



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

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**Judgment Delivered on: 07.05.2010**

+ **ITA. 406/2009**

**COMMISSIONER OF INCOME TAX-XII**

... **Appellant**

- versus -

**SMT. POONAM RANI**

... **Respondent**

**Advocates who appeared in this case:**

For the Appellant : Sh N.P. Sahni

For the Respondent : None

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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 appeal is directed against the order dated 26<sup>th</sup> September, 2008 passed by the Income Tax Appellate Tribunal dismissing the appeal being in ITA No. 338/Del/2006, filed by the Revenue, against the order passed by Commissioner of Income Tax (Appeals) setting aside the assessment order for the Assessment Year 2003/04.

2. The assessee is engaged in the business of manufacturing copper wire. For the assessment year 2003-04, the assessee filed a return, declaring gross profit at the rate



of 1.4% as against gross profit rate of 5.91 % for the preceding year. On being asked to explain the fall in gross profit rate, the assessee attributed the fall in gross profit rate to the increase in the purchase price. The Assessing Officer rejected the explanation given by the assessee, on the ground that no supporting evidence was produced to show increase in the purchase price and decrease in sales. He also noticed that the weight of finished products declared by the assessee, was 319264 kg as against the weight of raw material, which was declared as 311578 kg. When asked to explain, the assessee submitted that after drawing wire, the process goes on to put the wire for enameling, as a result of which the weight of the wire increased by 2-3%. The Assessing Officer felt that in the absence of adequate supporting evidence, the explanation given by the assessee could not be accepted. He, therefore, rejected the account books of the assessee under Section 145(3) of Income Tax Act and held that it would be fair and reasonable to take the gross profit rate at 5.59%, which was also the rate for the preceding assessment year.

3. While allowing the appeal filed by the assessee, CIT (Appeals) noted that the assessee had furnished complete details, including comparative details in respect of purchase of



raw-materials, and manufacture of copper wire as well as in respect of sale during the year in question, as compared to the earlier years. He also felt that the assessee had explained the marginal increase in the weight of wire alongwith supporting data of the year in question as well as of the preceding years. He also took note of the fact that the assessee was duly registered under Central Excise Act and was maintaining proper quantitative details in the prescribed manner. He, therefore, held that the assessee had adopted consistent and regular method of accounting and valuation of stock during the year in question as was done by her in the preceding years. He, accordingly, held that the Assessing Officer was not justified in rejecting the books of account and in applying the enhanced gross profit ratio.

4. The Tribunal, while rejecting the appeal filed by the Revenue, noted that since no defects in the account books were pointed out, the accounts could not have been rejected and no addition could have been made merely on account of lower profit declared by the assessee.

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. It is not the case of the Revenue that the assessee had not followed either cash or mercantile system of accounting. It is also not the case of the Revenue that the Central Government had notified any particular accounting standards to be followed by tour operators. Hence, the second part of sub-Section (3) of Section 145 does not apply to this case.

6. On a perusal of the assessment order, we find that the Assessing Officer has not pointed out any particular defect or discrepancy in the account book maintained by the assessee. During the course of hearing before the Commissioner of Income Tax (appeals), it was pointed out by the assessee that the account books of the assessee were duly audited under Section 44 AB of the Excise Act and the quantitative details as required by Clause 28 (b) of Form No.3CD regarding raw material and finished products (i.e. opening stock of raw material, raw material issued to production department, raw material consumed and closing stock of raw material, opening stock of finished goods, finished



goods produced during the year, finished goods sold and closing stock of finished goods) were prepared and audited by certified accountant and were enclosed with Form 3CD which had been placed on record but, the Assessing Officer had ignored the factual figures, both in qualitative and quantitative terms, enclosed with the return and filed during the course of assessment proceedings. It was for this reason that CIT (Appeals) was satisfied that the assessee had furnished complete details, including quantitative details in respect of purchase of raw material, manufacture of copper wire and sale of the furnished products. In these circumstances, we fail to appreciate how the accounts, maintained by the assessee, could have been said to be incomplete or inaccurate. In fact, the Assessing Officer had no material before him to treat the accounts of the assessee as defective or incomplete.

7. As regard the marginal increase in the weight of the finished product, the explanation given by the assessee has been accepted not only by Commissioner of Income Tax (appeal) but also by the Income Tax Appellate Tribunal. The Assessing Officer had no material before him on the basis of which it could be said that the weight of the wire does not increase even marginally during the process of enameling.



Therefore, he had no justification in law to reject the explanation given by the assessee in this regard.

8. The fall in gross profit ratio, in the absence of any cogent reasons could not, by itself, have been a ground to hold that proper income of the assessee cannot be deduced from the accounts maintained by her and consequently, could not have been a ground to reject the accounts invoking Section 145(3) of the Act.

9. The fall in gross profit ratio could be for various reasons such as increase in the cost of raw material, decrease in the market price of finished product, increase in the cost of processing by the assessee etc. There is no finding that the actual cost of the raw material purchased by the assessee was less than what was declared in the account books. There is no finding that the actual cost of processing carried out by the assessee was less than what had been declared in her account books. No particular expenditure shown in the account books has been disallowed by the Assessing Officer. There is no finding by the Assessing Officer that the actual quantity of finished product produced by the assessee was more than what it was shown in the accounts books. There is no finding that the assessee had made any such sale of the finished



product which was not reflected in the accounts books. There is no finding by the Assessing Officer that the finished product was sold by the assessee at a price higher than what was declared in the accounts books. In these circumstances, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, in our view, were justified in holding that the Assessing Officer could not have increased the gross profit ratio merely because it was low as compared to the gross profit ratio of the preceding year.

10. During the course of arguments before us, it was submitted by the learned counsel for the appellant that the assessee was not maintaining the Daily Stock Register. We, however, find no such finding in the assessment order. On the other hand, we note that the Assessee had submitted before the Commissioner of Income Tax (Appeals) that Form 3CD containing all the quantitative details in respect of raw materials as well as the finished goods, duly audited by the Certified Accountant had been placed on record, but, the Assessing Officer ignored those actual figures enclosed with the return. In any case, no statutory provision under the Income Tax regime requiring the assessee to maintain the Daily Stock Register has been brought to our notice. Hence, even if no



such register was being maintained by the assessee as is contended by the learned counsel for the appellant, that by itself does not lead to inference that it was not possible to deduce the true income of the assessee from the accounts maintained by her, nor the accounts can be said to be defective or incomplete for this reason alone. If stock register is not maintained by the assessee that may put the Assessing Officer on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee. But the absence of one register alone does not amount to such a material as would lead to the conclusion that the account books were incomplete or inaccurate. Similarly, if the rate of gross profit declared by the assessee in a particular period is lower as compared to the gross profit declared by him in the preceding year, that may alert the Assessing Officer and serve as a warning to him, to look into the accounts more carefully and to look for some material which could lead to the conclusion that the accounts maintained by the assessee were not correct. But, a low rate of gross profit, in the absence of any material pointing towards falsehood of the accounts books, cannot by itself be a ground to reject the account books under Section 145(3) of the Act.



11. In any case, the question whether fall in gross profit stood explained by the assessee or not was a question of fact. Both, ITAT and CIT(A) having accepted the explanation given by the assessee and the finding of fact recorded by them having not been shown to be perverse in any manner, 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**

**May 07, 2010**

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