

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decided on : 20.10.2016

+ ITA 163/2001

CIT

..... Appellant

Through: Mr. Ashok Manchanda, Advocate
along with Ms. Lakshmi Gurung and
Ms. EashaKadian, Advocate.

versus

M/S KUWER FIBRES (P) LTD.

..... Respondent

Through: Mr. Prakash Kumar, Advocate along
with Ms. Mehvish Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The following questions of law arise for consideration in this appeal under Section 260A of Income Tax Act.

“(a) Whether ITAT was correct in law and on facts in allowing the relief to the assessee out of addition:

(i) Of ₹. 1,44,17,441/- made by the A.O. on account of unexplained initial investment in purchase of polyester films;

(ii) Of ₹. 6,05,317/- made by A.O. on account of profits on unaccounted purchase and sale of polyester films which assessee itself had disclosed in its original returns;

- (iii) *Of ₹. 73,76,782/- made by A.O. on account of excess stock found during the search?*
- (b) *Whether ITAT was correct in law and in facts in deleting the addition of*
- (i) *₹. 4,52,34,000/- made by A.O. on account of undisclosed profit on the basis of material seized from residence of Sh. J.P. Aggarwal, one of the Director of the assessee company upto the F.Y. 89-90;*
- (ii) *Of ₹. 7,49,459/- made by A.O. on account of unaccounted purchase made from M/s GarwarePolyster Ltd. when the assessee itself had admitted the same;*
- (iii) *Of Rs. 33,725/- made by the A.O. on account of profit on sale of material purchased out of books from M/s GarwarePolyster Ltd. when assessee itself had admitted the unaccounted purchase?"*

2. The brief facts are that search and seizures proceedings were conducted in the assessee's premises on 20.03.1996. Notice under Section 158BC(c) was issued to the assessee on 13.06.1996. However, the assessee filed its return for the block period 01.04.1985 till 20.03.1996, much later on 10.03.1997. It declared undisclosed income of ₹6,05,320. This was based upon a computation of the total undisclosed/assessed income. The details thereof found in a tabular chart in the AO's order are extracted below:-

Asstt. Year	Total Income including Undisclosed Income u/s 158BB	Total Income returned or assessed on the date of search
1986-87	₹. 56,960/-	₹. 56,960/-
1987-88	₹. 46,380/-	₹. 46,380/-
1988-89	₹. 1,29,950/-	₹. 1,29,950/-
1989-90	₹. 1,28,330/-	₹. 1,28,330/-
1990-91	₹. 3,67,570/-	₹. 3,67,570/-
1991-92	₹. 2,57,000/-	₹. 2,57,000/-
1992-93	₹. 3,96,660/-	₹. 3,96,660/-
1993-94	₹. 5,64,950/-	₹. 5,64,950/-
1994-95	₹. 4,22,080/-	₹. 4,22,080/-
1995-96	₹. 3,69,830/-	₹. 3,69,830/-
1996-97 (upto 20.3.96)	₹. 6,33,917/-	₹. 28,600/-
Total	₹. 33,73,627/-	₹. 27,71,310/-

3. Based upon the materials seized i.e. in the form of books of accounts, statements, bills, raw materials and the value thereof disclosed at the time of search proceedings as well as the statements recorded under Section 132 of the Income Tax Act, the AO framed the block assessment by order dated 29.03.1997. As a result, the total undisclosed income of the block period was determined to be ₹ 6,84,16,724, which was brought to tax at 60%; the income tax together with surcharge was determined at ₹ 4,72,07,540. The

assessee preferred an appeal to the Income Tax Appellate Tribunal (ITAT) which substantially allowed it and granted relief.

4. The ITAT's order may be characterised into three different parts- the first relates to undisclosed investment and income derived therefrom; the second pertains to excess undisclosed stock and the value thereof; and the third pertains to additions made on account of the statement of one Mr. J.P. Aggarwal (the Director of the assessee upto July 1990) and the materials found in the course of search in his premises. This court proposes to deal with these parts separately.

