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

+ ITA 1269/2010

HACIENDA FARMS PVT. LTD. Appellant
Through Mr. Suresh C. Ladi, Advocate

versus

COMMISSIONER OF
INCOME TAX Respondent
Through Mr. N.P. Sahni, Senior Standing
Counsel

% Reserved on : 31st August, 2010
Date of Decision: 13th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the 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?

MANMOHAN, J:

CM 15184/2010

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Accordingly, application stands disposed of.

ITA 1269/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 28th August, 2009 passed by the Income



Tax Appellate Tribunal (for brevity “Tribunal”) in ITA 3184/Del/2008 for the Assessment Year 1996-97.

2. The relevant facts of the present appeal are that appellant-assessee filed a return declaring its income as nil. However, during the course of assessment proceedings under Section 143(3) of Act, 1961 appellant’s net taxable income was determined at ₹ 5,84,992/-. The following three additions were made in the appellant’s income :-

i)	Income from unexplained sources	2,08,800/-
ii)	Unexplained customer advances U/s 68	1,98,000/-
iii)	On account of cash received U/s. 68	1,50,000/-

		5,56,800/-

3. Upon an appeal being filed by the appellant, the Commissioner of Income Tax (Appeals) [in short “CIT(A)”] vide order dated 22nd March, 2001 deleted all the additions made by the Assessing Officer. Aggrieved by the said order of CIT(A), revenue filed an appeal before the Tribunal.

4. By the order dated 20th January, 2006 the Tribunal set aside the CIT(A)’s order only with regard to unexplained customer advances amounting to ₹ 1,98,000/- and remanded the matter back for fresh adjudication to the Assessing Officer (in short “AO”).

5. The AO completed the reassessment in view of the direction given by the Tribunal and treated the advance of ₹ 1,98,000/- as income of unexplained customer advances under Section 68 of Act, 1961. Thereafter, the appellant-assessee’s appeals filed before CIT(A) and the Tribunal were dismissed. Consequently the present appeal has been



filed before us.

6. Mr. Suresh C. Ladi, learned counsel for appellant-assessee submitted that the Tribunal had erred in law in rejecting the explanation offered for credit entries amounting to ₹ 1,98,000/-. He further submitted that the Tribunal had failed to appreciate the distinction between trade and cash credits. According to Mr. Ladi, since the appellant had filed invoices indicating receipt of advances, the onus of proof was upon the revenue to show that the invoices and transactions were not genuine.

7. Having heard Mr. Suresh C. Ladi, learned counsel for appellant and having perused the appeal papers, we are of the opinion that the issue raised in the present appeal is essentially a question of fact and the Tribunal has given cogent reasons for arriving at its conclusion. The relevant portion of the impugned order is reproduced hereinbelow:-

“16. It is not in dispute that all the money by way of advances has been credited by the assessee in cash in the books of account. The transaction of receipt of money is not made through banking channel. The assessee has not produced any iota of evidences as to the identity and existence of the aforesaid parties except producing certain invoices allegedly issued by them. The assessee has not produced any sort of evidences that these parties were carrying on a business at the address as given neither any details as to the premises occupying by them has been produced. The assessee has also not produced any documentary evidences as to any licence or permit obtained by these parties for carrying on the business in fruits and vegetables as commission agent and orders suppliers. From the invoices, it is seen that all these parties have been described therein as fruits and vegetables commission agent and orders suppliers. They are not retailers of fruits and vegetables selling the items at various corners of the road or streets. From the invoices, it is also seen that their telephone numbers are also mentioned but the assessee has not been able to produce any material or evidence to show that



