



\$~11

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

% **DECIDED ON: 02.12.2013**

+ ITA 132/2011, C.M. APPL.1020/2011

USHA IRON & FERRO METAL CORP LTD Appellant
Through: Mr. Prakash Kumar, Advocate.

versus

CIT Respondent
Through: Mr. Rohit Madan, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The assessee in this appeal under Section 268 of the Income Tax Act urges that two questions of law arises for consideration. The first, it is submitted, pertains to the correctness of the ITAT directions to add Rs.22 lakhs towards alleged bogus freight and forwarding expenditure by an estimating exercise. The second question of law urged is that the lower authority fell into error in adding Rs.6,84,22,895/- on account of outstanding credit balance in the name of one M/s Smriti Sales Private Limited.

2. The facts necessary for the purpose of deciding the present appeal are that on 14.02.2001, the appellant's premises and other group companies numbering about 250 - were subject to search and



seizure proceedings. Subsequently, the appellant and the other concerns which were subject to the search were issued with notice on 30.08.2001 under Section 158 (BC) requiring the furnishing of return of income including undisclosed income for the period 1.4.1990 to 14.2.2001. Apparently, during the course of the proceedings having regard to the complexity of accounts, special audit under Section 142 (2) (A) of the Income Tax Act were also ordered. Though, this Court is not directly concern with details of those facts, yet to the extent it is relevant is worth noticing that the appellant did not cooperate with the Special Auditors who had to proceed with some difficulty and nevertheless filed the report within the time allocated.

3. On 16.10.2013, the Assessing Officer framed the assessment order directing a total addition of Rs.9,71,23,895/-. The appellant in these proceedings challenges the addition on account of alleged bogus freight and forwarding expenditure to the tune of Rs.22 lakhs for the said period and towards unexplained cash credit - added back by the Assessing Officer and upheld by the CIT to the tune of Rs.6,84,22,895/-.

4. It is urged that so far as the addition of Rs.22 lakhs goes, the Assessing Officer and the higher authorities fell into error in relying solely on the testimony and deposition of one Vineet Bhargava who stated that the freight expenses did not reflect actual expenditure or transactions. It was sought to be highlighted that the pre condition for adding back such amounts or disallowing the expenditure so that it could attract Section 68 was the exactitude with which the transaction could be pin pointed. The counsel further submitted that the



deposition of Vaibhav Bhargava cannot be termed as conclusive in these circumstances since the answer to question no.5 relied upon by the Assessing Officer and other officials nowhere indicated that the expenditure he was referring to pertains to the appellant.

5. On the second issue, i.e., the addition of Rs.6,84,22,895 under Section 68 of the Act, learned counsel urged that this amount was reflected even in the previous balance sheet, as on 31.3.2000 and is subject to regular assessment. It was submitted that in these circumstances, the Assessing Officer dealt with this amount and concluded that the same have to be added back under Section 68 of the Act.

6. We notice from the reading of the assessment order - which is a fairly detailed one and has discussed threadbare the evidence placed before the authorities. The reference to the sum of Rs.22 lakhs was in the context of amounts claimed to have been spent towards freight and forwarding charges. Although, the succeeding question and answers had mentioned specific companies, neither could the appellant dispute nor is it disputed before us that the sum of Rs.22 lakhs pertains only to the appellant company. This was what was claimed as actual freight and forwarding charges which the concerned employee Vineet Bhargava clearly disclaimed in the course of his deposition. The appellant does not dispute that the Vineet Bhargava could have been subjected to cross examination. His testimony remained unrebutted and unchallenged. In these circumstances, the addition in the opinion of this Court cannot be termed as unwarranted or contrary to law.



7. So far as the addition of Rs.6,84,22,895/- goes, there is no dispute in the first place to the fact that an amount was received towards the credit balance. However, the appellant's submission today appears to be that this credit balance had been reflected in the previous years' books and also subjected to assessment. That too in the opinion of this Court cannot be determinative because as on 14.02.2001 as well as in the revised income tax returns and the relative supporting documents filed by the assessee, said amount appeared and was claimed. That such amount remained unchallenged in the previous proceedings, in the opinion of this Court, no way shifted the burden of proving what the appellant claimed as a credit of Rs.6,84,22,895/- as on the date of search and seizure. It was concededly unable to substantiate such credit in favour of third party concerned, i.e., M/s Smriti Sales Pvt. Ltd. That concern appears to have been a bogus one and part of the Usha Group Devices to claim unwarranted expenditure and thus reduce tax burden.

8. In view of the above discussion, this Court is satisfied that no question of law arises for interpretation in this appeal; the same is consequentially dismissed with no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

DECEMBER 02, 2013/vks/