Re questions a (i) and (ii) and b (ii) and (iii)

5. The AO had found, as a result of the search that the documents indicated total unaccounted purchases- to the extent of 1,26,476.460 kgs had been made which was originally valued at ₹ 1,95,71,906/-. The total unaccounted sales worked out to be 1,24,095.380 kgs which was valued at ₹ 2,01,77,223. The assessee disclosed the value of these unaccounted purchases at ₹ 6,05,320. The AO further noted that the first unaccounted sale made was on 10.04.1995 out of the purchases made till then and of a quantity of 21,596.70 kg valued at ₹ 33,42,089 on an average cost price. It was further held that for the subsequent period, the total purchases were shown as 92,451.20kgs valued at ₹ 1,43,20,750 on average cost price. The corresponding sale during this period was shown to be 19,959.40 kgs valued on average sale price at ₹ 32,45,398. The excess of purchase over sales worked up to ₹ 1,10,75,352. Added together with the initial unexplained total investment, it accounted for ₹ 1,44,17,441. The assessee had not disclosed the value of these raw materials so purchased nor did it mention

the cost price in the return filed. Subsequently, it filed a letter on 25.03.1997 stating that the undisclosed income in the return of the block period was not correct. The assessee's explanation was that Annexure A1 to A7 of the panchnama prepared in one of its premises- G-150 Badarpur, were the books of accounts maintained in the normal cause of business before the date of search and that the income therefore determined should be considered as accounted/disclosed income in view of provisions of Section 158BB(1)(d). In view of this understanding, it withdrew the surrender of ₹ 6,05,320.

6. The AO noticed further that the assessee had valued the unaccounted purchases at ₹ 154.75 per kg and unaccounted sales at ₹ 162.80 per kg. In its later letter of 25.03.97, the assessee however explained that these unaccounted purchases were of assorted grade polyester sheets from M/s Associated Plastic Industries, Bhavnagar, Gujarat which were according to it imported from Korea at an average price of ₹ 43.70 per kg. Copies of two invoices dated 27.02.1996 of M/s Associated Plastic was disclosed along with the letter of 25.03.1997. The AO however, rejected the assessee's explanation holding in the first instance that the regular account books of the assessee were seized from one of its premises at Fatehpuri, Delhi, and the panchnama prepared in these premises were of regular cash book (A-26); the regular ledger (A-25) and the stock register (A-29) of the company for FY 1995-1996. The purchase and sales recorded in the statements and annexures A-1 to A-7 seized, were not found recorded in these regular books of accounts seized from the Fatehpuri office of the assessee. On these facts, it was held that the assessee's claim that the sales duly reflected in the ledger

books of account were incorrect and therefore rejected. On the merits, it was held that the documents did not anywhere disclose that they were of the quality (offcuts) as claimed by the assessee in the subsequent documents i.e. the invoices stated to have been issued by Associated Plastic. Furthermore, the AO noted that neither the name of the seller nor the quality of the goods was mentioned. The explanation that the average purchase price was ₹43.70 per kg was therefore rejected. The veracity of the invoices of M/s Associated Plastics too was elaborately gone into and its explanations rejected as not worthy of acceptance. In these circumstances, the total unexplained investment was worked out at the original rate mentioned at the rate of ₹ 1,44,17,441 in addition to the undisclosed profit of ₹ 6,05,320.

7. A similar exercise was carried out in respect of the stocks sourced from M/s Garware Polyester found in the assessee's books. The data of these purchases was made part of the AO's order. During the proceedings, the AO was unable to reconcile the differences on account of the amounts relating to the transactions with M/s Garware Ltd. - which worked out to ₹ 7,49,459. The assessee's explanation was that reconciling was not possible because of bunching of bills by M/s Garware Pvt. Ltd or by itself in the accounts books and further that the discrepancies were only to the tune of 0.2% of the total transactions of ₹ 65 crores during the block period. The AO rejected these explanations observing that that the unaccounted purchases of ₹ 7,49,459 had to be treated as unexplained investment of the assessee and on applying the average gross profit disclosed by the assessee i.e. at 4.5%, the profit on sales on account of these transactions worked out to ₹ 33,725.

