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

\+ ST.APPL. 53/2014 & 54/2014

SEWANAND & SONS ..... Petitioners

Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Prakash Aggarwal, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent

Through: Ms. Ruchi Sindhwani, Addl. Standing Counsel, GNCTD with Ms. Megha Bharara and Ms. Bandana Shukla, Advocates.

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

ORDER

% **23.03.2015**

This Court on 28.11.2014 passed the following order: -

"We have heard arguments on behalf of the appellant at some length. The argument of the appellant that the assessment order pertains to one day is rather farfetched. The order deciding the objections relates to the return filed for the month of August, 2011. This assertion of the revenue is correct as the assessment order is for the entire month but it refers to the date 3rd August, 2011 because that was the date on which the survey was conducted and excess cash of Rs.29,50,450/-, excess stock of Rs.1.71 crores and unexplained loose sales slips valued at Rs.54,24,559/- were found. The sum total of the aforesaid amounts is Rs.2,54,99,760/-. Purchases/turnover to this extent were not recorded in the books. On the said amount, value added tax payable was Rs.12,74,988/-. Thus, to this extent, we do not see any reason to interfere with the impugned order.

We also reject the contention of the assessee that the value added tax is wrongly computed because the gross profit margin 31% was purportedly added to the valuation of the stock. Counsel for the revenue has referred to the factual position that the assessee had signed and accepted the inventory and also accepted the valuation of stock including undisclosed stock. Learned counsel for the appellant has not been able to show and state, when and on which date he wrote disputing or retracting the gross profit rate, or otherwise contested and challenged the valuation accepted and admitted by him.

Other question relates to the charging of interest of Rs.2,21,638/- which has been charged for the period 1.4.2011 to 28.5.2012,i.e. for 423 days. The submission of the appellant-assessee is that the interest would be chargeable either from 3rd August, 2011 or from the date of default of the payment of tax.

Learned counsel for the Revenue submits that the interest would be chargeable from 1st August, 2011 or from the date the tax became due but was not deposited. She would like to take instructions on the question of the period for which interest is payable.

Still another contention raised by the appellant is that they had duly disclosed and paid tax on excess cash of Rs.29,50,450/- in the return filed on 14.10.2011 for the month of August, 2011. The same amount, therefore, cannot be added in the default assessment and this would amount to double taxation. Learned counsel for the Revenue to take instruction in this regard and clarify the position.

List on 15th December, 2014."

Counsel for the respondent/revenue contends that there is no method of clarifying whether sum of ₹29,50,450/-, which was found in the premises was accounted for in the return and corresponding tax paid. Learned counsel for the assessee has tendered a copy of the return, a copy of the Form DVAT 16 along with Form-1 under the CST (Delhi) Rules, 1957. Both columns in the form DVAT 16 disclose that total turnover is ₹2,18,45,176/-. It is pointed out that breakup of this amount can be seen from the records covering the period 01.08.2011 to 31.08.2011. Learned counsel highlights that cash component, i.e., ₹27,78,661/- with tax thereon works out to ₹29,17,594/-. The aggregate of these, i.e., ₹1,90,66,515/- and ₹27,78,661/- works out to ₹2,18,45,176/-.

In the light of these observations, we are of the opinion that the matter should be re-examined and if necessary, appropriate adjustments given to the amount deposited by the assessee. Copies of the form filed before the AO at the relevant stage which are tendered in the Court is hereby taken on record.

The appeals are disposed off in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 23, 2015
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