



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

+ **INCOME TAX APPEAL NOS. 904/2009, 905/2009 & 575/2009**

% **Reserved on : 22nd July, 2011.**
Date of Decision : 30th September, 2011.

COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II
 Appellant
 Through Ms. Suruchi Aggarwal, Advocate.

VERSUS

MANOJ AGGARWALRespondent
 Through Mr. Salil Kapoor, Mr. Sanat Kapoor,
 Mr. Ankit Gupta & Mr. Tashriq Ahmed,
 Advocates.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest? YES

SANJIV KHANNA, J.:

These three appeals under Section 260A of the Income Tax Act, 1961 (Act, for short) have been preferred by the Commissioner of Income Tax, Central-II against Manoj Aggarwal. ITA Nos. 904/2009 and



905/2009 are directed against the common judgment dated 25th July, 2008 passed by the Special Bench of the Income Tax Appellate Tribunal (tribunal, for short) in IT(SS) A No. 404/DELHI/2003 and IT(SS) A No. 415/DELHI/2003 preferred by Manoj Aggarwal and the Revenue respectively. These appeals pertain to the block assessment period 1991-92 to 2001-02 (upto 20th August, 2000). ITA No. 575/2009 is directed against the order passed by the tribunal dated 26th September, 2008 in ITA Nos. 5643/D/2004 and 5470/D/2004 preferred by Manoj Aggarwal and the Revenue for the assessment year 2001-02. In the order dated 26th September, 2008, the tribunal has remitted the matter to the Assessing Officer with a direction to comply with the findings/observations in the order of the Special Bench dated 25th July, 2008, which is impugned in ITA Nos. 904/2009 and 905/2009. In this manner, the three appeals are inter-connected.

2. The Revenue has raised the following questions of law in ITA Nos. 904/2009 and 905/2009:-

“a) Whether the I.T.A.T. was correct in law in deleting the addition of Rs.11,71,900/- on account of cash found during the course of search at various premises of the assessee?



b) Whether the I.T.A.T. was correct in law in deleting the addition of Rs.18,10,079/- on account of commission income from the M/s. Bemco Jewellers Pvt. Ltd.?

c) Whether the I.T.A.T. was correct in law in deleting the addition of interest charged U/S 158BFA(1) of the Income Tax Act, 1961?

d) Whether the I.T.A.T. was correct in law in holding that transactions relating to sale/purchase of jewellery were genuine and the assessee was not carrying out accommodation entry business in respect of these transactions?

e) Whether the I.T.A.T. was correct in law in holding that genuine business transaction of sale and purchase of jewellery were carried out from 1182, Kucha Mahajani, Chandni Chowk, Delhi and B-108, Jai Sidhi Apartments, Ahemadabad?

f) Whether the I.T.A.T. was correct in law in holding that the Assessing Officer was not legally justified in rejecting the books of accounts of the assessee?

g) Whether the I.T.A.T. was correct in law in holding that the assessee has carried out genuine business transaction of sale and purchase of jewellery items?

h) Whether the I.T.A.T. was correct in law in holding that the principle of probability of human behaviour laid down by the Apex Court in 82 ITR 540 and 214 ITR 801 is not applicable to the assessee's case?

i) Whether the order of I.T.A.T. is perverse as it has ignored the relevant facts on records including the seized material as well as the post search investigations/inquiries and assessment proceedings?"

3. The Revenue has raised the following questions of law in ITA No.

575/2009:-



“a) Whether the I.T.A.T. was correct in law in restoring the matter to the file of the Assessing Officer with a direction to hear the Assessee and frame the Assessment order afresh keeping in view the order of the Special Bench in the case of Shri Manoj Aggarwal and others?

b) Whether the order of I.T.A.T. is perverse as it has ignored the relevant facts on records including the seized material as well as the post search investigations/inquiries and assessment proceedings?”

4. The preliminary facts as found and recorded by the special Bench of the tribunal are that on 3rd August, 2000 search and seizure operations under Section 132 of the Act were conducted at residential and office premises of Manoj Aggarwal and Bemco Jewellers Private Limited (BJPL, for short). Books of accounts and documents were seized. Notice under Section 158BC of the Act was served on Manoj Aggarwal and he filed his return for the block assessment period declaring undisclosed income of Rs.2,98,441/-.

