



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

% Judgment Delivered on: 28.04.2010

+ **ITA 445/2010**

**COMMISSIONER OF INCOME TAX-VIII**

... Appellant

- versus -

**M/S PARADISE HOLIDAYS**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Prem Lata Bansal

For the Respondent :

**CORAM:-**

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

**HON'BLE MR JUSTICE V.K. JAIN**

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in Digest?                    | Yes |

**V.K. JAIN, J.(ORAL)**

1. This appeal is directed against the order of the Income Tax Appellate Tribunal dated 23.12.2008, whereby it dismissed the appeal, being ITA No.5028/Del/2007, filed by the appellant against the order passed by Commissioner of Income Tax(Appeals), in respect of assessment of the respondent, for the assessment year 2004-2005.

2. The assessee firm, which is engaged in the business of travel and tourism, as a tour operator arranging inland tour



of foreign tourists visiting India, filed its return declaring taxable income of Rs.42,53,536/- for the assessment year 2004-2005. The net profit shown in the return was at 7.93% of the receipts. Since the Assessing Officer felt that the net profit reported by the assessee was on lower side, he picked up the expenses relating to seven tours organized by the respondent. On a consideration of the accounts furnished by the assessee, the Assessing Officer felt that the assessee could not demonstrate any pattern as to uniformity of rates etc. and the expenses debited in the tour Ledger did not reconcile with the tour itinerary. He, therefore, rejected the book results in terms of Section 145(3) of the Income Tax Act, 1961 and assessed the income @ 12% of gross foreign receipts. Net rate of 10% was applied by the Assessing Officer, to determine the income from Indian business receipts.

3. In the appeal filed by the assessee, Commissioner of Income Tax(Appeals) noted that not only the notices issued under Sections 142(1), 143(2) were complied with by the assessee, all the Books of Account and vouchers etc. were also produced before the Assessing Officer, for scrutiny by him. He also found that for all intents and purposes the assessment was complete under Section 143(3), though the Assessing



Officer purported to act under Section 144 of the Act. It was further noted by CIT(A) that the assessee had not suppressed any part of receipts and all the receipts were properly vouched. He also found that the receipts as well as the expenses of each tour were separately accounted for in the ledger account, and even gross profit arising in respect of each tour was properly ascertainable. He felt that the order passed by the Assessing Officer was based on presumptions and conjectures, without bringing any positive evidence on record. He, therefore, directed the Assessing Officer to accept the income returned by the appellant, after allowing deduction under Section 80 HHD.

4. The Income Tax Appellate Tribunal noted that though one reason assigned by the Assessing Officer for rejecting the Books of Account was that the net profit disclosed by the assessee was on the lower side considering the line of business in which it was engaged, no specific reasons of higher profit having been declared by any similarly situated assessee had not been found by the Assessing Officer. The Tribunal accepted the contention of the assessee that considering the nature of business of the assessee, a formal agreement with the foreign principal was not imperative. As regards reconciliation of the tour expenses with the tour itinerary, it



was held that the itinerary was tentative for the purpose of fixing the charges but the same could be changed depending upon various factors, including the number of days of the entire tour, period of stay in a particular place, the quality of hotel services provided to the tourists and frequent travel of tourists from one place to another. The Tribunal felt that the exact bill could be raised only after execution of the tour programme and, therefore, could not have been compared with the agreement or contract note with the foreign principal in order to ascertain the correct income of the assessee.

5. Section 145(3) of Act provides for assessment in the manner prescribed in Section 144 of the Act where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or where either the method of accounting provided in sub-Section (1) or the accounting standards as notified under sub-Section (2) having been regularly followed by the assessee. It is not the case of the Revenue that the assessee had not followed either cash or mercantile system of accounting. It is also not the case of the Revenue that the Central Government had notified any particular accounting standards to be followed by tour operators. Hence, the second part of sub-Section (3) of



Section 145 does not apply to this case.

6. The Assessing Officer has not pointed out any specific defect or discrepancy in the Account Books maintained by the assessee. Admittedly, the assessee had been maintaining regular Books of Accounts, which were duly audited by an independent Chartered Accountant. As noted by CIT(A), the financial results were fully supported by the assessee with vouchers and the Books of Account were complete and correct in all respects. The accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the Books of Accounts maintained by the assessee were incorrect or incomplete or method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom.

7. The question as to whether the accounts produced by the assessee were defective/incomplete or not is a question of fact. The Commissioner of Income Tax(Appeals) as well as Income Tax Appellate Tribunal have found that the accounts maintained by the respondent were neither defective nor



incomplete. Even the Assessing Officer has not found any fault as such with the system of accounting being followed by the assessee. The Tribunal which is the final fact finding authority has held that considering the nature of the business of the assessee, it was not obligatory to enter into a formal agreement with the foreign principal. Hence, non-production of formal agreements with the foreign principals would not render the accounts of the assessee incomplete and would not give justification to the Assessing Officer to reject them under Section 145(3) of the Act. Similarly, the explanation given by the assessee for the tour expenses not reconciling with tour itinerary having been accepted, both by Commissioner of Income Tax(Appeals) as well as by the Tribunal, the accounts of the assessee cannot be said to be defective on this ground and, therefore, could not have been rejected. If any particular expense claimed by the assessee remained unverified, the Assessing Officer could have disallowed that particular expense. But, that by itself cannot be a ground for rejection of accounts as a whole under Section 145(3) of the Act. The finding of fact recorded by the ITAT has not been shown to be perverse, and hence cannot be interfered with by this Court.

8. For the reasons given in the preceding paragraphs,



no substantial question of law arises for our consideration.

The appeal is, accordingly, dismissed.

**(V.K. JAIN)**  
**JUDGE**

**(BADAR DURREZ AHMED)**  
**JUDGE**

**APRIL 28, 2010**  
**RS/**