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

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+ ITA 103/2010

COMMISSIONER OF INCOME TAX

Through:

..... Appellant

Ms. Sonia Mathur,

Advocate

versus

JACKSON HOUSE

Through:

..... Respondent

Mr. Ajay Vohra with Ms. Kavita

Jha and Mr. Somnath Shukla,

Advocates

AND

19.

+ ITA 544/2010

COMMISSIONER OF INCOME TAX

Through:

..... Appellant

Ms. Sonia Mathur,

Advocate

versus

JACKSON HOUSE

Through:

..... Respondent

Mr. Ajay Vohra with Ms. Kavita

Jha and Mr. Somnath Shukla,

Advocates

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Date of Decision: 11th August, 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.

MANMOHAN, J

1. The present two appeals have been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act, 1961”) challenging the orders dated 8th May, 2009 passed by the Income Tax Appellate Tribunal (in short “ITAT”) in ITA Nos. 3246/Del/2007 and 4807/Del/2007, for the Assessment Year 2004-2005. Since both the appeals pertain to the same respondent-assessee for the same assessment year, they are being disposed of by a common order. It is pertinent to mention that while ITA No. 103/2009 is the quantum appeal, ITA No. 544/2009 is the penalty appeal.

2. Briefly stated the relevant facts are that the respondent-assessee is a partnership firm engaged in the business of manufacture and export of readymade garments. On 11th March, 2004, a survey operation under Section 133A was conducted at the business premises of the respondent-assessee and excess stock worth Rs. 68,69,090/- was found on physical verification which was accepted by the respondent-assessee. For the Assessment Year under consideration, the respondent-assessee filed a return of income tax of Rs. 55,75,930/-. However, the case of respondent-assessee was selected for scrutiny and the Assessing Officer (in short “AO”) determined the respondent-assessee’s taxable income at Rs. 1,26,75,040/- by making various additions/disallowances. Upon the matter being carried forward in appeals, the controversy ultimately reached the ITAT which, by way of impugned order, partly allowed the respondent-assessee’s appeal by deleting the followings:

- i) Addition of Rs.5,14,955/- in the value of closing stock being value of purchases made in post survey period.
- ii) Rs.20,00,000/- added on account of stock lying with the fabricators.
- iii) Rs.18,10,915/- being direct manufacturing expenses debited in the trading account while determining value of the closing stock.
- iv) Rs.25,04,914/- added on account of low gross profit.

3. Ms. Sonia Mathur, learned counsel for the Revenue submitted that ITAT was not justified in deleting the addition made by the A.O. and CIT(A) on account of unexplained investment in excess stock and suppression of gross profit. She further submitted that ITAT had deleted the addition purely on the basis of surmises and the assessee's contention were totally unsupported by any material on record.

4. However, upon a perusal of the impugned order, we are of the opinion that no substantial question of law arises in the present proceedings inasmuch as ITAT has given cogent reasons for arriving at its factual conclusions. In fact, the relevant portion of the impugned order is reproduced hereinbelow:-

“11. We have considered the rival submissions. We find that the stock inventory runs into 59 different items. While at the time of survey stock inventory was prepared by the survey official, the statement of one of the partners was also recorded during the course of survey operation conducted on 11.3.2004. The work in progress specifically includes 5 items like blouse, dress, skirt, baby doll, blouse sets totaling into 8000 pieces and valuing at Rs. 20 lacs. The inventory was taken by the survey officials only in the business premises of

