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

+ **ITA 926/2007**

% **Date of Decision : 15th December, 2011**

COMMISSIONER OF INCOME TAX Appellant

Through Mr. N.P. Sahni, Advocate

versus

ALANKAR RADIO EQUIPMENTS Respondent

Through Mr. Satyen Sethi and Mr. Arta
Trana Panda, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

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

SANJIV KHANNA,J: (ORAL)

The present appeal under Section 260A of the Income Tax Act, 1961 (The Act in short) impugns the order dated 10.08.2006 passed by the Income Tax Appellate Tribunal ('The Tribunal' for short) in the case of Alankar Radio Equipments. The order pertains to the Block



Assessment period 01.04.1988 to 24.09.1998.

2. The respondent is a partnership firm of father and son and is primarily engaged in carrying on business of sale and purchase of audio cassettes belonging to Super Cassettes Industries Ltd. in old Lajpat Rai Market. Search under Section 132 of the Act were conducted on the respondent on 24.09.1998. Immediately after the search, the respondent had surrendered undisclosed income of Rs.10 Lakhs. However, the respondent submits that aforesaid surrender was made to get the seized goods release.

3. After statutory notice under Section 158BC of the Act was served, block assessment return was filed by the respondent on 14.6.2000 declaring undisclosed income of Rs.13,26,380/-. The details of the said undisclosed income has been mentioned in the assessment order and clearly reflects that the respondent had declared undisclosed sales made by them during the assessment year 1996-1997 onwards and had computed the gross profit on the said sale at 1.86% as per seized document A-81, A-85, A-86 etc. In addition, the respondent had also declared undisclosed sale of Rs.11,73,128/- in respect of decks as per A-



80 @ 9.9% for the assessment year 1996-1997.

4. During the course of the assessment proceedings on 11.10.2000, Dipak Sethi partner of the respondent had appeared along with his Chartered Accountant/authorized representative and had furnished the details of the purchase price and sale price of the audio cassettes of different types, which were prevalent in the assessment year 1996-1997. He had further stated that they used to purchase audio recorded cassettes from Super Cassettes Industries Limited at almost Rs.5.50 more in respect of recorded/declared prices and Rs. 50 paise to Re. 1 more in the case of blank cassettes.

5. The Assessing Officer made four specific additions. First addition of Rs.15,92,601/- was made on account of undisclosed investment made for purchase of audio cassettes, which were recorded in the books of accounts during the period 1988-1989 till 1998-1999. The second addition of Rs.7,53,953/- was on account of undisclosed investment made for purchase of audio cassettes which were not recorded in the books of accounts. The third addition of Rs.11,10,134/- was by increasing the GP rate to 2.5% on undisclosed sales instead of 1.86% as declared by the



respondent in the block assessment return and by disallowing Rs.4,65,481/- towards expenditure. The fourth addition of Rs.2,46,047/- was on account of undisclosed stock found on the date of the search.

6. The CIT (A) deleted the first addition of Rs.15,92,601/- and reduce the second addition to Rs.3,76,976/-. The GP rate was reduced from 2.5% to 2% and expenditure claimed of Rs.4,65,481/- was allowed. The last addition of undisclosed closing stock was deleted.

7. The respondent accepted the aforesaid order passed by the CIT (A) but the Revenue moved the Tribunal. By the impugned order Tribunal has dismissed the appeal with regard to the first contention, the GP rate as well as closing stock. However, the expenditure of R.4,65,481/- which had been claimed by the respondent for earning of undisclosed income of Rs.13,69,394/-, was reduced to Rs.2 lakhs. Thus addition to the extent of Rs.2,65,481/- on expenditure was upheld.

8. Accordingly, ultimately additions made in the case of the respondent are as under:-

1. Rs.3,76,976/- on account of investment made for purchase of undisclosed sales.



2. Rs. 2,20,000/- (approx.) as addition made on account of GP rate of 2% on the undisclosed sales.

3. Rs.2,65,481/- on account of expenses on undisclosed sales.

9. After hearing counsel for the parties, we frame the following substantial question of law:-

(i) Whether the order passed by the Tribunal dated 10.08.2006 is perverse and contrary to material in evidence on record?

10. Learned counsel for the appellant had rightly contended that the Tribunal had laid undue emphasis and stress on the retracted statement made by the respondent vide letter dated 12.2.2001, which was filed during the course of assessment proceedings in the case of M/s Super Cassettes Industry Limited. As noted above partner of the respondent Dipak Sethi had appeared in the course of proceedings on 11.10.2000 and had made a statement before the Assessing officer in the presence of his Chartered Accountant/Authorised representative. For the purpose of present appeal, we are treating and accepting that the statement made on 11.10.2000 as correct and can be relied. Whether or not the said retraction was justified or merits consideration will be examined, if



required, in the case of Super Cassettes Industries Limited.

11. As notice in the present case the assessee had surrendered Rs.13,26,380/- as undisclosed income for the block assessment period in the return filed pursuant to the notice issued under Section 158BC. This surrender is important and significant. Addition of Rs.3,76,000/-, Rs.2,65,481/- and Rs. 2,22,000/- (approx.) as noted above have been sustained by the Tribunal. The last addition which has been made on enhancement of GP rate of 1.86% to 2% is on the profit earned by the firm on the undisclosed sales of cassettes.

12. The Assessing Officer while making addition of Rs.15,92,600/- had computed the disclosed sales made in the assessment years 1998-1999 onwards and calculated undisclosed investment required in each assessment year. Undisclosed investment as computed was added. The total comes to the figure of Rs.15,92,601/-.

13. It is noticeable that the Assessing Officer did not take into account the fact that undisclosed investment made in one year is not distinct or separate and can be accounted/discounted for in the next years. It is noticeable that the respondent was doing business in the wholesale market



and the trade turnover was extremely high. The purchases and sales were in quick succession. Further it is noticed that the respondent had disclosed income from undisclosed trade and this fact should have been taken into consideration for computing and calculating undisclosed investment. The Assessing Officer had made addition of Rs.7,53,953/- on account of investment made in purchase of undisclosed stock. For the assessment year 1996-97 the Assessing Officer observed that the assessee had purchased undisclosed stock of more than Rs.2.75 crores but the addition as noticed above was of Rs.7,53,953/- only. For the same year the assessee as per regular books of accounts had made purchase of Rs.30,83,342/- but the Assessing Officer had taken undisclosed investment for making regularly recorded purchases at Rs.5,16,460/-. The difference is apparent. This discrepancy in the order of Assessing Officer cannot be explained. Further the Assessing Officer has accepted the stand of the respondent that the cassettes were supplied on credit and sales were made in cash, to reduce the element of investment.

14. With regard to the GP rate, the Assessing Officer in the assessment order had recorded that comparable GP in the similar trades was Rs.2.5%.



It is noticeable that no details or particular other dealer were, stated. How the Assessing Officer got this figure is difficult to fathom. It is quite clear that respondent was not in a position to make heavy investments as the GP rate was very low.

15. With regard to the closing stock, the CIT (A) and the Tribunal have held in view of the addition already made, no further addition of Rs.2,46,047/- was required.

16. Keeping in view the aforesaid facts we are not inclined to accept the plea of the appellant and interfere with the order passed by the Tribunal. Sufficient and adequate additions have been made. The respondent had also cooperated by disclosing undeclared income of Rs.13,36,380/-, which is more than Rs.10,00,000/- declared as undisclosed income immediately after the search. The question of law is accordingly answered. The appeal is dismissed. No costs.

SANJIV KHANNA, J

R.V.EASWAR, J

DECEMBER 15, 2011

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