



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

+ **ITA No.1151 of 2009**

% **DECISION DELIVERED ON: APRIL 04, 2011**

COMMISSIONER OF INCOME TAX . . . APPELLANT

through : Ms. Prem Lata Bansal, Sr.
Advocate with Mr. Deepak
Anand, Advocate for the
appellant.

VERSUS

NEW PALACE STORE . . . RESPONDENT

through: Mr. S.K. Arora, Advocate for
the respondent.

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA**

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 respondent/assessee is in the business of sale of readymade garments. A survey was carried out at the premises of the assessee, during which difference in physical stock amounting to ₹40,00,000/- was found. The assessee surrendered ₹29,00,000/- during survey on account of difference in stock. However, in the income tax return filed by the assessee, it declared the income of ₹3,10,177/- on account



of difference in stock. On being asked, the assessee contended that at the time of survey, the assessee was conducting sale on discount ranging from 30% to 50%. Therefore, taking of sale price of the items at tag price was not correct. The Assessing Officer (AO) required the assessee to furnish various details regarding stock. However, the assessee did not furnish any detail alongwith evidence despite various opportunities. Accordingly, the AO made addition of ₹25,89,823/- (₹29,00,000 - surrendered during survey - ₹3,10,177/- declared in the return) to the income of assessee on account of difference in stock.

2. The CIT (A) confirmed the addition observing that there was a discrepancy of ₹40,00,000/- during the survey, but the assessee had surrendered only ₹29,00,000/- thereby giving relief of ₹11,00,000/- by the survey party. Therefore, the assessee could not have retracted on the ground that stock was not valued properly. The CIT (A) also observed that surrender was made by the assessee without any objection and the AO had made out all the objections raised by the assessee regarding valuation of stock during the assessment proceeding.



3. On further appeal preferred by the assessee, the Income Tax Appellate Tribunal (for brevity 'the Tribunal') has reduced the addition of ₹25,89,823/- made by the AO on account of difference in valuation of stock of ₹6,77,600/-. The Tribunal observed that the discount of 50% is given by the assessee on goods worth ₹5,13,928/- and discount of 75% was given on goods worth ₹33,12,908/-, no discount was claimed in respect of stock worth ₹67,19,861/- and thus overall discount came to about 14% with reference to total stock. Accordingly, the Tribunal took the value of stock at ₹92,00,000/- as against the valuation made by the survey party at ₹1,05,46,697/-, thus giving relief of ₹14,46,697/-. The Tribunal further applied G.P. rate at 20% on the basis of preceding years in order to arrive at cost or market price, whichever is lower, as against 10% applied by the AO, and the stock was valued at ₹72,60,000/- as against the stock valued by the assessee at ₹68,92,500/- in its return. The Tribunal further observed that the assessee had disclosed a sum of ₹3,10,177/- on account of difference in value of stock, which should be at ₹6,77,600/- (₹72,60,000 - ₹65,82,400). Thus, the Tribunal reduced the addition to ₹6,77,600/- as against ₹25,89,823/- made by the AO.



4. After going through the orders passed by the Tribunal, we find that the Tribunal has apprised material and facts appearing on record. It has rightly observed that in the instant case, the controversy revolves round the following points:

- (i) Whether the tag price or the discounted sale price at which goods were sold by the assessee to the customers is to be taken as the base for determining the value of stock to the assessee?
- (ii) Whether margin of profit is to be taken at 10% as taken by the survey party or at 20% claimed by the assessee for the purpose of arriving at the cost price?

5. Thereafter, the Tribunal thoroughly discussed the aforesaid issues and returned the findings, qua first issue, that the tag price could not be treated as the price for determining the value of stock as the assessee was offering huge discount. In this behalf, the Tribunal observed as under:

