FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

TAX APPEAL NO.1 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.A.P.Kolte, advocate holding for Mr.J.R.Shah, advocate for the appellant.
Mr.Alok Sharma, Senior Standing Counsel for Respondent.

CORAM : S.V.GANGAPURWALA &
A.I.S.CHEEMA,JJ.
Date : 18.04.2015.

PER COURT :

1. Heard.

2. Mr.Kolte, learned counsel holding for Mr.J.R.Shah, advocate for the appellant submits that at the time of admission of appeal, this Court has framed substantial questions of law. Learned counsel submits that the Tribunal was not justified that the rate of profit of 12.8% is a reasonable rate when such a rate is not prescribed in any of the provisions of the Income Tax Act or Rules. When such a rate does not have a statutory force, the authorities ought not to have applied such a rate, however, should have accepted the rate of 20% as submitted by the appellant. The learned counsel relies on the judgment of the Division Bench of

Madhya Pradesh High Court in a case of **“Commissioner of Income Tax Vs. Hindustan Mills & Electrical Stores”** reported in **(1997) 140 CTR 0581.**

3. We have considered the submissions canvassed by the learned counsel for the appellant. The Tribunal while dismissing the appeal filed by the appellant in para 6 of its judgment has observed as under :

“The CIT(A) adopted the rate of gross profit at 12.80% as against 11.16% adopted by the AO and worked out the value of the excess stock at Rs.1,91,141/-. We do not see any rationale for adopting the rate of gross profit at 20% for part of the accounting year when the average rate for the whole year was in the vicinity of 12%. Manifestly the only reason for the assessee to adopt such a high rate of GP was that it brought the value of the excess stock to Nil. However, there is no material on record to support such a claim. In our considered opinion, the CIT(A) adopted a reasonable rate of gross profit of 12.80% and his decision does not call for any interference. We accordingly uphold his order and reject the grounds No.1 and 2.”

4. It has been found by the Tribunal that there is no rationale for adopting gross profit at 20% for part of the accounting year when the average for the whole year was in the vicinity of 12%. The only reason for the assessee to adopt such a high rate of gross

profit was that it brought value of the excess stock to Nil. There is no material on record to support such a claim. Both the authorities on considering the average gross profit for the whole accounting year has arrived at a reasonable conclusion. No error appears to have been committed by them in the said concurrent findings of facts.

5. In light of the above, the substantial questions of law are answered accordingly. The Tax Appeal is disposed of. No costs.

(A.I.S.CHEEMA,J.) **(S.V.GANGAPURWALA,J.)**

Dt..18.04.2015.
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