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

+ ITA 97/2010

THE COMMISSIONER OF
INCOME TAX-III

..... Appellant
Through: Ms. Rashmi Chopra with
Mr. Chandramani Bhardwaj,
Advocate

versus

SAROJ METAL WORK PVT. LTD. Respondent

Through: None

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Date of Decision: 26th July, 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?No
2. To be referred to the Reporter or not?No
3. Whether the judgment should be reported in the Digest?No

J U D G M E N T

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 17th July, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 595/Del/2009, for the Assessment Year 2001-2002.

2. Briefly stated, the facts of the present case are that the respondent-assessee at the relevant time was a manufacturer of LPG cylinders. It used to supply the said cylinders to three companies,



namely, BPCL, HPCL and IOC.

3. In pursuance to the order passed by the Commissioner of Income Tax under Section 263 of Act, 1961, a fresh assessment order under Section 143(3) of Act, 1961 was passed by the Assessing Officer on 18th February, 2005. By the said order, Assessing Officer made an addition of Rs. 1,80,48,856/- on account of inflation of purchases. However, on a remand order passed by the ITAT, Assessing Officer calculated the excess consumption of steel at Rs. 1,07,67,750/-. But Commissioner of Income Tax (Appeals) partly allowed assessee's appeal and held the value of excess consumption at Rs. 95,03,697/-. On an appeal being filed, ITAT allowed the assessee's appeal and deleted the disallowance of Rs.95,03,697/-.

4. Ms. Rashmi Chopra, learned counsel for Revenue submitted that ITAT had erred in law in deleting the disallowance of Rs. 95,03,697/- on account of inflation in the purchase of raw material. She contended that ITAT had not appreciated the evidence on record.

5. ITAT in the impugned order has dealt with disallowance on account of inflation of purchase as under :-

“11. On detailed analysis of the facts and circumstanced we find two sets of evidence. In the first set which has been relied upon the AO is the letter of Hindustan Petroleum Corporation Ltd. dated 4th January, 2005 envisaging the average weight of empty cylinder having gross capacity of 14.2 KG gas is approximately 15.8 KG. This is the only evidence possessed by the AO for disbelieving the claim of the assessee. The other reason assigned by the AO is that wastage in manufacture of foot ring, packing strip and stay plate claimed by the assessee at 32.5%



cannot be accepted. According to him this wastage should be 5 to 10%. What is the basis for his opinion is not supported by any documentary evidence or any expert opinion. He simply observed that steel would be cut into straight line and therefore wastage cannot be more than 5 to 10%. Contrary to this evidence the evidence placed by the assessee on record is the purchase order issued by the oil companies along with the drawing requiring the assessee to manufacture the cylinder on the specification of the drawings which is part of the purchase order. In the drawing tare weight of the cylinder has been specified to 16.7 KG. The AO as well as Ld. DR sought to dispute this specification by an argument that it is just an example. But we do not find any merit in that contention because in the drawing it is not only specified on the body of the cylinder but also on the right hand corner of the document it is again specified 16.7 KG. Even for the sake of argument we assume that it was an example then why it was 16.7 Kg why not any other alphabet or figure. The drawing in itself explained the specification of every part of the cylinder. The next evidence produced by the assessee is the terms and condition of the purchase order wherein oil companies have specified the quality of steel required to be used by the assessee. They have specified the steel required to be produced by the assessee from particular companies. This steel would give generation 55 number of cylinders on consumption of 1 MT. The assessee has placed on record copy of a certificate from the Dy. Manager Bharat Petroleum Corporation Ltd. (page 14 Paper Book) certified that the yield of 55 numbers LPG cylinder per metric ton mentioned in the terms and condition of the purchase order/agreement is related to the body steel i.e. the central two halves only. For other parts the additional steel would be required. The next evidence produced by the assessee is the opinion of Chartered Engineer who has opined that according to the BIL Standard the tare weight of empty cylinder having 14.2 KG of gas capacity is 15.8 to 17 KG. An another assessee who was engaged in manufacture of cylinder was showing generation of scrap at 26.65%.



12. *If we weigh these two sets of evidence then in our opinion scale would tilt in favour of the assessee because yield would always depend upon many factor in manufacturing process, quality of workmanship, control of management etc. We have to bear in mind that when an explanation or defence of an assessee based on number of facts supported by evidence and circumstances, required consideration, whether the explanation is sound or not must be determined not by considering the weight to be objected to each single fact in isolation but by assessing the cumulative effect of all the facts in their setting as a whole. In the present case, Ld. Revenue authorities below fail to point out any specific defects in the books of accounts maintained by the assessee the scrap generation shown by the assessee is lower than the other comparative case. Its total wastage is 26.20% whereas in the comparable case it was 26.65%. The Ld. CIT(A) did not take cognizance of the excise record only on the ground that certified copy of the audit report was not submitted. The assessee claimed that it is maintaining RG register and excise department did not find any defects in its record. The AO ought to have called for the information from the excise department if any grievance was there. The alleged information collected from the Hindustan Petroleum Corporation Ltd. vide letter dated 4th January, 2005 in our opinion ought not to be preferred over the actual agreement taken place the assessee and the three oil companies unless specific defect in those agreements are pointed out. If assessee is pleading that it has manufactured cylinders having 16.7 KG of weight specified in drawings attached with agreement then the AO has to bring cogent evidence on record for dispelling the averments of assessee. This letter only specifies that average weight is approximately 15.8 KG. This evidence is not sufficient, for making the addition. Thus in our opinion no case is made out for addition on account of inflation in the purchase price. Therefore we allow the appeal of assessee and delete the disallowance.*

(emphasis supplied)



6. We are of the opinion that the issue raised in the present matter is essentially a question of fact which does not give rise to any substantial question of law. In fact, ITAT has given cogent reasons for arriving at its conclusion and the said reasoning is neither perverse nor contrary to record.

7. Consequently, present appeal being devoid of merit is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 26, 2010

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