5. Manoj Aggarwal accepted and admitted before the Revenue Authorities that he is an “accommodation entry giver” and had about 58 bank accounts in his own name, name of his father, HUF and others, including some companies. (Mr. Manoj Aggarwal, however, disputes that all the bank accounts contain entries which could be classified and regarded as accommodation entries).



6. The Assessing Officer held that the accommodation entries by Manoj Aggarwal can be grouped into five main categories.

- (i) Entries of long term, short term and speculative profit and loss on sale and purchase of shares through and by Friends Portfolio Private Limited.
- (ii) Entries of gifts and loans through various bank accounts opened in his name and in the name of his friends, relatives and various HUFs.
- (iii) Entries of bogus sales made through Classic Textiles.
- (iv) Entries of bogus sales and trading in shares in the name of M/s NITS Softech Limited.
- (v) Entries of bogus sale and purchase of jewellery through M/s Bemco Jewellers Private Limited (BJPL, for short).

7. Regarding the first four categories, there is no dispute and as per the findings recorded by the tribunal, the entries are bogus and accommodation entries. About the quantum also, there is no dispute that the amount involved in the transactions is Rs.1,32,32,77,001/- and Rs.57,62,33,291/-.



8. The amounts represent accommodation entries in which m_____, was transferred back to the persons either by cheque or by cash as per requirement. The entries also relate to the so-called share transactions, which were held to be bogus and accommodation entries. These transactions had been conducted under the umbrella and cover of two companies namely M/s Friends Portfolio Pvt. Ltd. and M/s NITS Softech Ltd.

9. The Assessing Officer had computed commission earned by Manoj Aggarwal on the aforesaid amount @ .50% or 50 paise to Rs.100. Accordingly, he had worked out the undisclosed earnings of Manoj Aggarwal during the block period at Rs.66,16,385/- on Rs.132,32,77,001/- and Rs.28,81,666/- on Rs.57,62,33,291/-.

10. CIT (Appeals) upheld the order of the Assessing Officer that Manoj Aggarwal had earned commission @ 0.5% or 50 p. to Rs.100/-, but he held that on the basis of the material available and preponderance of probability that Manoj Aggarwal had paid commission to mediators who had secured business @ 0.15% or 15 p. to Rs.100/-. Accordingly, the said amount should be reduced from the



gross commission of 0.50%. Thus he held that additional Rs.43,32,984/- and Rs.20,70,167/- should be made on account of accommodation entries.

11. The tribunal has upheld the said addition and the order of the CIT (Appeals).

12. Learned counsel for the appellant Revenue has highlighted the findings recorded by the tribunal that Manoj Aggarwal was providing accommodation entries and it is submitted that the finding of the tribunal in respect of addition of Rs.18,10,079/- on account of commission income on bogus transactions in the name of BJPL is contradictory. This aspect is also highlighted by the learned counsel for the Revenue to show that the tribunal has proceeded by wrongly placing burden of proof and onus entirely on the Revenue. He has referred to the findings recorded by the tribunal in paragraphs 56 to 83, but submits that the tribunal has proceeded on reverse basis to find loopholes or state that the evidence relied upon by the Revenue is neutral or not sufficient. It is submitted that the burden of proof and onus was on the assessee Manoj Aggarwal to show and establish that



the entries on account of jewellery business and trading were genuine and true. The facts and material to support the positive assertion were within the knowledge and exclusive possession of Manoj Aggarwal. He submits that the receipts recorded in the “books of accounts” of BJPL were admittedly in cash going into several crores of rupees but these have been accepted as genuine transactions relating to sale of jewellery without sufficient and adequate proof or even attempt to establish their genuineness on the part of the assessee Manoj Aggarwal. He submits that onus of proving the source of deposit in banks in cash primarily rests on the assessee Manoj Aggarwal who should have established and explained the said deposits and the transaction of sale and purchase.

13. Learned counsel for the Revenue has submitted that even if it is assumed that the burden to establish that an income is taxable is on the Revenue, it is immutable in the sense that onus can shift to the assessee when sufficient evidence, either direct or circumstantial, is disclosed by the Revenue. An adverse inference can be drawn against Manoj Aggarwal as he has failed to produce material which was in his exclusive possession. Shifting of onus in the course of proceedings is well recognized.