8. The ITAT accepted the AO's findings with respect to the quantum of the raw materials purchased which were not part of the regular books of account. However, the ITAT rejected the AO's approach stating that the assessee's explanation with respect to the value i.e. ₹ 43.70 per kg, on the ground that it was sourced from M/s Associated Plastics was reasonable. It was held that

“in the absence of any evidence that any such investment was made, in our opinion, it could not be regarded as undisclosed income for the purpose of Chapter XIV B of the I.T. Act. We also find force in the alternative submission of the appellant that there is no basis for the allegation that the assessee had made purchases @ Rs. 154.75 per kg. We accept the same and hold that the figures of sale and purchase from M/s VenlonPolyster was submitted at the instance of the AO. In the absence of any evidence that the assessee had made purchases from M/s VenlonPolyster we hold that the estimate of the aforesaid rates for the purpose of estimating any undisclosed investment is not justified and proper. Proceedings are based not on any positive material. However, in our opinion, as there are unaccounted purchases of 126476.460 kgs where as the sales are of only 124095.380 kgs, as such the difference aggregating to 2381 kg have to be treated as the undisclosed stocks of the assessee, the value of which at the average rate of Rs. 43.70 does deserve to be sustained which amounts to Rs. 1,60,325/-. Further, in our opinion, the profit on the sales have also to be estimated in respect of the stocks sold by the assessee. The stock received from Gujarat aggregated Rs. 56.56 lacs. On the aforesaid turnover an average rate of profit declared by the assessee of 4.30% is directed to be estimated as the undisclosed profit. In other

words instead of an addition made of Rs. 1,44,17,441/- and Rs.6,05,317/- addition as directed above be adopted.”

9. It would be immediately apparent from the above discussion that as to the fit sum of unexplained investment, the dispute is not about the quantity- rather it is about the value of the said raw material. The assessee filed its returns after almost more than nine months after receiving notice under Section 158BC. Even at that stage, it did not explain or rely upon the letter/invoice of M/s Associated Plastics. Later it wrote a letter to the AO, enclosing copies of two previous invoices of the year 1996 to say that the value of this raw material was ₹. 43.70 per kg. The AO rejected the explanation and proceeded to value the stock on the basis of the materials existing i.e. the disclosed income and the undisputed purchases and on the basis of the regular books of account.

The question is whether the ITAT could in these circumstances have rejected the value i.e. ₹. 154.75 per kg and the estimate of profit at ₹162.60 per kg. The slender reasoning of the ITAT is entirely premised upon the assessee's explanation which in turn is based upon the two invoices that were neither found in the course of the search nor relied upon even in the original return but for which explanation was given through a letter dated 20.03.1997, much later.

10. Once the raw material quantity that did not appear in the regular books of account was discovered and could be inferred as a result of the search, the onus lay upon the assessee to furnish full particulars as to the cost of that raw material or the average cost. Its explanation by relying upon a letter of 1996 produced more than a year later, was by an afterthought

really speaking. Its creditability, was in our opinion correctly doubted and entirely rejected by the AO who adopted a safer method for discerning the cost of the raw material which was not reflected in the regular books of account. In these circumstances, the ITAT's reasoning cannot be sustained. It is plainly contrary to the facts on the record and contrary to any reasonable approach that could have been adopted under the circumstances of the case.

11. Likewise in respect of the same issue-vis-a-vis the stocks relating to M/s Garware Polysters, the assessee's explanation was in fact no explanation at all. It stated that since the reconciliation could not be made on account of bunching of documents (for which the AO was not responsible at least), some leeway or concession ought to be given. The ITAT merely accepted that explanation which in our opinion was correctly rejected by the AO. The AO inferred correctly that since these purchases too were made outside the books of account and proper accounting or reconciliation could not be made by the assessee, the value of the investment and the estimated profits on the basis of the undisputed rate i.e. 4.5 % GP had to be adopted. Therefore, the findings of the ITAT are plainly unreasonable and could not have been arrived at. The impugned order cannot be sustained on this aspect as well.

Re question a (iii)- Excess Stock

12. During the search proceedings, different quantities were found in the three searched premises of the assessee. The total quantity of stock found at that time was 42,640.144 kgs of polyester films, embroidery reels, golden foil papers etc. The assessee had filed the copy of the purchase and stock register maintained in the normal course but not seized in the search

proceedings at any time in any premise. In terms of the stock register, these documents/books disclosed lower quantities. The AO noticed that the assessee could not produce any evidence to prove that the stock register was maintained before the date of search but was not seized and no purchase or sales bills were mentioned.

