IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 267 of 2008 (O&M)

Date of Decision: 25.8.2015

Commissioner of Income Tax, Faridabad

....Appellant.

Versus

M/s Mandeep Mushroom Ltd., Gurgaon

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Tajender K. Joshi, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 78 days in re-filing the appeal is condoned.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 29.12.2006 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench “G”, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 1159/DEL/2003, for the assessment year 1997-98, claiming the following substantial questions of law:-

(i) Whether, on the facts and circumstances of the case, the order of the Hon'ble ITAT is not perverse in deleting the addition of ₹ 6,65,792/- made by the Assessing Officer relating to mushrooms account, when the Assessing Officer had clearly pointed out various discrepancies on the basis of enquiries made and as discussed in the assessment order?

(ii) Whether, on the facts and circumstances of the case, the order of the Hon'ble ITAT is not perverse in deleting the addition of ₹ 4,74,683/- made by the Assessing Officer in strawberry account, when the Assessing Officer had clearly pointed out various discrepancies on the basis of enquiries made and as discussed in the assessment order?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was earning income from mushroom and strawberry growing and sale thereof. The said income was claimed as agricultural income. The assessee filed its return of income on 28.11.1997 showing loss at ₹ 5,50,015/- and agricultural income at ₹ 9,39,738/-. The said return was processed under Section 143(1)(a) of the Act on 31.3.1998. The Assessing Officer vide order dated 6.11.2000 (Annexure A-I) framed the assessment by making additions in the trading account amounting to ₹ 4,74,683/- in strawberry account and ₹ 6,65,792/- in the mushrooms account. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 8.1.2003 (Annexure A-II) dismissed the appeal and upheld the additions of ₹ 4,74,683/- and ₹ 6,65,792/-, respectively made by the Assessing Officer. Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 29.12.2006 (Annexure A-III) allowed the appeal and deleted the additions made by the

Assessing Officer on account of strawberry and mushrooms amounting to ₹ 4,74,683/- and ₹ 6,65,792/-, respectively. Hence, the present appeal by the revenue.

4. We have heard learned counsel for the revenue and perused the record.

5. The Tribunal while accepting the appeal of the assessee held that the assessee had given the details of purchase of raw material, expenses and the sales. The quantitative details of raw material, the quantity of wheat straw, wheat bran, chicken dropping, wheat, urea, gypsum etc. was given. Even the datewise details by mentioning bill number, party's name and purchases from 1.4.1996 to 31.3.1997 was also given. Both, the Assessing Officer as well as the CIT(A) had failed to examine the said details properly. From the statement of Shri Raj Singh examined by the Assessing Officer, who made the purchases for the assessee stood verified. Since Shri Raj Singh had not denied the purchases made by him for the assessee, therefore, the transactions of purchases from him could not be held to be non-genuine. Further, Shri Raj Singh filed his affidavit deposing that he got the bills prepared by other literate persons. Regarding non-verification of the weighing slips, Shri Mahavir Singh, owner of the Mahala Dharamkanta was examined on 19.11.1999. Although he had not verified the bills produced before him but had admitted that he was not sitting on the Dharamkanta and his employees were working who had issued the duplicate receipts. Further, the payments to M/s KC Traders were made through a/c payee cheques drawn on the assessee's bankers. The relevant findings recorded by the Tribunal read as under:-

> 18. We have carefully considered the entire

material on record and the rival submissions. On examination of documents filed in the paper book, reliance on which was placed by the learned counsel for the assessee, it is found that the assessee has given complete details of purchase of raw material, the expenses and the sales. In the quantitative details of raw material available on pages 10 & 11 of the paper book, the quantity of wheat straw, wheat bran, chicken dropping, wheat, urea, gypsum etc. has been given. Further, date-wise details giving bill number, party's name and purchases from 1.4.1996 to 31.3.1997 have been given in the chart which is available on pages 16 to 18 of the paper book. It is to be pointed out that the assessee was using 100% indigenous raw material and purchases of this material is not made from the open market. Neither the AO nor the learned CIT (Appeals) have properly examined the details. The AO has examined Mr. Raj Singh who too has affirmed that he used to purchase material for the assessee. He has also explained that he was not maintaining any books of account nor was having any account in the bank. He has deposed that he used to purchase the material and supplied the same directly to the assessee who was also bearing the loading and unloading charges. Thus, even from his statement the fact of purchases made by him for the assessee stood verified.