14. BJPL was incorporated on 24th December, 1998. Its registered office is located at 7/22 Ansari Road, Darya Ganj, Delhi. Manoj Aggarwal and his father B.C. Aggarwal have been Directors and shareholders since its incorporation. The total paid up capital of BJPL is Rs.3,000/- which is equally divided amongst the two shareholders.

15. Manoj Aggarwal claims that BJPL is engaged in business of trading of gold, silver and diamond ornaments. At the time of search it was noticed that the company has 9 bank accounts in different banks as per details given below:

1.	Central Bank of India	Amritsar	1561
2.	Laxmi Vikas Bank Ltd.	Kolkatta	28129
3.	Oriental Bank of Commerce	Amritsar	12990
4.	Punjab & Sind Bank	Asaf Ali Road	1619
5.	State Bank of India	Darya Ganj	75072
6.	State Bank of India	Vijay Nagar	65220
7.	Vijaya Bank	Vigyan Vihar	1106
8.	Punjab National Bank	Amritsar	13174
9.	Vijaya Bank	Darya Ganj	3449



16. BJPL had shown purchases of Rs.2,13,49,890/- in the income return filed on 20th March, 2000 for the assessment year 1999-2000, and income of Rs.1838/- was declared. Returns for the assessment years 2000-01 and 2001-02 were filed by BJPL on 30th November, 2000 and 1st October, 2001 respectively i.e. after the date of search on 3rd August, 2000. During the period relevant to the assessment year 2000-01, BJPL had declared purchases of ornaments worth Rs.28,98,21,836/- and an income of Rs.19051/- was declared. Similarly, during the period relevant to the assessment year 2001-02 i.e. upto 20th August, 2000, BJPL had declared and accepted purchases worth Rs.5,57,36,782/- and an income of Rs.3572/- was declared.

17. The question arose before the Assessing Officer whether so called purchases, sales and payments made were bogus and in fact only accommodation entries. The Assessing Officer held that the so called purchases, sales etc. were bogus and represent accommodation entries. Accordingly he made additions of Rs.18,34,542/- @ 50 p. per Rs.100/- on the total claimed purchase of Rs.36,69,08,500/-. After reducing declared income by BJPL for the three years of Rs.24,461/-



(Rs.1838/- for AY 1998-99, Rs.19,051/- for AY 2000-01 and Rs.3,10,079/- for AY 2001-02 upto the date of search) an addition of Rs.18,10,079/- was made in the hands of Manoj Aggarwal on substantive basis. An addition of Rs.16,29,072/- on similar grounds was made in the hands of BJPL on protective basis.

18. The CIT (Appeals) had upheld the said findings.

19. It is pointed out that Manoj Aggarwal's statements were recorded under Section 131 on 3rd August, 2000 and 11th September, 2000 and he categorically admitted providing accommodation entries. It was urged that the tribunal has ignored these statements and not given due importance to the said admission by holding that Manoj Aggarwal did not specifically state that the jewellery business was sham and bogus and a camouflage for accommodation entries. He submits that a perverted view has been taken as Manoj Aggarwal had not averred in these statements that the jewellery business was genuine. Therefore, when Manoj Aggarwal admitted that he was in business of providing accommodation entries and once he did not state that jewellery business was genuine, the admission was clear and beyond



doubt. He submits that the statement recorded on 14th Decer....., 2000 was an after thought. Similarly he has questioned the reliance placed upon the statement made by Manoj Aggarwal on 8th January and 9th January, 2001. It is also pointed out that the statements given by father of Manoj Aggarwal, B. C. Aggarwal referred to in the assessment order have been ignored.

20. Learned counsel for the Revenue has submitted that the tribunal has relied upon letter dated 22nd August, 2000, in which Manoj Aggarwal had admitted that the total transactions relating to accommodation entries were Rs. 100 crores approximately and, therefore, the jewellery business was genuine. The inference and sequitor drawn by the tribunal is challenged. He has submitted that the total accommodation entries as per the findings of the tribunal were about Rs.180 crores, thus the figure of Rs. 100 crores in the letter/statement dated 22nd August, 2000 is of no consequence. The tribunal wrongly presumed that the sham and bogus transaction were to the extent of Rs. 100 crores, to exclude “jewellery” transactions. He



has pointed out that no jewellery and no books of accounts of ----- were found at the time of search.