whatever has been stated therein is true and correct state of affairs, and not merely a paper work. The claim of the assessee that these persons have given money in advance to the assessee with understanding that the vegetables would be supplied to them later on and even in subsequent assessment year, is totally against human probability as it is totally against normal transaction that a vegetable or fruit vendor would advance money to the assessee for supplying the vegetables after a gap of about four to nine months. The assessee has credited the amount in the month of March, 1996, but has claimed that the vegetables have been sold to them in the month of December, 1996, August, 1996 and that too in respect of the potato, onion, garlic and cabbage. It is hardly believable that to purchase cabbage in the month of August to December, 1996 a person would advance certain money to a company, incorporated under the Companies Act, in the month of March, 1996. It is not the case where businessman has given the advances to a small cultivator of village to produce his products to be produced from his agricultural land. But it is the case where fruit and vegetable commission agent i.e. the businessmen, are making advances to the present assessee, who is a company having the balance of Rs.11,08,746/- in its bank account as end of the year ended on 30.01.1996 and has also advanced loans and advances of Rs.5,87,693/- to other persons. The assessee has also shown sundry creditors of Rs.5,40,769/- though the total sale of agricultural products to the assessee is only Rs.2,36,992/- in the year ended on 30.01.1996. The assessee is also having no stock at the end of the year. The A.O. made enquiry about the existence and genuineness of the parties by asking the assessee several times to produce them but assessee has failed to produce these parties, and even when an last opportunity was given to the assessee fixing the date on 06.12.2006, none for the assessee appeared before the A.O. It was never the case of the assessee that he was not in a position to produce the parties and seeking any help of the A.O. to procure their attendance. Even otherwise, the assessee should have at least submitted certain minimum evidences so as to establish the identity and existence of the aforesaid parties in question specially when the amount claimed to have been received in advances has been accepted in cash. Therefore, the burden upon the assessee was even heavy to prove the fact that whether any transaction has actually been taken place in cash between the assessee and the alleged persons. In the light of the circumstances and the reasons given above, strong suspicion and adverse inferences are necessary to be drawn as to the genuineness of the transaction of sales covered by the invoices filed by the assessee. The assessee has not been able to explain the circumstances or the reasons as to why these persons had given advances to the assessee in the month of March, 1996



for getting the goods supplied after the period of four to 8 months, which does not satisfy the taste of human probability as well as the normal business transaction in this line of business. We are, thus, not convinced that the transactions of receiving the amount in cash from the intending purchasers of vegetables is above board. We also fail to understand under what circumstances and for what benefit the alleged fruit and vegetable commission agent would block substantial amount for four to eight months for getting supply of vegetables, which are otherwise easily available in the market. The assessee's contention that the A.O. has not made an enquiry in the course of fresh assessment proceedings is also not tenable inasmuch as the A.O. had given ample and sufficient opportunities to the assessee to produce evidences in support of the advances as well as the concerned persons, who had given advances to the assessee in cash. In the light of the totality of the discussions made above, we do not find any merit in the grounds raised by the assessee, which is liable to be rejected. We, therefore, uphold the order of the Ld. CIT(A) in confirming the addition of Rs.1,98,000/- on account of unexplained credits in the nature of advances credited in the assessee's books of account in the year under consideration. "

(emphasis supplied)

8. From the aforesaid, it is apparent that the appellant has not been able to prove either the identity or the existence of the parties who had advanced money to it. We are in agreement with the view taken by the Tribunal that the defence of trade credit set up by the appellant is against normal human conduct as no petty supplier/commission agent/fruit vendor would give money four to nine months in advance for supply of vegetables like cabbage.

9. It is also pertinent to mention that in the first round of litigation itself, which resulted in the remand order by the Tribunal dated 20th January, 2006, the Statutory Authority had pointed out that some of the parties from whom the appellant is alleged to have received advances, had denied the factum of any transaction with the appellant. Despite



the said finding in the first round of litigation and despite the rem order, we find that the appellant-assessee had neither filed any evidence with regard to existence and/or business dealings with the aforesaid parties nor it had filed any application before the statutory authority to confront the said third parties like M/s. Niku Bhai & Sons.

10. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

September 13, 2010

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