



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

+ **I.T. APPEAL NO.608/2009**

% **Date of Decision: 19.01.2011**

Commissioner of Income Tax – XII .... Appellant

*Through:* Mr.N.P. Sahni, Advocate

Versus

Sh.Harbir Singh .... Respondent

*Through :* Mr.Kaanan Kapur, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MR. JUSTICE M. L. MEHTA**

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| 1. | Whether 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. |

**M.L. MEHTA, J. (ORAL)**

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1. This is an appeal under Section 260 A(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order of Income Tax Appellate Tribunal (ITAT) dated 30<sup>th</sup> October, 2008 whereby it dismissed the appeal of the appellant (hereinafter referred to as "the Department") against the order of CIT(A) dated 30<sup>th</sup> October, 2006.



2. The respondent is engaged in the business of manufacturing of silicon carbide waterproof paper. In pursuance of the survey conducted under Section 133A of the Act, the respondent (assessee) offered income for taxation and made three surrenders, namely, (i) ₹7,69,509/- on account of unexplained cash found, (ii) ₹2,90,925/- on account of excess stock found, and (iii) ₹4,40,000/- on account of unexplained investments made in machinery and tools. The assessee filed return declaring income of ₹21,78,910/-. Vide letter dated 21.03.2005, the assessee was asked to explain as to why the books of accounts should not be rejected under Section 145(3) of the Act. In the assessment proceedings, the Assessing Officer (AO) made the additions on following accounts:

- (i) Addition of ₹34,95,177/- on account of fall in GP;
- (ii) Addition of ₹3,65,000/- on account of unexplained unsecured loans; and
- (iii) ₹1,55,203/- on account of unexplained sundry creditors.

The assessee filed an appeal before CIT(A), which was allowed. The Department preferred an appeal against this order before the ITAT.

3. The CIT(A) summarised the objections of the AO and parawise reply thereof given by the assessee in paragraph 6 of the order, which reads as under:



- “Increase in average consumption of material in this year.
- Difference in closing stock on the basis of monthwise purchases/sales.
- Abnormal purchase of diesel in certain months.
- Change in version during the survey.
- Purchaser of immovable properties.
- Decline of immovable properties.
- Decline in sales.
- No stock record maintained.
- Manufacturing/trading expenses in the same range as in the previous year.

All the above points have been successfully countered pointwise by the appellant on the basis of the facts and figures as discussed at length in the preceding paragraphs and need not to be repeated here. It will suffice to summarise the appellants arguments as below:

- Better trading results are shown as regards the quantity as well as the financial Gross Profit ratio also improved. The reason of decline in sale was also explained.
- The calculation of the Assessing Officer was giving wrong impression, i.e., increase in consumption rate of raw material per rim manufactured, whereas there was more production and material consumed actually decline during the year.
- The working of difference in closing stock on the basis of monthwise sales and purchases was incorrect. This mistake was pointed out and the exact calculation has been submitted.
- The presumption of diesel purchase (no evidence was given) from different places was satisfactorily explained.
- The highlighted proceedings were also replied and basis of surrender was explained. Moreover, surrender during the survey cannot be the basis of attracting the provisions of Section 145 of the Act.
- The purchases of properties were assessed and source submitted in each year and statement of



personal assets/liabilities in the form of Balance Sheet was filed. The properties owned are over period of saving of more than 29 years.

- The Assessing Officer has merely repeated the queries raised vide his letter dated 21.3.2005. No further inquiries or efforts were made to counter the assessee's reply made vide letter dated 28.3.2005.
- The sales accepted by the Delhi Sales Tax Department under the Delhi Sales Tax Act is binding on the Income-tax authorities and the Assessing Officer has no powers to draw his own observation or modify the figure. Refer: CIT Vs. Anandha Metal Corporation, 273 ITR 262 (Madras).
- Mere presumption does not empower the Assessing Officer to attract the provisions of Section 145 of the Act.
- The survey determines the profit based on stock found up to 10.3.2003 and from 11.3.2003 to 31.3.2003, the assessee is able to produce stock records.”