“13. We have gone through the statement of Shri Ashwini Kumar, partner of the firm as well as the statement of Shri Arvind Pandey, employee of the assessee entrusted the work of arranging and managing stock. In the statement of Shri Arvind Pandey, he stated that the sale price is printed on the tags attached to the salable goods, and these days a sale at the discount of 50% was going on as per the signboard displayed outside the shop for the last one and a half month. He further stated that earlier we



were selling the goods at the tag price. The A.O. has examined the statement of partner and other employees and did not accept the assessee's contention that the goods were sold at the 50% of the tag price for most of the time during any year. The A.O. maintained the difference of Rs.29,00,000/- worked out by the survey party. Having regard to the totality of the statement of the assessee firm's partner and his and his employee, it is beyond any doubt that the goods were also being sold at the discount of 50% since last about one and half month. However, the factor by itself is not conclusive to prove and establish that the cost price of all the goods were half of the tag price attached to the salable goods. Only some of the items were sold at a discount of 50% of the tag price. The assessee has furnished the working of value of stock before us, and on perusal thereof, we find that the assessee has claimed the sum of Rs.14,99,304/- as discount amount to tag price for the purpose of working out the cost price or market price of stock whichever is lower. While working out the discount amount of Rs.14,99,304 by the assessee, we see that discount of 50% is given to the goods worth Rs.5,13,928/- and to 75% of Rs.33,12,908/-, and no discount is claimed in respect of stock worth Rs.67,19,861/-. It is, thus, clear that the assessee has not claimed discount of 50% against all the stocks found at the time of survey. The overall discount comes to about 14% only with reference to the total stock. In the light of the fact that the assessee had been selling the goods at discounted price of 50% for last about one and a half month prior to the date of the survey and having found that in the line of business of trading in readymade garments, the old stock of absolute stocks are commonly sold at a discounted price by any businessman, which is found to be a common practice in the market, we are of the considered opinion that certain discount is to be given to tag price for the purpose of determining value of stock at cost of market price whichever is lower. The assessee has thus been able to explain as to why the difference of Rs.29,00,000/- in toto is not liable to be added as difference in the stock found at the time of survey as compared to the stock shown in the books. We, therefore, reduced the value of the stock of Rs.1,05,46,697/- by Rs.14,46,697/- to arrive at a rounded figure of Rs.92,00,000/-. The actual sale price of the goods found at the time of survey is, thus, to be taken at Rs.92,00,000/-."



6. Thereafter, second issue was determined in the following manner:

"Now, the question arise as to the what extent the profit in embedded in the overall stock of Rs.92,00,000/-. The survey party has given credit only of 10% as against which assessee has claimed that the average profit earned by the assessee on all the goods whether sold at tag price or at discounted price would be about 20%. In this connection, we have perused the assessment order made u/s143(3) of the act for the assessment year 1994-1995, 1995-1996 and 1996-1997 shown by the assessee is at the rate of 20.42%, 20.40% and 20.34%, and having found the same to be low, the A.O. made a lump sum addition of Rs.20,000/- to cover up the possible leakage in the profit. It makes it clear that the gross profit around at 20% was being declared by the assessee and accepted by the A.O. from year to year. The rate of gross profit of 20% is an average profit that could be earned by the assessee on sale of goods at the tag price as well as at discounted price. The assessee can be said to have earn average profit of 20%, and thus, in order to arrive at the cost price or market price whichever is lower, a deduction of 20% to the sale price is to be given. If 20% is deducted from the sale price of Rs.92,00,000/- as determined by us, the value of stock found at the time of survey would come to Rs.72,60,000/-, as against which the assessee has worked out the value of the stock at Rs.68,92,500/- in the return of income. The assessee has disclosed an amount of Rs.3,10,177/- on account of difference in the value of stock which, in our opinion should be Rs.6,77,600/- being the difference between Rs.72,60,000/- and an amount of Rs.65,82,400/-, the amount as per the trading account prepared on the basis of books. Thus, an addition on this account would be Rs.6,77,600/- as against Rs.3,10,177/- shown by the assessee and as against Rs.29,00,000/- taken by the A.O. Thus, the addition of Rs.3,67,423/- being the difference between the Rs.6,77,600/- and Rs.3,10,177/- is further called for over and above the amount of Rs.3,10,177/- already disclosed by the assessee. The A.O. shall modify the assessment order accordingly."

7. The entire case concerns about the appreciation of facts and no question of law arises. The Revenue is conscious of this aspect



and it is for this reason, an attempt by learned Senior counsel for the Revenue was made to show that the findings of the Tribunal are perverse. However, she has not been able to successfully demonstrate the same.

8. Finding no merit in this appeal, the same is accordingly dismissed.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

APRIL 04, 2011

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