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

Decided on: 12.01.2015

+ **ITA 540/2012**

CIT Appellant
Through: Sh. Abhishek Baghel and Sh. Angad
Sandhu, Advocates.

versus

AMARSON WATCH CO. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This Income Tax Appeal under Section 260-A of Income Tax Act is directed against the order dated 25.10.2011 of Income Tax Appellate Tribunal (ITAT) in income tax appeal No. 440/Del/2010 before the said authority. Vide the said order, the ITAT rejected the appeal of the Revenue confirming the order of CIT (A) passed on 25.10.2011 in appeal No. 293/2008-09.

2. The appeal before the CIT (A) had been preferred by the respondent assessee impugning the order dated 31.12.2008 passed by the Assessing Officer rejecting the books of accounts under Section 145 of Income Tax Act, assessing the income for assessment year 2006-2007 at ₹42,19,790/-

concluding, *inter alia*, as under:-

- “i. During the examination of the books of accounts, it was noticed that the cash book maintained by the assessee is incomplete and not maintained as per the accounting system;*
- ii. The cash book doesn't show the position of opening cash available with the assessee on a particular day and similarly at the end of a particular day/date.*
- iii. In the cash book the sale made by the assessee is not properly recorded and also the cash deposited in the bank on different dates, doesn't match with the available cash with the assessee;*
- iv. The assessee was also not maintaining the stock register;”*

3. The Assessing Officer, in view of the rejection of the books of accounts of the assessee, made an addition of ₹39,15,783/- in the trading account of the assessee, it being 20% of the total sale consideration of ₹1,95,78,915/-, in the total income of the assessee for income tax purposes. He also disallowed the 1/5th of the ₹6,61,704/-, claimed by the assessee under the heads of car maintenance, telephone expenses and depreciation on car, on the reasoning that the possibility for the personal use by the partners and their family members cannot be ruled out.

4. The CIT (A), in its order dated 23.11.2009, deleted the addition of ₹39,15,783/- made by the Assessing Officer applying the 20% of the gross profit rate on the total sale, after rejection of books of accounts u/s 145 of the Act, and reduced the disallowance of the car maintenance, telephone expenses and depreciation on car from 20% to 10% of the claim made by the assessee. This view of the CIT (A) was confirmed by the ITAT in its judgment dated 25.10.2000.

5. The Revenue is aggrieved with the order of the ITAT to the extent of

first part of the impugned order, contending that it was not justified in law in deleting the amount added by the Assessing Officer applying the 20% of the gross profit rate on the total sale after having rejected the books of accounts under Section 145 of the Income Tax Act.

6. For purposes of consideration of the challenge to the impugned order in this appeal, all that we need to take note of is the fact that the Assessing Officer had made the best judgment assessment under Section 144 of the Income Tax Act, after rejecting the books of accounts under Section 145, on the basis of observations summarized as under:-

“i) There was no available cash on different dates, taking into account cash sales. This finding was based on the assumption that there was no opening cash balance with the appellant.

ii) The appellant does not maintain stock register.”

7. The CIT (A) deleted the addition on the basis of rate of gross profit applied and accepted it at 14.49%, as claimed by the assessee, on the basis of findings of fact recorded in Para 5.1 of his order which reads as under:-

“5.1 I find that the appellant had opening cash balance of ₹1,37,217/- as on 15.4.2005, the first date of deposit of cash. The AO has taken the opening balance at NIL by disregarding the completed accounts for the period ending 31.3.2005 and also the audited cash book. The AO has made the observation on the basis of impounded books, which were incomplete, a fact duly admitted by the appellant from time to time. However, the books were completed by the appellant subsequently and complete books of accounts were duly audited by the Auditors. Therefore, the basis for the AO to reject the books on this ground is arbitrary and not sustainable. Secondly as mentioned by the appellant as per the trend, the appellant does not maintain stock register since inception in view of the fact that it involves sale of manifold

variety of watches. This has been the practice in use by the appellant for last 60 years. There is no statutory requirement requiring the appellant to maintain a prescribed stock register. At the same time the ld AO has not brought out any single observation which could indicate that the appellant to maintain a prescribed stock register. At the same time the ld AO has not brought out any single observation which could indicate that the appellant had either sold watches out side the books or debited excessive purchases or did have excessive stock which was not reflected in the books. In the absence of this, the mere finding that the appellant did not maintain stock register, cannot be used to reject the books without having commented about the correctness or completeness of the accounts or without drawing any adverse finding about the method of accounting or notified accounting standards. In view of this, I do not find that the ld AO was judicious and on sound grounds to reject the books of accounts of the appellant. The appellant has shown G.P. of 14.49%, which is slightly better than that for the immediately preceding previous year. In view of this, there is no ground for making any addition to the trading account of the appellant. The addition made by the AO is, therefore, deleted.”

8. It must be observed here that after books of accounts had been completed, duly audited and submitted, rejection thereof by the Assessing Officer was indeed arbitrary. It is not a case where the Assessing Officer did not have the benefit of the audit report. The record reveals that the audit report had been issued on 17.02.2007 and, thus, was very much available to the Assessing Officer when he passed the order on 31.12.2008.

9. In these circumstances, the application of 20% of the sales as gross profit, as against the claim of the assessee founded on the return for assessment year 2002-2003 (14.49%), was wholly unjustified since the Assessing Officer had not given any basis whatsoever for the same. There was no comparative data available with the Assessing Officer for inferring

the gross profit at such higher rate. Thus, we do not find any error or impropriety in the view taken by the two appellate authorities below in the impugned orders. No substantial question of law arises for our consideration.

10. In the result, the appeal must be dismissed. We order accordingly.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

JANUARY 12, 2015
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