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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 287/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Sonia Mathur, Advocate

versus

PARAMOUNT COMMUNICATIONS LTD. Respondent
Through: Mr. Satyen Sethi, Advocate with
Mr. Arta Trana Panda, Advocate.

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Date of Decision: 3rd August, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T**MANMOHAN, J**

1. The present Appeal by the Income Tax Department has been filed under Section 260 A of the Income Tax Act, 1961 (for brevity "Act 1961") challenging the order of Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 3242/DEL/2007 dated 12-12-2008 for the Assessment Year 2003-2004. By the impugned order, ITAT has



deleted the addition of Rs. 27,60,000/- made by the Assessing Off (hereinafter referred as “AO”) on account of excess stock .

2. Briefly stated the relevant facts of this case are that on 24th December, 2002, a survey operation under Section 133A of Act 1961 was carried out on the respondent-assessee which resulted in surrender of excess stock and excess scrap amounting to Rs. 75, 00,000/- This amount was added by the AO as unexplained investment in stock under Section 68 of the Act 1961 as this amount was neither added as the surrendered amount to the total income nor was mentioned in the audit report. However, the respondent assessee contended that at the time of survey operation under Section 133A, administrative, financial and other expenses were not considered and excess stock and scrap was eventually duly recorded in the books of accounts. Respondent-assessee further contended that sale of such stock and scrap was also recorded during the regular course of business after the survey operation.

3. An appeal was filed by the respondent assessee against the order of AO before Commissioner of Income Tax (Appeals) [for short “CIT(A)”] and it was observed by the CIT(A) that there was excess valuation of Rs 47, 40,000/- in the closing stock inventory prepared during the course of survey. A relief of Rs.47,40,000/- was thus granted to the assessee as it was a mistake on the part of the survey team. However, CIT (A) confirmed the addition of Rs. 27,60,000/- i.e (Rs.75, 00,000 - Rs.47,40,000).



4. Assessee appealed against the order of CIT (A). By impugned order ITAT allowed respondent-assessee's appeal. ITAT observed that the assessee had produced sales invoices of goods in respect of which addition was made by the AO along with statement of the parties to whom the goods were sold. ITAT also verified excise stock register account of finished goods showing stock of goods manufactured and sold; ledger account of scrap sales and inventory of finished goods.

5. Ms Rashmi Chopra learned counsel for the appellant submitted that ITAT had erred in law in deleting the addition of Rs 27, 60,000/- made by the AO on account of unexplained investment in excess stock and scrap surrendered by the assessee during the course of survey operation. Ms Chopra further submitted that assessee had not produced any material on record to dislodge the findings of AO.

6. We are of the view that as the assessee had produced each and every invoice in respect of goods sold and produced quantity wise details of unsold stock as well as surrendered stock vis-a-vis stock sold before the end of the year duly supported by documents, it is not correct to allege that stock surrendered was not reflected in the books of account. In our opinion, the stock sold after the date of survey and the sales proceeds were duly credited in the accounts without claiming set off of its cost resulting in higher profits. Consequently the addition made by the AO cannot be retained. In any event the factual finding



arrived at by the final fact finding authority cannot be said to
perverse or contrary to record.

7. Accordingly, we find that no substantial question of law arises in
the present proceedings. Hence, the present appeal, being bereft of
merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 03, 2010

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