19. It is to be pointed out that he could not verify the bills produced by the assessee. In this regard his explanation was that on the bills his name was entered by the assessee in the bill book of M/s Raj Agro because he was totally illiterate. Thus, it appears that the bill book was not maintained by him because he was illiterate and the same might have been maintained by the assessee and his signatures were obtained on the bills by the assessee for his own purposes. This might have been an extra precaution on the part of the assessee. In any case, since Shri Raj Singh has not denied the purchases made by him for the assessee, the transactions of purchases from him cannot be held to be non-genuine. It may be pointed out that Shri Raj Singh has not denied the purchases made by him for the assessee, the transactions of purchases from him cannot be held to be non-genuine. It may be pointed out that Shri Raj Singh has filed affidavit, which is available on page 49 of the paper book. In this affidavit he has deposed that he got the bills prepared by other literate persons. He has further deposed that he was supplying wheat chicken dropping, wheat straw etc. to the assessee. He has also stated that wheat straw used to be weighed at Mahala Dharamkanta, Bilaspur, by him. After this affidavit, this witness was not summoned for further cross-examination or confrontation by the AO.

Therefore, the basis of his affidavit also, he has verified the transaction of sale of wheat, wheat straw, chicken dropping etc. to the assessee. In view of this evidence, the AO was not justified in rejecting the transactions as unverifiable.

20. The other defect pointed out by the AO is about the non-verification of the weighing slips. In this regard Shri Mahavir Singh, who is the owner of Mahala Dharamkanta, was examined. He has not verified the bills produced before him. In the cross-examination he has admitted that he was not sitting on the Dharamkanta but his employees were working. His statement was recorded on 19.11.1999 and he failed to disclose the name of the employees employed in 1997. This fact may be on account of the failure of human memory. In any case, since he was himself not sitting on the Dharamkanta and his employees were working, the duplicate receipts might have been issued by his employees as submitted by the learned counsel for the assessee also.

21. So far as payments made to M/s K.C. Traders are concerned, in the assessment order although the AO has observed that the party was not traceable but it has also been observed that the payments were made to that party through a/c payee cheques drawn on the assessee's bankers.

22. There is another aspect of the matter. The

assessee has filed a comparative chart, which is available at page 19 of the paper book. In this chart for A.Y. 1996-97 the gross profit has been shown at 60% and net profit at 40%; whereas in assessment year under consideration i.e. 1997-98, the GP rate has been shown at 65% and net profit rate at 39%. The assessee has also explained the decrease of 1% in the net profit rate before the AO as well as before the learned CIT(Appeals). In the chart it has also been indicated that in this year on account of appointment of more staff and expenditure increased nominally and increase in the expenses was also on account of foreign travel during the year and new cars purchase. Further, a sum of ₹ 39,000/- was paid on account of HRA reimbursement to the staff. There was increase in the freight charges and also increase in the expenses on account of better quality package. The assessee made detailed submission before the learned CIT (Appeals) vide letters dated 18.01.01 and 19.01.01. Some of the reasons given before the learned learned CIT (Appeals) for decrease in the net profit rate were as under:-

> "a) The material cost is 17% of turnover in Assessment year 1997-98 as against 21.7% in the corresponding earlier year 1996-97, hence there arises no dispute on material consumption.

b) Production cost is 17.9% as against 17.8% in the corresponding previous year.

c) Consequently the Gross Profit ratio has increased to 65.01% in assessment year 1997-98 as against 60.5% in the earlier year-assessment year 1996-97.

d) There have only been increase in administrative & selling expenses from ₹ 13.67 lacs in assessment year 1996-97 to ₹ 19.14 lacs in the assessment year 1997-98.

i) Since nature of these expenses are such which are not directly proportional to turnover viz Director/Staff Salary, rent, travelling, communication etc.

ii) Reasons for increase in all items of Administrative & sales expenses have already been submitted to Ld. DCIT with letter dated 21.10.2000. The copy of the same is enclosed herewith.

e) All these Administrative & Sales expenses are vouched by

- The Assessing Officer
- The Statutory Auditor &
- The Special Auditor u/s 142(2A) of the Income Tax Tax."

6. No perversity could be shown by the learned counsel for the revenue in the aforesaid finding recorded by the Tribunal which may

warrant interference by this Court.

7. Accordingly, the substantial questions of law are answered against the revenue and in favour of the assessee. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 25, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**