



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

% Judgment delivered on: 24<sup>th</sup> February, 2010

+ **ITA 1/2007**

**COMMISSIONER OF INCOME TAX** ..... Appellant

*-versus-*

**FORECH INDIA LTD** ..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr M.S. Syali, Sr Advocate with Ms Mahua Kalra

**CORAM:**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers 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?

**BADAR DURREZ AHMED, J (ORAL)**

1. The present appeal filed by the Revenue is in respect of the assessment year 2000-01 and arises out of the Income Tax Appellate Tribunal's order dated 28<sup>th</sup> April, 2006 in ITA No. 4562/Del/2003.

2. The Revenue was also in appeal before the Tribunal being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), who had



made on account of undisclosed stock found with the assessee during the course of a survey.

3. We have heard counsel for the parties and have also examined the orders passed by the Assessing Officer, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal.

4. We note that the Commissioner of Income Tax (Appeals) observed that the crux of the matter pertains to the genuineness of purchase of Rs 1,46,00,078/- made by the respondent-assessee prior to the date of survey but which were not entered in the purchase account in the financial books. The Commissioner of Income Tax (Appeals) also noted that out of this, purchases to the extent of Rs 1,24,00,747/- were represented by six bills from M/s Sanjay International and M/s Maxwell. The case of the assessee was that even though the entries of such material had been made in the stock register and such stock was physically found in the factory premises of the assessee and formed part of the inventory taken in the survey, the purchase value of these items had not been debited in the purchase account as the purchase bills had not been handed over to the accountant for making entries thereof in the books of accounts. It was observed by the Commissioner of Income Tax (Appeals) that, as against this, the Assessing Officer felt that the aforesaid purchase bills had been arranged after the survey and were, therefore, not genuine.

5. The Commissioner of Income Tax (Appeals) examined the



genuineness of the purchase bills and examined the issue as to whether the purchase bills had been arranged after the survey or that the materials had, in fact, been purchased by the assessee prior to the survey. The Commissioner of Income Tax (Appeals), on examining the facts in detail, found as under:-

“I find from the facts placed before me that these were import purchases, on which Customs Duty has been paid before the date of survey or the same have been imported against the Duty Exemption Scheme of the Govt. of India. The payment of Duty is verifiable from its bank account for the period prior to the date of survey. Also the entries of such imports are found to be duly made in the Duty Exemption Export Certificate book, which is authenticated by the Customs and Excise authorities prior to the date of survey. The appellant has also submitted the copies of Bills of Entry issued by customs authorities in respect of these goods, which show that the dates of import of these goods are prior to the date of survey and that these goods had been actually learned by customs prior to the date of survey. Further, the export obligation discharged certificate was also issued by the Joint Director General, Foreign Trade, which shows that the goods had been purchased by the appellant before the date of survey and had also been utilized for manufacturing purposes to discharge the export obligations. It is also noticed that gate passes were issued in the name of the company by Container Corporation of India while releasing the goods from the ICD, Tuglakabad after levy of certain charges for storage of container in which imports were made. The appellant has shown that the dates on these gate passes are all prior to the date of survey. The facts also show that one of these import purchase bills is from M/s Bayer, GMBH, in respect of which customs clearance has been made and the documentary evidences produced before and the Assessing Officer show that this purchase was made prior to the date of survey. The claim of the appellant is found verifiable from the RG-23, Part-II entries in excise registers, on which the MODVAT credit has also been allowed by the Excise authorities prior to the date of survey.

I find that the fact that purchases had actually been made and the goods had actually been received by the appellant prior to the date of survey has also been verified independently by the Assessing Officer during the course of assessment proceedings from the suppliers, as well as from the clearing agents who have confirmed that they had cleared the goods and transported and delivered the same to the



the stock register of the appellant, which fact has been duly verified by the Assessing Officer himself at the time of assessment proceedings and it is not the case of the Assessing Officer that there is any discrepancy in the maintenance of the same. The fact that the books of account have been maintained on the computer is not disputed by the Assessing Officer. The facts show that it was only the Trial Balance which was identified by the survey Team.”

6. The Tribunal was of the view that the order passed by the Commissioner of Income Tax (Appeals) could not be faulted and that the Assessing Officer’s approach was not correct. The Tribunal, *inter alia*, held as under:

“17. The controversy as noted by the Id. CIT(A) is whether claim of the assessee that purchases to the tune of Rs.1,46,00,078/- made prior to the date of survey and claimed to be not entered in the financial books was genuine or not. Out of above, purchases to the extent of Rs.1,24,00,747/- were made from two parties, namely, M/s Sanjay International and M/s Maxwell through 6 bills noted by the Id. Assessing Officer at page 3 of the impugned order. The Id. Assessing Officer refused to believe the claim of the assessee. We have already recorded reasons given by the Assessing Officer in the assessment order for not accepting above claim. The objections raised were met by the assessee before the Id. CIT (Appeals) and his attention was drawn to various items which showed that purchases made by the assessee were genuine though not accounted for in the financial books. The Id. CIT(A) for the reasons recorded by him and reproduced above has held that on preponderance of probability the case of the assessee has to be accepted as genuine. The addition has been accordingly deleted.

18. Comparative study of two orders, and on facts, we are inclined to accept and agree with the order passed by the Id. CIT(A). Although complete detail of what happened at the time of survey was not produced before us, it is agreed between the parties that survey party on 20.1.2000 found discrepancy between stock actually present in the factory premises and stock worked out as per books of account of the assessee. The discrepancy pointed out in stock was fully reconciled on behalf of the assessee although the plea was taken that some of the purchases including purchases made at



dispute that books of accounts of the assessee at the time of survey were incomplete. The assessee later completed books of accounts after incorporating all the purchases and showed that position of stock at the premises and in the books of accounts stood reconciled. This was conveyed by the assessee to the Dy. Commissioner of Income-tax being certified it for vide letter dated 7.2.2000. The same position was maintained by the assessee during the course of assessment proceedings. The assessee had also relied upon the fact that completed books of accounts were audited and supported by report of an Auditor.”

7. In our view, the findings returned by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal with regard to the genuineness of the purchases prior to the survey are pure findings of fact. We would also like to note the decision of this Court in the case of **Commissioner of Income Tax v. NHK Japan Broadcasting Corporation: 291 ITR 331 (Delhi)**, wherein the scope of interference with findings of fact in an appeal under Section 260A has been pithily explained. In the said decision it was observed as under:-

“12. The effect of a concurrent finding has been dealt with in *Ishwar Dass Jain v. Sohan Lal*, AIR 2000 SC 426. The Supreme Court noted two situations where findings of fact can be interfered with (though under section 100 of the Code of Civil Procedure which is admittedly in pari materia with section 260A of the Act). The first situation is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion, while the second situation in which interference is permissible is where a finding has been arrived at by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. Neither of these two situations arises in the present case. Therefore, on the basis of the decision rendered by the Supreme Court, no substantial question of law would arise on the finding of fact arrived at the by the Commissioner and the Tribunal.....”



with concurrent findings of fact arises in the present case. The present appeal is not a case where relevant evidence has not been considered nor is it a case where a finding has been returned by placing reliance on inadmissible evidence. Whatever is sought to be agitated before us was considered by the Commissioner of Income Tax (Appeals) as well the Tribunal. The Commissioner of Income Tax (Appeals) as well as the Tribunal have not placed reliance on any inadmissible evidence either. Consequently, the findings arrived at by the Tribunal cannot be interfered with. No substantial question of law arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**FEBRUARY 24, 2010**

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