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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NO. 56/2000**

Date of decision: 14th August, 2013

KAHAN UDYOG

..... Appellant

Through Mr. Prakash Kumar, Advocate.

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Sanjeev Rajpal, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This appeal by the assessee-M/s Kahan Udyog relates to block period 1st April, 1985 to 16th November, 1995 and arises out of the order of the Income Tax Appellate Tribunal dated 31st December, 1999 in IT(SS) A. No. 32/Del/96. The appeal was admitted vide order dated 9th May, 2001 and the following substantial question of law was framed:-

“Whether the Tribunal’s conclusions as regards the additions under Section 69C of the Income-Tax Act, 1961 are sustainable?”



2. On 16th November, 1995 search operations under Section 132 the Income Tax Act, 1961 (Act, for short) were conducted at business premises of Mahavir Woolen Mills, including the present appellant. Incriminating documents were found and seized. Relying upon the incriminating documents, addition of Rs.7,63,055/- was made in the block assessment order for unrecorded/unaccounted transactions under Section 69C. The said addition was reduced to Rs.6,13,000/- by the tribunal. The appellant claims that no addition is justified and same is contrary to facts and law.

3. In the block assessment order dated 29th November, 1996, the Assessing Officer has referred to various seized papers in respect of unaccounted sales and unaccounted expenditure. These were inventorised. It was found that these transactions were not reflected in the regular books of accounts. Before the Assessing Officer, the appellant had submitted that the difference between the excess of expenditure over receipts, should be brought to tax and treated as undisclosed income and the two amounts should not be separately taxed. Assessing Officer in the present case did not tax the unaccounted sales and has only taxed unaccounted expenses/expenditure/withdrawals. Before the tribunal, similar plea was raised, but was rejected after making reference to the order of the tribunal in the case of Siddhartha Woolen Mills. We have dismissed



the appeal of the assessee in the case of Siddhartha Woolen Mills ITA No. 59/2000. In the present case, we notice that the tribunal has given relief to the extent of Rs.1,50,000/- and the Assessing Officer has not made any separate addition on account of profits from unaccounted sales. It is recorded in our order dated 25th July, 2013 in the case of Siddhartha Woolen Mills that the expenditure incurred was on account of electricity, petrol, tea pool, etc. and the names of the persons and details why the expenditure was incurred had not disclosed and furnished. The appellant has not, in the present case, furnished details or explained nature and purpose behind the “expenditure”. Some expenses have been incurred towards kabadi etc. Names of persons do find mention but the nature of activities undertaken why and for what purpose the payment was made, are not known. It was for the appellant assessee to produce relevant material or produce the said person to justify the payment and show and establish that the expense was not personal in nature but related to or was pertaining to unaccounted business. No one mentioned in the list had appeared before the Assessing Officer to testify and explain the nature and character of the said payments. The appellant has accepted that these transactions were not recorded in the books. The appellant ran and took the risk when he entered into these transactions and, therefore, should face the consequences prescribed



and mandated under Section 69C of the Act.

4. In view of the aforesaid factual position, we do not think the findings of fact recorded by the tribunal can be categorised as perverse and justify inference or reversal in this appeal under Section 260A of the Act. The question of law is accordingly answered against the appellant assessee and in favour of the Revenue. The appeal is dismissed. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 14, 2013
VKR