21. With regard to the office/show room at 1182 Kucha Maharani, Chandni Chowk, it is submitted that names of Ram Pahalwan and Omi Mama were given by B. C. Aggarwal as persons who are aware that BJPL had a show room at the said premises and was engaged in jewellery business. Both of them had denied knowledge of jewellery business, BJPL and the so called show room. He submits that their statements have been ignored by the tribunal holding that they were witnesses of the Revenue and, therefore, Manoj Aggarwal should have been given an opportunity to cross-examine them. It is submitted that Manoj Aggarwal or his father should have produced them or some other person to establish existence of the show room or jewellery business. He submits that the alleged rent receipts of Rs.100/- in the name of Manoj Aggarwal in respect of said shop are of no consequence.

22. Similarly, reliance on the report of the Sales Tax Inspector dated 31st August, 2000, is misconceived as by that time alleged show room had already closed as per the case set up by Manoj Aggarwal himself. This report was not submitted before the Assessing Officer. The tribunal has



not referred to the report of the income tax inspector who had visited
the shop and made local enquiries.

23. With regard to branch office at Flat B-108 Jai Sidhi Apartment at Ahmedabad, it is pointed out that in the financial year 1999-2000, the alleged sales at Ahmedabad were to the tune of Rs.24,07,30,000/- out of total sales of Rs.26,07,63,735/-. Manoj Aggarwal had claimed that the said flat belongs to one Vijay Aggarwal but he was not traceable and was never produced. Statement of Sudhir Shah, Builder, Developer and Administrator of the apartment building was wrongly ignored, even when Vijay Aggarwal was not produced. Learned counsel for the Revenue has specifically drawn our attention to paragraphs 71 and 72 of the impugned order which read as under:-

“71. The Assessing Officer has raised doubts about the carrying of the gold bars to Ahmedabad from Delhi for being sold there. It may prima facie appear to be somewhat unusual for Manoj Aggarwal to carry the gold bars with him from Delhi to Ahmedabad and to bring the sales proceeds in cash from Ahmedabad to Delhi all by himself and by undertaking journeys by train. However, Bishan Chand Aggarwal in his statement dated August 16, 2002, has explained this by saying that most of the times the journey had to be undertaken at short notice and therefore, Manoj Aggarwal travelled by unreserved class. When asked to produce the tickets, he has stated that they were collected by the railway authorities while exiting the railway station and, therefore, could not be produced.



This practice which is pre- valent in the railway station is well-known and cannot be contradicted. So far as the journeys are concerned it does appear somewhat unusual that gold bars of such high value were carried in person by Manoj Aggarwal from Delhi to Ahmedabad and the cash was also brought by him by train from Ahmedabad to Delhi but in the absence of any strong evidence in the possession of the Department to contradict the claim, it is difficult to reject it merely because it appears somewhat unusual. The Assessing Officer has himself noted that Bemco has shown travelling expenses of Rs. 3,74,440 during the financial year 1999-2000 which includes expenses of 73 visits to Ahmedabad and back by Manoj Aggarwal. The only vouchers available for the expenses were the travelling allowance bills which are in form TR-25 which is normally used by Government servants to submit their claims for travelling allowance. No tickets were produced by Bemco but this has been explained by saying that they were collected by the railway authorities at the exit gate. The Assessing Officer has noticed that the ticket expenses claimed were for first class or AC-2 Tier and has observed that nobody can travel in these compartments without reservation. Bishan Chand Aggarwal has however stated before the Assessing Officer that most of the times the journeys had to be undertaken at short notice and hence the travel was by unreserved class. The journeys were actually undertaken by Manoj Aggarwal and therefore, he would have been in a better position to explain how he travelled in the trains whether in reserved accommodation or unreserved accommodation. The answer given by Bishan Chand Aggarwal has to be therefore looked upon only as his surmise as it contradicts the expenses claimed in the books of account of Bemco. We were not referred to any statement given by Manoj Aggarwal in which he was asked to clarify the position as to how and in what class he travelled between Delhi and Ahmedabad. In these circumstances, the minor contradictions in the statement of Bishan Chand Aggarwal cannot override the substance of the claim of Bemco that the gold bars and the sale proceeds in cash were transported between Delhi and Ahmedabad by Manoj Aggarwal by train.



