tribunal considered the arguments advanced by the assessee as well as on behalf of the Revenue and came to the conclusion that the assessee had been advancing funds to Damas Jewels from time to time and had also been receiving funds from the said party. The Tribunal particularly noted that the departmental representative did not controvert the submission that no interest was being charged by either party. The Tribunal observed that the business relationship between the said assessee and the parties was not disputed or doubted and the fact that the advances had been made in the course of business was borne out from the record. Thus, the Tribunal on the basis of the facts determined by it came to the conclusion that there was no ground for the disallowance of the interest amount. We are of the view that the findings of the Tribunal are pure findings of fact. The Tribunal has examined the accounts of the parties in detail and the same had been placed before the Tribunal as mentioned above



counsel for the Revenue sought to support the decision of the Commissioner by taking us through the order passed by the Commissioner of Income Tax, however, we feel that the Tribunal, being the final fact finding authority, has the final say in the matter. No perversity was pointed out by the learned counsel for the Revenue in the findings arrived at by the Tribunal. Consequently, proposed question 'C' does not arise for the consideration of this Court inasmuch as it is not a substantial question of law.

5. With regard to the proposed question 'D', we find that it comprises of two parts: One part deals with the excess stock amounting to Rs9,59,425/- and the other part pertains to the alleged shortage of stock amounting to Rs88,26,126/-. The Commissioner of Income Tax, on the basis of the said alleged excess stock and shortage of stock had made additions, which the Tribunal has deleted. The alleged excess of stock of Rs9,59,425/- was in connection with the alleged excess of stock of diamonds, whereas the alleged shortage of stock of Rs88,26,126/- was in connection with the alleged shortage of stock of silver, silver moulds and precious stones.

6. With regard to the excess stock of diamonds, the Commissioner of Income Tax had taken the closing stock of diamonds in the year in question to be Rs 19,58,332/- as against the closing stock as valued by the assessee to the extent of Rs 29,17,757/-, which resulted in difference of Rs9,79,225/-. According to the Commissioner of Income Tax this so called excess of stock of Rs 9,79,225/- was funded out of the non-disclosed income



income of the assessee in question.

7. The Income Tax Appellate Tribunal noted that the difference in the closing stock, which has been indicated by the Commissioner of Income Tax, arose on account of two circumstances. The first circumstance being that the assessee had shown the closing stock in respect of the assessment year 1997-98 as Rs 8,12,000/-. However, the Commissioner of Income Tax, for the assessment year 1997-98, had reduced the closing stock to Rs41,43,150/- and consequently there was a difference in the opening stock pertaining to the assessment year 1998-99. The second difference arose because the rate adopted for the valuation of diamonds in the closing stock was different from the rate given by the assessee, though there was no difference in quantitative terms.

8. Insofar as the first difference is concerned, the lowering of the valuation of the closing stock for the assessment year 1997-98 has been set-aside by the Tribunal and the same has been accepted by this Court by virtue of the order dated 17.03.2008 in ITA 2/2005. Consequently, we find that there was no material before the Commissioner to employ a lower rate for diamonds in the closing stock. In any event the assessee had disclosed a higher valuation of stock, which would ultimately lead to a higher profit. Consequently, the Tribunal came to the conclusion that no further addition was called for since the assessee had also disclosed a higher valuation of the closing stock and thereby higher profit when there was no difference in the quantitative tally. This, also, is a pure finding of fact and, in such finding,



9. With regard to the shortage of stock of silver, silver moulds and precious stones, the Tribunal noted that the Commissioner of Income Tax had not examined the relevant material submitted by the assessee in reply to the notice and during the course of hearing before him. The Tribunal specifically held that it was wrong on the part of the Commissioner to observe that purchase worth Rs1,13,33,251/- was neither made by the assessee nor declared by it. It was specifically mentioned that the assessee had shown sales to the extent of Rs36,41,22,261.98 in the Profit and Loss Account for the period ended on 31.03.1998 and the details of the sales also clearly included the sale of silver worth Rs1,41,77,590/-. Consequently, the Tribunal held that the observation of the Commissioner that there was no sale of the purchased silver in the year in question was without any basis. The Tribunal also noted that the closing stock of Rs40,48,860/- as disclosed by the assessee in respect of the assessment year 1997-98 had not been accepted by the Commissioner of Income Tax, however, the view taken by the Commissioner of Income Tax for the said assessment year 1997-98 had been rejected by the Tribunal and, consequently, the addition was found to be unwarranted. Resultantly, the Tribunal held that the addition of Rs88,26,126/- could not have been made by the Commissioner. This conclusion of the Tribunal is also based purely on facts. No perversity has been pointed out by the learned counsel for the Revenue. Obviously, no question of law, what we speak of a substantial question of law, can arise for our consideration. In this view of the matter, even proposed question 'D'



10. This leaves us with the proposed question ‘A’. However, we feel that in the view of our decision with regard to proposed questions ‘C’ and ‘D’, proposed question ‘A’ would be of academic interest and would, consequently not be a substantial question of law arising in this case.

11. The appeal is accordingly disposed of.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 28, 2010

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