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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 237/2024
PRINCIPAL COMMISSIONER OF INCOME TAX DELHI 10

..... Appellant

Through: Mr. Abhishek Maratha, Sr. SC
alongwith Ms. Nupur Sharma,
Mr. Parth Semwal and Mr.
Apoorv Agarwal, Advocates

Versus

M/S DHADDA INTERNATIONAL Respondent

Through: Mr. Ved Kumar Jain, Mr.
Nischay Kantoor and Ms.
Soniya Dodeja, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

% **29.04.2024**

CM APPL 24559/2024 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

ITA 237/2024 & CM APPL 24557/2024 (Delay of 75 days in filing), 24558/2024 (delay of 178 days in re-filing)

1. The Revenue impugns the judgment of the Income Tax Appellate Tribunal ['ITAT'] dated 03 February 2023 and proposes the following questions of law for our consideration:-

“(1) Whether on the facts and circumstances of the case, ITAT was justified in reducing the addition of Rs.4,94,11,387/- to Rs.9,88,228/- being 2% of the sales, made by the AO on account of bogus purchases from Benami, concerns, berated and managed by Bhawarlal Jain?

(2) Whether on the facts and circumstances of the case, ITAT was justified in reducing the addition of Rs.4,94,11,387/- to Rs.9,88,228/- being 2% of the sales without considering the fact that the assessee had not discharged its owners of proving the



genuineness of the purchases made from the concerns which were held by the department to be bogus concerns?

(3) Whether on the facts and circumstances of the case, ITAT was justified in reducing the addition of Rs.4,94,11,387/- to Rs.9,88,228/- being 2% of the sales, without appreciating the decisions of the apex court given in the case of M/s NK proteins Ltd. (84 Taxman.com 195(SC)) having similar facts?

(4) Whether on facts and circumstances of the case the Hon'ble ITAT has erred in law in reducing the addition of Rs.4,94,11,387/- to Rs.9,88,228/- being 2% of the sales, without appreciating the facts of the case properly?

(5) Whether the impugned order passed by ITAT is perverse both on facts and in law?"

2. As we go through the orders passed by the authorities below as well as the view expressed by the ITAT we find that the appeal fails to give rise to any substantial question of law. We take note of the following observations which appear in the order which is impugned before us:

“15. In this background of the case before us, admittedly assessee in this case has engaged in bogus purchase entries while sales have not been doubted. When sales are not doubted purchases alone cannot be disallowed at 100%. Making purchases through grey market gives the assessee benefits at the expense of exchequer. The assessee is engaged in the business of diamond trading. As per the report of task force of diamond sector constituted by Ministry of Commerce & Industry, after considering capital BAP (Benign Assessment Procedure), net profit was prevalent at 1% to 3% in case of trading of diamonds and 1.5% to 4% for those who engaged in manufacturing of diamonds. In a similar case reported in 144 taxman.com 184 (Mumbai-ITAT) in case of Uppal Diamonds vs. ACIT, wherein assessee was engaged both in trading and manufacturing of diamonds and the allegation was sourcing from Bhanwar Lal Jain, the ITAT held that 3% estimate of profit percentage by the CIT (A) was correct estimate, hence, ITAT upheld the order of Id. CIT (A) and dismissed the assessee's appeal.

16. As per the facts of the present case, it is clear that this is a case of trading in diamonds and sales have not been doubted. Moreover, AO has made no enquiry whatsoever. The prevalent net profit as noted above was at 1% to 3%. The net profit declared by the



assessee as per tax audit report is 1.24% for both the years. Although the net profit declared falls within the range recommended, in our considered opinion, the interest of justice would be served if the rate of net profit is taken at 2% of sales, Hence bringing to tax, difference between 1.24% net profit shown and the 2% net profit recommended by the above Task Force will, in our considered opinion, serve the ends of justice. We order accordingly. The above proposition is also in consonance with the exposition in the case of Bhalanath Poly Fab (P.) Ltd. (supra). The head note in this regard may be referred as under:-

"Section 69 of the Income-tax Act, 1961 - Undisclosed investments [Bogus purchases] - Assessment year 2005-06 - Assessee was engaged in business of trading in finished fabrics - Assessing Officer found that concerned parties from whom material was purchased were not found at their addresses and held that purchases made by assessee were bogus - Accordingly, he made disallowance - Tribunal found that though purchases were made from bogus parties, but purchases themselves were not bogus as entire quantity of stock was sold by assessee and held that only profit margin embedded in such purchases would be subjected to tax and not entire purchases - Whether no illegality was committed by Tribunal - Held, yes [Para 6] [In favour of assessee]"

3. It is in view of the aforesaid that the ITAT has taken a plausible view and pegged the rate of net profit at 2% of sales.
4. In view of the aforesaid, no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 29, 2024

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