13. In the course of the assessment proceedings, the assessee relied upon the report of a valuer who according to it had appraised and valued the stock on 25.03.1996. However, it appears that this valuation report was not filed with the return filed by the assessee. The difference between the values of the stock so found and seized was considerable. As against the valuer's estimate of ₹. 25,490, the value of the stock determined by the AO was ₹. 73,76,782. The ITAT accepted the explanation and went on to independently value each item of the stock all over again. This court is of opinion that the method adopted by the ITAT was not warranted. The assessee did not produce the valuer's report within time; instead, it waited for a considerable period after the search to rely on it. Furthermore, the valuer's report is unverified. This made the document suspect and was correctly brushed aside by the AO. In the circumstances, the AO's decision to rely on materials which showed a clear value of the goods, was an acceptable principle rather than the valuation report, which weighed considerably with the AO. This question too has to be answered in favour of the revenue.

14. Likewise, the interference by the ITAT in respect of the ₹. 33,725/- by the AO, on a pure appreciation of the facts, merely because it differed from the view of the AO, was not justified. In the case of Question b (iii) as well,

when the assessee had admitted ₹. 7,49,459/- made by A.O. on account of unaccounted purchase made from M/s GarwarePlyster Ltd the deletion directed by the ITAT was not justified. This question is answered against the assessee and in favour of the revenue.

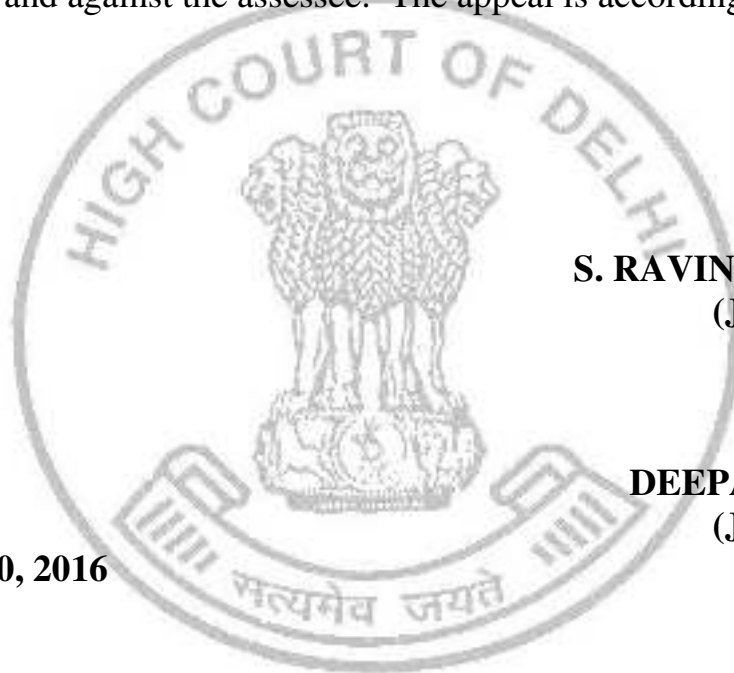
Re Question No. b (i)

15. This pertains to the addition made by the AO on the basis of Mr. J.P. Agarwal's statement, recorded during the course of search proceedings. It was found that the documents contained detailed working out of profits, with specifics and particulars relating to the quantities of goods, raw materials etc. The assessee made two fold submissions in relation to this addition: first, that the statement recorded was unreliable because of a family dispute, which motivated Mr. Agarwal, one of the co-directors of the assessee to speak against it and secondly, that opportunity to cross examine Mr. Agarwal was not given. The ITAT felt that a singular statement could not be the basis of an addition.

16. This court notices, at the outset that Mr. Agarwal was no doubt a family member and a relative of the assessee's directors. At the same time, it is undeniable that he too was a director of the assessee company at the relevant time. The documents seized (A-5, A-6 and A-7) detailed elaborate workings of accounts and what is more, quantities of raw materials and profits. The documents were prepared at the time a family settlement was arrived at, sometime in 1990-91. The statements- recorded on 20-3-1996 were corroborated by the materials. As far as the question relating to cross examination is concerned, the court notices that though the documents were furnished to the assessee, it had not sought opportunity of cross

examination; this was made at the fag end, in March, 1997. This court finds no justification to reject the statements, which merely explain the documents seized; the assessee could well have given a full explanation instead of seeking rejection of the documents on the ground that they were prepared in the context of a family dispute leading to a settlement. This quesiton of law too, is answered against the assessee and the revenue.

17. For the above reasons, all the questions of law are answered in favour of the revenue and against the assessee. The appeal is accordingly allowed.



**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

OCTOBER 20, 2016
sapna