IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO.50 OF 2015
THE COMMISSIONER OF INCOME TAX, NAGPUR-3
V/S
M/S TAORI MARKETING, NAGPUR

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

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Shri S.N. Bhattad, Counsel for the Appellant.
Shri L.S. Dewani, Counsel for the Respondent.

CORAM : B.P. DHARMADHIKARI & P.N. DESHMUKH, JJ.
DATED : OCTOBER 19, 2015.

Heard learned counsel for the respective parties.

On 21.9.2015, we have heard the matter and passed the following order, thus :

> *"Heard for some time. Before proceeding further we grant the appellant an opportunity to explain how it has understood reply given by Addressee on question no. 7 i.e. details of amount payable by M/s Taori Marketing to Videocon Industries as on 26.10.2007 and details of amount received from the Assessee by it in respect of BBND till 26.10.2007.*
>
> *List this matter for further consideration on 5th October, 2015."*

In response to that order, additional affidavit has been filed by the Inspector of Income Tax Shri Deepak Marotrao Vaidya vide Stamp No.11440 of 2015.

According to Shri S.N. Bhattad, learned counsel for the appellant, determination of amount of income at Rs.4,99,81,800/- on account of stock not in existence but shown as such by the respondent is supported by the fact that in Survey on 26.10.2007 physical stock worth Rs.3.33 Crores only could be located while the contention that total stocks were worth Rs.8.33 Crores could not verified.

The negative profits and failure to support these stocks ultimately resulted in rejection of books of account. Opportunity was given to assessee as also to supplier / dealer M/s. Videocon Industries at Wadi but they could not produce anything to show investment in stock worth Rs.8.33 Crores. In this situation, common logic that a trader would not sell his commodities at negative price has been applied.

Shri L.S. Dewani, learned counsel for the respondent, on the other hand relies on order passed by the ITAT. He submits that there is nothing on record to doubt books of account maintained by assessee. Over flooding of

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market with electronic items necessitate sell at lower price and this is supported by the documents. He further contends that unfortunately there was fire in establishment of M/s. Videocon Industries at Wadi shortly after date of Survey which destroyed not only stocks but also their records. The said establishment, therefore, could not produce entire relevant material but then still backed the case of assessee. He points out that accounts of assessee are duly audited and in this situation mere negative growth cannot be a reason to doubt the same. He points out that no fabrication as such could be detected by the Authorities.

With the assistance of respective learned counsel for the parties we have perused the papers, Survey on 26.10.2007, the availability of accounts and other documents (duly audited) with assessee showing investment in stocks worth Rs.8.33 Crores, is not in dispute. Physically, only stocks worth Rs.3.33 Crores could be verified and located in the establishment of assessee at Nagpur. His submission that remaining stocks were with M/s. Videocon Industries at Wadi also finds mention. He has stated that stocks were billed but not delivered (BBND).

The said position is also accepted by M/s. Videocon Industries. In fact, in additional affidavit it is pointed out that learned counsel for assessee had furnished the letter dated 30.12.2010 in which it furnished xerox copies of letter and list of BBND and this was as per BBND list provided by M/s. Videocon Industries earlier.

The fact of fire at establishment of M/s. Videocon Industries is not in dispute.

In this situation, the fact of fire is not in dispute and list of BBND appliance / commodities supplied by M/s. Videocon Industries and assessee had valid documents duly audited supporting assertion that assessee had invested Rs.8.33 Crores in stocks. Department has not discredited theory of over flooding of market by electronic goods forcing assessee to sell at loss. As such, there was no justification for rejecting his books of account.

The ITAT has rightly applied its mind and accepted the books of account. We, therefore, find that no substantial question of law arises in this appeal. The same is rejected.

JUDGE **JUDGE**

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