



\$~

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

+ ITA 1418/2010

THE COMMISSIONER OF
INCOME TAX

Through Appellant
Ms. Suruchii Aggarwal,
Standing Counsel.

versus

SMT. MOTIA RANI BHATIA Respondent
Through None

%

Date of Decision: 14th September, 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.

MANMOHAN, J:

CM 16525/2010

For the reasons stated in the application, delay in refiling the appeal is condoned.

The application stands disposed of.

ITA 1418/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 16th October, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No.



2244/Del/2009 for the Assessment Year 2004-05.

2. Ms. Suruchii Aggarwal, learned standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 11,45,839/- made by the Assessing Officer on account of low gross profit rate. She submitted that the Assessing Officer was justified in estimation of a reasonable gross profit of 10% keeping in view the gross profit rate of 24% shown by the respondent-assessee in some years.

3. However, upon a perusal of the file we find that the said addition was deleted both by the Commissioner of Income Tax (Appeals) [for short "CIT(A)"] and the Tribunal on the ground that no discrepancy was found in respect of book profit declared by the assessee. In fact, CIT (A) in its order has observed as under :-

"As far as G.P. addition is concerned during the year, the assessee has declared turnover of Rs. 1,30,48,735/- and gross profit of Rs. 25,32,873. However, the A.O. adopted the rate of gross profit at 10% for all the years and arrived the difference of Rs. 38,37,746/-. The AO has not discussed any discrepancies in respect of book profits declared by the appellant. Prima facie she has proceeded on surmises and on estimation without any basic ground to make such estimation. It is necessary to point out discrepancies in respect of closing stock, purchases, sales etc. before resorting to estimation of G.P. No such exercise has been done to do so in this case. Even search u/s 132 had not suggested any defects in the trading results disclosed by the appellant. Hence no addition can be made on account of gross profit as done in the current case. Accordingly, the A.O. is directed to delete the estimated addition of Rs. 38,37,746/- from the total income of the assessee."

(emphasis supplied)



4. The Tribunal in its impugned order has also observed as under

“9. Ld. CIT(A) has deleted the addition on the ground that AO has not pointed out any discrepancies in respect of book profit declared by the assessee. The AO simply proceeded on surmises and estimated without any basic ground to make such estimation. From perusal of the finding extracted supra it suggested that AO has not considered any provision of law before resorting to estimate the profit at a uniform rate of 10%. She has not bothered to point out what defect in the trading result of assessee. She simply proceeded that addition on estimation has to be made that so without assigning single reason in support of such addition. It is more painful to see that revenue is challenging the order of Ld. CIT(A) and expecting that on the basis of such finding orders of a Commissioner can be reversed. In view of above facts and circumstances we do not see any reason to interfere in the order of the Ld. CIT(A). The ground of appeal raised both the years is rejected.”

5. Since both the CIT(A) and Tribunal have given cogent reasons for arriving at their conclusions and the issue raised in the present appeal is purely a question of fact, we are of the view that no substantial question of law arises in the present proceedings. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 14, 2010

rn