72. Some of the questions put to Bishan Chand Aggarwal (questions 35 to 37) in the statement dated August 16, 2002, were regarding the transfer of cash, being sale proceeds, from Ahmedabad to Delhi. The Assessing Officer does not appear to have thought it unusual that Bemco did not have a bank account in Ahmedabad. He, therefore, asked Bishan Chand Aggarwal only to clarify how the cash was brought to Delhi and deposited in the bank account. The reply of Bishan Chand Aggarwal was that the sale proceeds were also carried by Manoj Aggarwal by train from Ahmedabad to Delhi and they were deposited in the bank accounts in Delhi within a week from the date of return from Ahmedabad. To a question as to why the sale proceeds were not deposited immediately and in totality after returning from Ahmedabad, he replied that the bank authorities were refusing to accept huge cash deposits at one time. What was sought to be highlighted before us by Mr. Kapila, the learned special counsel was that Bemco did not have a bank account in Ahmedabad though it had a sales office there and had effected huge sales of Rs. 27.93 lakhs (sic.) during one financial year, which was quite unusual. Having a bank account in Ahmedabad would have been certainly prudent and would have obviated the need to carry the cash from Ahmedabad to Delhi, which was a risky affair, and it does appear to us unusual that there was no bank account in Ahmedabad but for that reason alone the other evidence on record cannot be ignored. There is evidence to show that the assessee effected sales in Ahmedabad as is clear from the sales tax assessment order passed under the Gujarat Sales tax Act, the seized letterhead of Bemco which showed Jai Sidhi apartments as the branch office of Bemco in Ahmedabad and the statement of Arvind Thakar, the sales tax consultant. In the light of these evidences, we are inclined to accept Bemco's claim that the sales claimed to have been made from Ahmedabad branch office were real and not bogus."

(Emphasis supplied)

24. It is pointed out that the sales tax assessment were for nil tax.



25. Similarly with regard to books of accounts, he has referred to paragraphs 73 and 75 of the impugned order, which read as under:-

73. We may now turn to the question whether there is material to hold that the books of account produced by Bemco before the Assessing Officer were bogus or were reliable. The Assessing Officer has placed reliance on (i) the fact that they were not found during the search ; (ii) that they were supported only by computer generated sheets showing cash sales without the addresses of the parties to whom sales were made ; (iii) the bills appeared to be freshly prepared ; (iv) that no stock register was maintained/ produced ; and (v) the auditor's report filed along with the return for the assessment year 2000-01 mentioned that the inventory was not produced for the perusal of the auditors, that the purchases were supported only by Bemco's invoices and hence cannot be verified and that there was no documentary evidence made available to them for transfer of goods from Delhi to Ahmedabad and transfer of cash from Ahmedabad to Delhi. Out of these, the most important objection to the books of account is the one based on the audit report a copy of which is at pages 238-39 of the paper book filed by the assessee. The auditors have stated that in their opinion proper books of account as required by the law have been kept by the company so far as it appears from their examination of such books and that the balance-sheet and profit and loss account are in agreement with the books of account. The qualifications, subject to which the report has been given, are : (a) that personal accounts of the parties, including squared up accounts, are subject to reconciliation ; (b) no information regarding quantity of goods dealt with were given ; (c) most of



the purchases are supported only by purchase invoices issued by Bemco without the signature of the seller and therefore no opinion about the genuineness thereof can be expressed ; (d) no documentary evidence is available for transfer of goods from Delhi to Ahmedabad and cash from Ahmedabad to Delhi. In the annexure to the audit report, the following opinions have, inter alia, been expressed : (a) the stock records were not made available and hence the auditors have relied on the certificate issued by the management to the effect that the stock valuation has been done on the basis of accounting policies ; and (b) the internal control measures, though adequate, can be further strengthened. So far as the documentary evidence for the transfer of goods and the cash is concerned, we have already held that there was nothing serious against the claim of the Bemco. As regards stock register or records which were not made available to the Assessing Officer or the auditor, Bishan Chand Agarwal has stated on August 19, 2002, that they were ready but due to shortage of time the auditors may not have checked them. This is not acceptable. If they were ready, there was no reason why the auditors would not have checked them. Further, at least before the Assessing Officer the same could have been produced. The same position holds good in the case of inventory records also. As regards the other objection against the purchase invoices, Bishan Chand Agarwal has explained that since Bemco was purchasing old jewellery from different parties who were not having any printed sale bills, it was forced to issue its own purchase invoice and that the signatures of the sellers were not insisted upon. He has also stated that the sellers did not sign the invoices because of the goodwill enjoyed by Bemco. Though we are unable to appreciate this part of the explanation and what the reputation and goodwill of Bemco have to do with the signatures of



