**THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

**AND**

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**I.T.T.A. No. 25 of 2015**

**ORDER:-** (per Hon'ble Sri Justice G. Chandraiah)

This appeal at the instance of Revenue, arises from the order of the Tribunal dated 30.10.2009 in ITA No.879/Hyd/2008 for the assessment year 2004-05, raising the following substantial questions of law:

> **"(A) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in cancelling the order of revision passed by the Commissioner of Income Tax under Section 263 of Income Tax Act?**
>
> **(B) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in accepting the gross profit rate declared by the assessee by comparing the profit disclosed with the assessment year 2001-02 instead of comparing with that of immediately preceding assessment year, namely, 2003-04?**
>
> **(C) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in deleting the addition made on account of excess stock being found in the course of the survey on the basis of physical verification of stocks in the course of the survey?"**

2. Heard Sri B. Narasimha Sharma for the Department and Sri Raghuram for Assessee.

3. A perusal of the questions of law raised reveals that the order challenged before the Tribunal was the order passed by the Commissioner in exercise of powers under Section 263 of the Income Tax Act. The Tribunal, after examining the record, had recorded a categorical finding that the rate of Gross Profit, as adopted even for the assessment year 2001-02, was accepted as 5.43% and further the Assessing Officer had thoroughly examined the matter in all aspects and, in fact, there were as many as six sittings between 01.09.2005 and 06.12.2005. The Tribunal also recorded a finding that the huge volume of stock was not weighed but weight per bag is taken on average basis. As there are two possible views, the view taken by the Assessing Officer cannot be said to be erroneous merely because there is another view possible. In paragraph 7 of its order, the Tribunal had categorically found that the twin conditions which are required to be satisfied, that the order of the Assessing Officer being erroneous and prejudicial to the Revenue, are not satisfied in the present case and, thus,

set aside the order of the Commissioner passed under Section 263 of the Income Tax Act.

4. Hence, in the facts of the present case and based on the material available on record, we do not see any reason to take a view different from that of the view taken by the Tribunal.

5. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

**G. CHANDRAIAH, J**

**CHALLA KODANDA RAM, J**

16th June, 2015

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