the assessee. Therefore, it will be incorrect to hold that the work in progress which was admitted in quantity of 8000 pieces and valuing at Rs. 20 lacs will not be added while preparing the value of the stock found during survey. If the learned CIT(A) had any other reason, he could very well question the survey officials in this regard. In spite of the request by the assessee and filing affidavit in this regard, the learned CIT(A) merely presumed that since the assessee had admitted of having some stock at fabricator's place, the same is not included in the final stock inventory prepared by the survey team. While conducting survey, the survey team is expected to take all reasonable steps to find out the unexplained stock, cash etc. found and in including the same. The survey team is expected to have worked in the interest of revenue and no doubt can be raised against their capacity in conducting the survey. Since the purpose of survey itself is to find out unexplained cash, stock etc., it will be unfair to hold that the survey team did not acted in the interest of revenue and left out the value of work-in-progress lying at the fabricator's place in valuing the stock during survey. Since the number of pieces as also amount exactly tallies with the answer given by the partner and since the same is also forming part of the stock inventory prepared by the survey team, it cannot be said that the stock at fabricator's place were over and above the stock found at the premises of the assessee. We, therefore, delete the addition of Rs. 20 lacs made in this regard.

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14. *We have considered the rival submissions. The value of closing stock found on the date of survey as per inventory prepared by survey official was Rs. 95,08,460/-. The learned CIT(A) has noted at page 8 of his order the trading account drawn on the date of survey. As per the said trading account, the purchases were to the extent of Rs. 1,72,09,384/- and packing expenses were of Rs. 4,86,636/-. In the audited trading account as on 31.3.2004 the purchases are mentioned at Rs. 1,77,24,339/- but no separate packing expenses are claimed. Thus the contention of the learned counsel for the assessee is found to be correct. The additional purchase after the date of survey is only of Rs. 28,319/- but the stock declared by the assessee is more by 61- as compared to stock inventory prepared by survey team. The differ is only a sum of Rs. 7,963/- which is too negligible compared to the value of closing stock declared by the assessee. There is no dispute about the value of declared stock which is valued at cost on market price whichever is lower. We, therefore, delete the addition Rs. 5,14,4,955/- as made by the learned CIT(A).*

The learned CIT(A) also made an addition of Rs.

18,10,915/- being the increase in the value of closing stock due to direct expenditure incurred after the date of survey but alleged as not forming part of valuation of closing stock. Before the learned CIT(A) it was explained that the inventory was prepared as per the value of such stock. However, some of the bills from fabricators or consumables were not received like dyeing' and acid wash expenses, finishing expenses, embroidery expenses fabrication expenses etc. In respect of some of the goods even the sales had already taken place and therefore, the expenses cannot be attributed to the stock remaining in the inventory. These facts were explained by identifying each bill and in relation to each item manufactured, for which such expenses were incurred. Even the sales invoice number for the items sold have been mentioned. The learned CIT(A) has merely ignored the contention. Therefore, the addition is to be deleted.

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19. We have considered the rival submission. The learned CIT(A) has compared the gross profit as per audited books of account with the G.P. as per trading account prepared on the date of survey. However, the crucial thing that he has missed is on the date of survey, though the assessee has incurred certain expenses, the same were not recorded due to non-receipt of such bills. The value of such bills was of Rs. 25 lac. Therefore, if such expenses are reduced from the gross profit as per trading account prepared on the date of survey, the same will be as declared by the assessee for the entire year. Except the reduction in the rate of G.P., no. case is made out in rejection of books of account. In our opinion, the same is not in accordance with law. Under section 145(3) the Assessing Officer may make a best judgment assessment by rejecting the book results only where the method of accounting or the accounting standard has not been regularly followed or where the Assessing Officer is not satisfied about the correctness or completeness of the account. In the original assessment the Assessing Officer has not made any allegation that the books of account are either incorrect or incomplete. On the contrary the same are duly audited as required under section 44AB of the Act. The duty draw back will always be part of trading results. If such amount is included while computing gross profit, the results declared by the assessee are better. In such circumstances, no addition could have been made by rejecting the book results. No specific defect has been pointed out in the books of account i.e. whether the purchases are inflated or sales are not recorded. In such circumstances, no addition could 'have been made by estimating the gross profit. We, therefore, delete the addition of Rs. 25,04,914/-."

5. In our opinion, the factual findings of the final fact finding authority are neither perverse nor contrary to record. Accordingly, we find that no substantial question of law arises in the quantum appeal. Since the quantum appeal is, bereft of merit, the question of imposing any penalty does not arise. Accordingly, present appeals are dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 11, 2010

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