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

Decided on : 05.02.2015

+ **ITA 297/2014**

COMMISSIONER OF INCOME TAX-XII Appellant

Through : Sh. Sanjay Kumar, Jr. Standing Counsel
with Sh. Basabraj Chakraborty, Advocate.

versus

M/S. GARG CHEAP CUT PIECE HOUSE Respondent

Through : Sh. Piyush Kaushik, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is aggrieved by the Income Tax Appellate Tribunal's (ITAT) order allowing the assessee's appeal for AY 2006-07. It contends that the decision of the ITAT, that Section 263 of the Income Tax Act, 1961 (hereafter referred to as "the Act") was wrongly invoked in the circumstances of the case, is erroneous.

2. The assessee firm, at the relevant time, carried on the business of textiles and garments sale. The Revenue surveyed its premises on 15.12.2006 under Section 133A of the Act. Discrepancies to the tune of ₹1,00,05,388/- in its accounts were found. Of that, ₹89,91,576/- was in the form of excess stocks and the balance constituted excess cash. The assessee

surrendered this amount and incorporated them in the books of accounts. The final books produced during the course of hearing for the year ending 31.03.2006, disclosed that all these amounts were duly reflected. The assessee had filed a return claiming to be taxed for the sum of ₹42,44,290/-. Scrutiny assessment was completed and the Assessing Officer (AO) framed the order of ₹44,01,300/-. The CIT called for the record and was of the opinion that since the surrendered amount had not been disclosed over and above normal income and the surrendered stock was not accounted for properly, in addition to other existing discrepancies, the matter required re-examination under Section 263 of the Act. Accordingly, a notice was issued under that provision, which was resisted by the assessee. The CIT proceeded to finalize the assessment and added considerable amounts, and framed the assessment at a higher amount of ₹87,83,468/-.

3. The CIT was considerably influenced by the fact that the assessee had sold its stocks between the period 24.03.2006 and 30.03.2006 at vastly discounted rates. The assessee had urged that stock clearance sale, whereby discount upto 60% was offered, was resorted to on account of the ongoing sealing drive conducted by the municipal authorities. The CIT also took into consideration the fact that stock which was initially valued at ₹17 lakhs was sold at ₹1,35,400/-, which was dubious. He, therefore, applied a 20% G.P. rate on the assessee's normal sales which worked out to ₹1,07,19,727/- after giving some allowance for valuation of defective sales and the actual amount claimed, i.e. ₹1,37,400/-. This resulted in substantial additions.

4. The ITAT, in its conclusions, found in favour of the assessee and held that the exercise of power under Section 263 of the Act in the facts of the present case was unwarranted. The ITAT's conclusions are extracted below:

“6. We have heard rival contentions and perused the material available on record. From the documents filed by the assessee, it clearly emerges that assessee incorporated the entries of surrender in its books of accounts, prepared pre survey, post survey and final trading accounts and produced it before assessing officer during the course of assessment proceedings. Assessing officer asked for the justification of reduced income. Assessee attributed the same to discounted sales offered by the assessee after the survey, in the last one and half months of the accounting year. Assessing officer cross verified the factum of holding of the discounted sale which is evidenced by the newspaper cutting and the sale bill books all this is part of assessment record. Thus, the issues about incorporation of discrepancies during the course of survey, the books were examined. The loss on account of discounted sales was cross verified. Thus the record shows that the assessing officer was conscious of all these facts and called for various information. His satisfaction about assessee's explanation is manifest from the fact that he did not make any addition in this behalf. The assessment order is passed with the approval of JCIT, which is accorded after verification of assessment record. Hon'ble Delhi Court in the case of Sunbeam Auto Ltd (supra) has clearly held that if the application of mind by assessing officer emerges from the assessment record, merely because while allowing the claim some specific wording is not used in assessment order, it will not be an occasion for the Commissioner to hold the assessment order as erroneous and prejudicial to the interests of revenue. Respectfully following the Hon'ble Delhi Court's decision in the case of Sunbeam Auto Ltd (supra) we are of the view that the assessing officer's order does not suffer from any lack of inquiry of relevant issues and non application of mind. We find no infirmity in assessment order in terms of being erroneous or prejudicial to the interests of revenue.”

6.1. In view thereof, we quash the order of Commissioner passed u/s 263 of the Act.”

7. In the result, assessee's appeal is allowed.”

5. Learned counsel urged that the ITAT fell into error of law in holding that the premise upon which jurisdiction could be exercised under Section 263 did not exist. It was argued that the AO's order plainly accepted the assessee's assertions of the need to sell stocks at vastly depressed rates, even though such stocks had been purchased previously for considerably higher amounts. It was argued that the reasoning of the AO was unsupportable, and in addition, there was prejudice to the Revenue, which could be construed as erroneous within the expression of Section 263 of the Act. Learned counsel for the assessee urged that the AO had considered, in detail, the explanations with respect to the clearance sales as well as depressed consideration at which the assessee was forced to sell the stocks. In addition, he relied upon the authority of this Court ruling in *CIT v. Sunbeam Auto Ltd.* 332 ITR 167 (Del).

6. In the present case, the facts which emerge from the previous discussion are that the assessee's premises were subjected to survey on 15.02.2006. The discrepancies noticed between its books of accounts, the stocks and the excess cash were surrendered by it. The Revenue does not dispute that these were also reflected in the books of accounts presented during the course of assessment. The two circumstances which considerably swayed and ultimately went into the decision of the CIT were that of depressed sales for the period 24.03.2006 and 30.03.2006, for stock valued at ₹17 lakhs, which was ultimately sold for ₹1.37 lakhs. The assessee's

explanation was that the threat of ongoing sealing drive drove it to sell the stock at throwaway prices. The CIT has, in his order, cited an instance of goods worth ₹1900/- being sold for ₹200/-. Whilst a consistent behaviour, of disclosing a pattern, might justify a conclusion which warrants rejection of the books of accounts, the explanation of the assessee that but for such sales, the stocks would have been inaccessible for an inordinately long period of time, thus considerably risking its business, as against which it chose to liquidate its stocks, cannot be characterized as unreasonable. Therefore, to seize upon this or the circumstance that a 60% discount was offered ipso facto was insufficient to take a different view. The various authorities of the Supreme Court in *Malabar Industrial Co. Ltd. v. CIT* 243 ITR 83 has highlighted that the power under Section 263 cannot be invoked to correct a mere error of an AO, based upon an incorrect assumption of fact. There has to be something more to hold that the determination is both erroneous and prejudicial to the interests of the Revenue. Sunbeam (supra) cited by the assessee also notices the same aspect. Considering the totality of the circumstances, no substantial question of law arises. The ITAT merely applied the prevailing law on the subject. The appeal is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

FEBRUARY 05, 2015