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

Decided on: 10th February, 2015

+ ITA 234/2014

CIT-XI

..... Appellant

Through Mr. N P Sahni, sr. standing counsel
with Mr. Nitin Gulati and Mr. Judy
James, Advs.

versus

ZOHRA EMPORIUM

..... Respondent

Through Mr. Piyush Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The revenue is aggrieved by an order dated 18.10.2013 of the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") in ITA No.3862/Del./2000. It urges three issues and states that they involve substantial questions of law, first, on the deletion of addition relatable to unrecorded purchases (₹83,25,768/-); rejection – of the sum of ₹16,85,743/-, which had been added originally by the Assessing Officer (AO) on account of the gross profit rate adopted by him); and on the deletion of addition of ₹87,429/-, claimed by the assessee as expenses towards embroidery charges. Briefly, the facts are that the assessee – for assessment year (AY) 1996-97 - filed a return declaring its total income as



₹1,19,370/-. The assessment was selected for scrutiny. The AO rejected the assessee's books of account by invoking Section 145(2) and brought to tax a sum of ₹113,24,060/-. In doing so, the amounts inter alia of ₹83,25,768/- due to unaccounted purchases, ₹20,93,098/- - due to unrecorded sales and ₹87,429/- due to embroidery charges were added. A similar exercise had been conducted for AY 1994-95 and the AO appears to have adopted the route of referring the assessee's accounts to special auditor under Section 142(2A). That exercise ran into technical problems on account of the fact that the extension of time for completing the special audit was not agreed to be extended by the assessee; but was done at the instance of the special auditor. The special auditor failed to understand that embroidered finished goods cannot, in any case, be traced out from opening stock inventory and purchases made. The ITAT therefore rejected the AO's determination based on the sub-audit. The AOs order in the present instance was carried in appeal to the CIT, who granted substantial relief in respect of the matters which are subject matter of the present appeal. However, relief was denied to the extent of ₹4,07,355/- on the second question i.e. on recorded sales, but substantial relief was granted for the balance amount. The assessee and the revenue appealed to the ITAT. By the impugned order, the revenue's appeal was rejected and the assessee was granted the relief that it sought.

2. It is urged by the revenue that the assessee had miserably failed to produce material to substantiate its claim with respect to opening and closing stock, and had only partially satisfied the AO on discount. The learned counsel stressed that in the course of the assessment proceedings, the stand of the assessee was equivocal, in the sense that at one stage, a



claim was made that relevant books or inventories existed, but later, it was urged that the books had been destroyed. Given the nature and volume of transactions, submitted counsel for the revenue, the AO was justified in rejecting books of account and taking the total volume of transactions on the one hand and applying the GP rate of 25.14% in the circumstance of the case.

3. Counsel for the assessee contended that the appreciation of facts by the lower authorities is neither perverse nor unreasonable as to call for interference by this Court under Section 260A of the Income Tax Act. He pointed out the relevant portions of the CIT's order and stated that the said authority not only followed the previous assessment year – AY 1994-95 but also adduced independent and additional reasons for the present year. The ITAT too considered all these grounds and rejected the revenue's contention.

4. As far as the first question is concerned i.e. deletion of the sum of Rs.83,25,768/-, we notice that the ITAT dealt with this issue in para 13 of the impugned order; it referred to the detailed findings of the CIT(Appeals) in para 13.5. The ITAT's findings are as follows :

“17.3. The assessing officer's suspicion starts qua the trading results of the assessee as mentioned above on a presumptive basis that the assessee's sales were nearly the opening stock. Inventory of closing stock filed by the assessee was verified by assessing officer on test check basis. Assessing officer then required the assessee to precisely identify the item mentioned in the closing stock and tally it with the purchase vouchers with exactly same description. The assessee in detail explained that it deals in selling furnished lehngas, sarees and other ladies apparels which are finished with zari, embroidery, bead work etc. The raw cloths like sarees, lehngas are dyed in



different colours as per requirement and then finished by a lengthy process. Therefore, the exact description of closing stock items with matching cannot be shown from the purchase vouchers. The purchase vouchers contain the description as plain sarees, dupattas or other textile and finishing material, which will be converted into finished product by way of dyeing, embroidery work by artisans, stones, zari etc. In our considered view the explanation of the assessee was based on practical facts of its business and the exact description of closing stock finished items could not be demonstrated by way of exact description in the purchase vouchers. This is simply so because assessee does not purchase finished items. This factual situation has been conversely assumed by the assessing officer to draw an adverse inference that unrecorded purchases are made by the assessee and unrecorded sales were also indulged in by assessee. The test check ratio is extrapolated and applied to entire purchases and sales of the year, resulting in these additions.

17.4. In our considered view, the exercise undertaken by assessing officer has been rightly held by the CIT(A) to be unjustified and based only on assumptions and presumptions. CIT(A) has referred to his order for AY 1994-95, though the assessment for AY 94-95 has been technically quashed by ITAT order, however the observations of the CIT(A) therein are on merits and tally with our views which are taken independently.”

5. The CIT(Appeals) and the ITAT – as is evident from the above extract took note of the reasoning and the materials. Both the authorities were guided by the peculiar nature of the transactions involved where the assessee purchased raw and semi-finished products and thereafter sent them for embroidery and other work before the finished products were made available to it for sale. No fresh ground has been made out in the present appeal to show why the ITAT’s reasoning, is unsustainable in law. The



ITAT confirmed the view of the CIT(Appeals) after an elaborate discussion, based on its own appreciation as is evident from the above extracts. In these circumstances, we are of the opinion that no substantial question of law arises on the first question urged.

6. With respect to the second issue i.e. a sum of Rs.20,93,098/- towards own recorded sales, the ITAT had this to say :

“17.6. Apropos the assessee's appeal - in our considered view assessee's books, as far as sales are concerned, do not call for any rejection of books. No iota of evidence has been brought on record to suggest any undisclosed sales and in the absence thereof merely because books of a/cs are rejected without justification, sales cannot be estimated. In our considered view the rejection of books of a/cs of the assessee is only on the basis of surmises and assumed discrepancies in the closing stock which has been reasonably explained by the assessee. No evidence what so ever indicating non recording of any purchase or sale in books of accounts is brought on record to substantiate A.Os theory.

17.7. It is trite law that undisclosed purchase and sale cannot be attributed to assessee without reliance on proper corroborative evidence. The GP disclosed by assessee having been accepted; no specific instances of deficiency of sale or purchase in a/c books; no proof of unrecorded purchases or sales having been brought on record, we see no justification for rejection of books of the assessee. In view thereof, in the peculiar facts and circumstances of this case we uphold the book results and G.P. disclosed by the, assessee being satisfactory no addition is called for. The rejection of books by lower authorities is only on surmises and not supported by any cogent or objective reasons. Consequently, we delete the additions in respect of rejection of books, estimation of sales/purchases and consequent estimation of GP in the result assessee's ground in this respect succeeds. Revenue's grounds in this respect fail.”



7. Like in the case of the first issue sought to be raised, no question of law arises. What the revenue urges is detailed re-appreciation of the facts – which is impermissible under Section 260A.

8. The same reasoning would apply in respect of third question involving the deletion of Rs.87,420/-. In the light of the above reasoning no substantial question of law arises.

9. The appeal is dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 10, 2015

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