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I-8 to 11
% 23.09.2010

Present: Mr. M.P. Sharma, Advocate for the appellant.
Mr. Ajay Vohra and Ms. Kavita Jha, Advocates for the respondent.

+ **ITA Nos.1213/2006, 1327/2007, 1329/2007 and 48/2008**

(Common Order)

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The only argument raised by learned counsel for the revenue is that the Tribunal has relied upon the judgment of this Court in the case of *CIT vs. Bharat Commerce and Industries Ltd., 240 ITR 256*, which is not applicable to the facts of this case. We do not agree with the submission of the learned counsel for the appellant. The aforesaid judgment is relied upon by the Tribunal while discussing the matter in depth in para 6 of the impugned judgment, which reads as under:-

"6. We have heard the parties with reference to material on record. For assessment year 1996-97 both revenue and assessee have preferred appeal against the order of Ld. CIT(A). These appeals have been heard separately in ITA No.2973/D/00 and 1808/D/00 and have been disposed off by a separate common order dated 30.11.2005. The respondent has provided an age-wise table of stock held at Connaught Place and the same is tabulated at pages 3 & 4 of the impugned order. The closing stock at the conclusion of reduction sale on 11.2.97 of the cost of ₹ 75,57,865/- comprising old stock was valued at ₹ 56,07,779/- as on 31.3.97. In the preceding year, the Tribunal found that the assessing officer, did not draw any adverse inference on the trading activity of



assessee's Connaught Place branch. Both sales and purchases were better and complete quantitative details were also provided. The fact that due to factors like old, out fashioned and shop-spoiled stock etc., the stock value is discounted stood accepted by the assessing officer. The assessee also provided reasonable basis of arriving at the discounted value of stock which Ld. CIT(A) adjusted by making certain assumptions. As the Ld. CIT(A) did not give any basis for making assumptions, the Tribunal set aside his action to sustain part addition on account of undervaluation of stock in respect to Connaught Place branch in that year. The basis of discounting the value in the year under consideration are same as were taken in the immediately preceding year. The assessing officer did not bring any reason to deviate from the fact that there is old and shop-spoiled stock, value of which has to be discounted. He merely proceeded in rejecting the discounted value of such stock which was lower than the cost for the reason that vouchers for eventually sold goods have not been produced. Essentially when such stock held by the assessee stood duly accounted for and taken part of opening stock of subsequent year, the discounted value, if yielded any sale price more than such valued price, shall become profit of those years. However, basis of valuation remaining the same and factors leading to discounting of value being reasonable and accepted in past, there was nothing wrong in valuing the goods at an estimated price and thus the Ld. CIT(A) was not justified in making assumption without giving any reasonable basis to adjust the discounted value and sustain part addition. This principle finds support form the judgment of Delhi High Court in CIT Vs. Bharat Commerce and Industries Ltd., 240 ITR 250 (Del). It is, however, not known whether the assessee has preferred any appeal against the sustenance of addition of ₹ 11,067/- for undervaluation of stock, we, however, do not find any



reason to interfere the value of stock admitted by Ld. CIT(A) and consequent relief so given to the assessee. Finding no merit in the first ground of venue, the same stands rejected."

At this stage, it is submitted by learned counsel for the appellant that in respect of assessment year 1996-97 the assessment was made by taking into consideration two branches of the assessee, namely, at South Extension and Connaught Place, separately, which procedure was accepted by the ITAT also, and that should have been the approach adopted for all the years. We fail to understand the rationale of this argument. It was for the assessing officer to adopt such an approach, which the assessing officer did not do in respect of these assessment years. Therefore, this cannot be the grievance of the revenue. It would be for the assessing officer to adopt such a procedure for future assessment years.

Insofar as these cases are concerned, no substantial question of law arises. Dismissed.


A.K. SIKRI, J.


REVA KHETRAPAL, J.

SEPTEMBER 23, 2010
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