



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

+ **ITA No.349 of 2010**

% Decision delivered on: 16th September, 2011

CIT **. . . Petitioner**

Though: Mr. Sanjeev Rajpal, Sr.
Standing Counsel.

VERSUS

ARIHANT EXPORTS LTD. **. . . Respondent**

Through: Mr. B.N. Sawhney, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The present appeal assails the order dated 30.06.2009 passed by the Income Tax Appellate Tribunal (ITAT) in the case of Respondent in ITA No. 541/Del/2007 whereby ITAT confirmed the order passed by the CIT(A) and deleted the disallowance made by the assessing officer on account of depreciation on gas cylinders.



2. The brief facts of the case are that the Assessee company was in the business of Financing and Leasing. The Assessee during the Assessment year under consideration (1994-95) purchased gas cylinders from M/s Modern Steel Trading Company , Bhavnagar and transported the goods through M/s Orient Transport Company to M/s Pooja Gases, Gaziabad, to whom the Assessee Company has leased out such cylinders. The Assessee Company claimed depreciation on such cylinders.

3. During Assessment proceedings the Assessing Officer found that M/s Modern Steel does not exist at its given address and after taking into consideration the statement of the proprietor of the Lessee Firm M/s Pooja Gases, that it was a paper transaction, treated the transaction as non genuine and disallowed the depreciation claimed by the Assessee. On 08.08.1996 CIT(A) confirmed the action of the Assessing Officer. As the Assessee filed fresh evidence the ITAT remanded the matter back to the CIT(A) for deciding the matter afresh. By order dated 30.11.2006 CIT(A) accepted the claim of the Assessee holding that Shri Vinod Kumar Jain, against whom an enquiry had been conducted in 1997,



had entered into similar transactions with the same supplier and transporter, in his case both these parties were found to be in existence. Further, the cylinders purchased by Mr. Jain were physically existing with the Lessee M/s Rathi Super Steel. Accordingly CIT(A) in the present case also, treated the transactions as genuine and allowed depreciation. The order of CIT(A) was confirmed by the ITAT which is under challenge before us.

4. It is contended by the Learned Counsel for the Appellant that the ITAT did not appreciate the independent inquiries made by the Assessing Officer during the original Assessment proceedings which had revealed that the supplier was not existing at the given address. A mere perusal of the report in the proceeding against Mr. Vinod Kumar Jain in respect of similar supplier and transporter clarifies that the Company was in existence. The record of those proceedings is relevant before us as the supplier as well as the transporter is the same.
5. As regards the physical existence of the cylinders is concerned the report in Mr. Jain's proceedings clearly refers



to thy stock book of M/s Rathi Super Steels which reflect the leasing of such cylinders by the said Mr. Jain as well as the Assessee Company, therefore, insofar as the physical existence of the cylinders is concerned, they are with the ultimate Lessee that is M/s Rathi Super Steels. We find no force in the argument of the Learned Counsel for the Appellant that the agreement with M/s Pooja Gases was merely a paper agreement as the cylinders were found to be in existence with the ultimate Lessee.

6. We are in respectful agreement with the finding of the ITAT that when on same set of facts the transactions of one party are treated as genuine and depreciation is allowed then the same should be done in the case of the other party where the Assessing Officer treated the transaction of the Assessee Company as bogus. These are pure findings of facts, which are based on the material on record and proper appreciation thereof. There is no perversity in the order of the ITAT since both the material facts required to allow depreciation that is the existence of the seller company and the existence of the gas cylinders is established in the proceedings in a similar case.



7. In our opinion, the order passed by the ITAT does not call for any interference. Accordingly, the Appeal, being devoid of any merit, is dismissed.

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**(A.K. SIKRI)
JUDGE**

A handwritten signature in black ink, appearing to read 'Siddharth Mridul'.

**(SIDDHARTH MRIDUL)
JUDGE**

SEPTEMBER 16, 2011

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