4. The CIT(A) ultimately came to the conclusion that AO was not justified in rejecting the books of accounts under Section 145(3) of the Act by estimating the assessee's turnover at ₹1.20 crore instead of ₹85,04,823/- as declared by the assessee. Based on this conclusion, the CIT(A) ordered for deletion of addition of ₹34,95,177/- made by the AO.
5. This is a pure question of fact examined by the CIT(A) and confirmed by the ITAT. We do not find any infirmity in the order of the ITAT in this regard.
6. With regard to the addition of ₹3,65,000/- made by the AO on account of unexplained unsecured loans, the AO noted that the



assessee had shown unsecured loan to the tune of ₹3.65 lakh from three persons. The AO recorded that the assessee had filed confirmations of these persons but failed to explain the source of amount advanced by these persons. The assessee in reply to the notice by AO in this regard had explained that these persons had withdrawn these amounts from Shri Satish Jindal, to whom they had earlier made these advances. Since the assessee failed to produce these persons, the AO came to the conclusion that these persons have not been able to show the source of these amounts. Consequently, he made additions of ₹3,65,000/- under Section 68 of the Act.

7. The CIT(A) did not agree with the findings of AO in this regard. The reasoning given by the CIT(A) in paragraph 8.1 of its order is reproduced as under:-

“8.1. It is well established proposition of law that the assessee has to prove the identity and capacity of the creditors and genuineness of the transactions but he cannot be asked to prove the source of source of the original of origin. In the instant case, the appellant has not only furnished all the relevant details to establish the identity and creditworthiness of the persons and the genuineness of the transactions but also given details to explain the source of the source.”

8. The ITAT while agreeing with the findings of the CIT(A) in this regard, in its order in paragraph 13 recorded as under:



“13. From the above, we find that Ld CIT(A) has distinguished the judgment of the Hon’ble Calcutta High Court followed by the Assessing Officer rendered in the case of Precision Finance Ltd. (supra) and in this regard we are in agreement with him that this judgment is not applicable in the present case because the facts are different. We find that in the present case, the assessee has furnished sufficient documents to prove not only the identity of the loan creditors but also the creditworthiness and genuineness of these transactions. The source is also explained by the Assessee in the hands of the loan creditors because loans are given by these persons to the assessee out of refund received by those loan creditors from one Shri Satish Jindal. In the light of these facts, we are of the considered opinion that no interference is called for in the order of the Ld. CIT(A) on this issue and hence we uphold the same. This ground of the revenue is also rejected.”

9. On this account also, we do not find anything wrong in the findings of the CIT(A) as also that of the Tribunal. This again is a pure question of fact as recorded by both the authorities below.
10. With regard to the addition of ₹1,55,203/- under Section 69 of the Act, the AO had noted that the assessee failed to file confirmation. It is a fact that the assessee failed to furnish the confirmation from the creditor, i.e., M/s.Carborundrum Universal Ltd. of a sum of ₹1,55,203/- before the Assessing Officer. However, relevant record in this regard was produced by the assessee before the CIT(A). From the orders of the CIT(A) and that of ITAT, it transpires, as a matter of fact, that the assessee had given a credit of this amount in the books on account of purchase of goods from M/s.Carborundrum Universal Ltd., but the goods were in transit and hence the same was not debited in



the P&L Account by the assessee. The CIT(A) was satisfied with the record produced by the assessee in this regard including that of accounts of M/s.Carborundrum Universal Ltd., stock in transit account, copies of bills and evidence of payments of ₹1,55,203/- in the subsequent year and also confirmation certification from M/s.Carborundrum Universal Ltd.

11. The findings regarding deletion of this amount by CIT(A) and confirmed by the ITAT are again pure questions of fact.
12. In view of the above discussion, we do not find any question of law having arisen in the present appeal, and the same is, as such dismissed.

**M.L. MEHTA**  
**(JUDGE)**

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

**JANUARY 19, 2011**

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