the sellers, it appears to us that the substance of the explanation is that since those who sell old jewellery are mostly householders and individuals and ladies who are not in the business of selling such jewellery they did not have any printed sale bills and that was the reason why Bemco had to use its purchase invoices to maintain some sort of record for its purchases. It seems to us that this is an acceptable explanation, considering the fact that most of those who sell old jewellery are householders and individuals and ladies who may have a need to sell them. They are not persons who are in the business of selling or buying old jewellery and it is generally not expected of them to have printed sale bills. In such a case, it is not unusual for the purchaser, who is in the business of buying old jewellery, to record the transaction in his purchase invoice and issue the same to the seller and retain a copy for his record. Apparently this is what Bemco has done. The evidence, under the circumstances, cannot be impeached merely because of the absence of the signature of the seller. The auditors have only expressed their inability to confirm the genuineness of the purchase transactions; this is different from saying that the evidence is not genuine.

75. All the above facts do throw considerable doubt on the way in which the books of account and records were maintained by Bemco both in Delhi and in Ahmedabad. However, a balance-sheet and profit and loss account were prepared by Bemco and they were also filed along with the returns of income. They were also audited by the statutory auditors who have con- firmed that in their opinion, proper books of account as required by law have been kept by the company so far as it appears



from their examination of the books and that the profit and loss account and the balance-sheet are in agreement with the books of account. Having regard to the audit report, it seems to us that Bemco did maintain books of account at Delhi and Ahmedabad. However, as per the audit report, no basis was given for the stock valuation and the inventory records were not made available to the auditors with the result that they were unable to express any opinion on the correctness of the stock valuation which was certified by the management. Maintenance of books of account is one thing and the reliability of those books for purposes of income-tax assessment is another. The auditor's certificate does not say that the books of account are bogus or have been falsified. It only says that the stock valuation and the purchase invoices are not properly supported. We have already noted that the auditors have only refrained from expressing any opinion about the genuineness of the stock valuation and the purchase invoices ; they have not said that there was no stock or that the valuation as certified by the management was contrary to the principles of accounting or known methods of valuation of stock or that the purchase invoices were not authentic or genuine. These have to be judged independently. In fact, it is pertinent to note that in the annexure to the audit report for the year ended March 31, 1999, the statutory auditors have observed that though no stock records were made available to them for verification. "The management conducted physical verification covering finished goods at reasonable intervals but in the absence of stock records we are not in a position to determine the discrepancy if any". This seems to suggest that there were periodical checks being conducted by Bemco to verify the stock. In the ultimate analysis what one can infer at best is that the stock valuation may have to be made on different principles which are also



acceptable under accounting principles and that the genuineness or authenticity of the purchase invoices have to be independently verified. The auditor's report, in our humble opinion, merely qualifies the accounts maintained by Bemco ; it does not impeach their genuineness. It is also a fact that the premises at No. 1182, Kucha Mahajani and B-108, Jai Sidhi apartments, Ahmedabad were not put to search under section 132 of the Act and it is the case of Bemco that its books were kept in these premises. The books of account of a company should normally be kept at its registered office which in the case of Bemco is 7/22, Ansari Road, Daryaganj, Delhi. However, all the purchases of old jewellery are being made in Kucha Mahajani and 90 per cent. of the sales of gold bars, after the old jewellery is melted, is effected at Ahmedabad. The claim of the Bemco that the books of account were kept in the places where the purchases and sales were effected does not appear to be unreasonable and at any rate there is no inherent improbability in the same which can justify its rejection. It cannot, therefore, be asserted with certainty or be taken as an established fact that the books of account maintained by Bemco and produced before the Assessing Officer were bogus. The auditor's report for the year ended March 31, 1999 is dated January 29, 2000. Their report for the year ended March 31, 2000 is dated July 24, 2000. In these reports, as already noted, they have opined that proper books of account as required by law have been kept so far as it appears from an examination of such books and that the profit and loss account and the balance-sheet are in agreement with the books of account. Nor can it be held that Bemco never maintained any books of account and that they were prepared subsequently for the purpose of assessment proceedings as has been held by the Assessing Officer.



(emphasis supplied)

26. He has also drawn out attention to the audit report, relevant portion of which reads as under:-

“(ii) Non verification of quantitative information in respect of goods dealt in for goods purchased and sold and also their opening and closing balances in hand since the information and records were not provided to us.

X X X X X X X

(v) No documentary evidence was made available to us with regard to transfer of goods from Delhi to Ahmedabad Branch office and cash remittance from Ahmedabad Branch office to Delhi.

The company is not maintaining any record for sale and disposal of scrap.”

27. He submits that in spite of the aforesaid position, it was held that the books of account of BJPL reflect genuine transactions.

28. Similarly, Sunil Kapoor had made statements before DDIT, Amritsar on 3rd December, 2001 and 23rd July, 2002 in which he had accepted that some assessesees from Amritsar had shown bogus sale of jewellery to BJPL. The tribunal has relied upon the retraction by Sunil



Kapoor dated 18th February, 2003 in form of a letter written to Commissioner, Income Tax, Amritsar. The retraction is after considerable time. Manoj Aggarwal had denied knowing a person by the name of Sunil Kapoor and having any transaction with him, but name of Sunil Kapoor is reflected in the books of accounts of BJPL produced by Manoj Aggarwal. It is stated that the tribunal has held that the transactions relating to Sunil Kapoor were share transactions and not jewellery transactions, but there is no basis or foundation for the same. This was not the case of Manoj Aggarwal. Similarly, it is submitted that the self implicating statement of Girish Mittal should not have been ignored as in spite of opportunity being given, Girish Mittal was not cross examined. Number of other similar issues and contentions have been raised.

29. It is submitted that when the tribunal relies upon irrelevant material or has left out relevant material, a question of law is involved. Similarly, it is submitted when the tribunal acts partly on relevant or partly on irrelevant material, it is not possible to say to what extent the irrelevant material influenced the mind of the tribunal and, therefore, the question of law arises. Reliance is placed upon *Sree Meenakshi Mills*



*Ltd. Vs. CIT (1957) 31 ITR 28 (SC) and CIT Vs. Daultram (196 ,
ITR 574 (SC).*

30. Having considered the various contentions of the Revenue we would not at this stage state or give a firm opinion or finding on merits, but we do feel that substantial questions of law arise in the present case. Accordingly, the following substantial questions of law are framed:-

(i) Whether the order passed by the tribunal is perverse and has ignored the relevant facts and material on record to hold that BJPL was engaged in jewellery business in Delhi and Ahemdabad ?

(ii) Whether the tribunal has erred in deleting addition of Rs.18,10,079/- on account of commission income earned by Manoj Aggarwal on transactions stated to be jewellery transactions relating to BJPL?

31. In addition to the aforesaid questions, we are inclined to frame two additional questions.



(iii) Whether the tribunal is right in law in deleting the addition of Rs.11,71,900/- on account of cash found during the course of search?

(iv) Whether the tribunal was correct in law in deleting the addition of interest charged under Section 158BFA(1) of the Income Tax Act, 1961?

32. With regard to question No. (iii), the CIT (Appeals) had proceeded on the basis that the cash found at the time of search belongs to BJPL. The tribunal, however, has held that the reasonable inference to be drawn was that cash belongs to others, who were utilizing Manoj Aggarwal in the accommodation entry business and, accordingly, Section 69A of the Act is not applicable. It is pointed out that the names and details of the said persons were not furnished and Section 69A has to be given full effect to and cannot be ignored. Similarly, with regard to waiver of interest, it is submitted that the same has been struck down on the ground that there had been delay in furnishing of seized documents but no particulars and details have been examined.

33. The appeals are accordingly admitted and the aforesaid questions of law are framed.



34. The appellant will file paper books within 6 weeks encl therewith the entire material/paper book which was placed before the tribunal. The paper book will clearly indicate the evidence/material, which was available or filed before the Assessing Officer or was filed for the first time before the CIT (Appeals) and the tribunal.

35. In ITA No. 575/2009 the tribunal has followed the order in the block assessment period and remitted the matter to the Assessing Officer. This appeal be listed along with ITA Nos. 904-905/2009 and will be disposed of in terms of the order passed in the said appeals.

**(SANJIV KHANNA)
JUDGE**

**(DIPAK MISRA)
CHIEF JUSTICE**

September 30th, 2011
sa/pg/kkb/vkr/na