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

+ **ITA 886/2016 & CM Nos. 45959-61/2016**

JAY DEE EXPORTS Appellant
Through: Mr. S. Krishnan, Advocate.

Versus

PRINCIPLE COMMISSIONER OF INCOME TAX DELHI-VII
..... Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **14.12.2016**

1. This matter is taken up today as 12.12.2016, when it was originally listed, was declared a holiday on account of "Id-E-Milad".

CM No.45960/2016 (for exemption)

2. Allowed, subject to all just exceptions.

3. The application stands disposed off.

ITA 886/2016 & CM Nos. 45959 & 45961/2016

4. There is a delay of 1210 days in filing the appeal and 87 days in re-filing the same, which is inordinate on any account. On this ground alone, the appeal is liable to be dismissed.

5. In any event, we are considering the merits of the appeal.

6. The assessee is aggrieved in this appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') by the order

of the Income Tax Appellate Tribunal (for short 'ITAT') dated 26.10.2012, which held that the claim of its having incurred expenditure to the tune of Rs.44,99,920/- was not substantiated and upheld the addition under Section 69C of the Act.

7. The assessee, a manufacturer and exporter of readymade garments, had for Assessment Year (AY) 2001-02, when it enjoyed the benefit under Section 80-HHC of the Act, claimed expenditure. The Assessing Officer out of nine head of payments made towards suppliers and during the course of inquiry was satisfied with respect to three Delhi based suppliers. With respect to the others, addition was made and the respondent claim was disallowed. The Commissioner of Income Tax (Appeals) [for short 'CIT(A)'] refused to take on record the additional material and confirmed the AO's order. The ITAT on 26.02.2008 remitted the matter to the CIT(A). The CIT (A) took note of the materials and held that the purchases, from the parties at Erode, were bogus, against which the appellant/assessee requested for cross-examination of the parties. In these circumstances, the remand report was sought and obtained. This report did not make any mention apropos the cross-examination. Having regard to all these circumstances, the CIT(A) disallowed the assessee's appeal. The Revenue's appeal was allowed. The assessee's attempt to have a rectification of the ITAT order was unsuccessful.

8. It is urged on behalf of the assessee that ITAT has unreasonably construed the record. The order of the ITAT was modified by this Court in a writ petition to the effect that the opportunity for cross-examination was not granted – what the Appellate Tribunal had recorded. Assessee highlights that the omission to grant an opportunity to cross-examine the concerned

suppliers and more importantly, the broker Shri N.K. Jain, who had obtained the money, has gravely prejudiced it. It is submitted that both in the remand as well as the appellate proceedings, what transpires was that the cheques which passed through normal banking channels towards payments of suppliers, were ultimately encashed by one or other of Shri Jain's concerns. It was submitted that in these circumstances, the burden, if any, under Section 69C of the Act can be said to have been discharged in the absence of any other query by the Revenue.

9. This Court has considered the materials. Whilst it is a matter of record that the appellants/ assessee was not granted opportunity to cross-examine Shri Jain, who appears to have deposed at an earlier stage in the proceedings, what appears nevertheless on the record is that the amounts stated to have been paid to all six suppliers, were completely disowned or disclaimed by one of them, who chose to respond to summons. The summons were not responded to by the other five suppliers. The cheques through which payments were made to the suppliers are part of the record. They, clearly, were drawn in the name of specific textile suppliers. In the circumstances, there was no occasion for anyone to have disputed the cheques. Furthermore, there is complete omission to explain why each of the textile suppliers – if the materials were, in fact, genuinely supplied – uniformly endorsed the entire amounts to the broker or the brokers concerned. Furthermore, the assessee, in our opinion, ought to have taken greater care in showing further documentary evidence, such as copies of railway receipts, etc. or other collateral materials given the nature of burden initially placed upon it. Besides supplying copies of invoices, the assessee does not appear to have substantiated its claim for having purchased the

materials from the concerned parties.

10. Having regard to all these factual circumstances, we are of the opinion that no question of law arises in this appeal.

11. For the foregoing reasons, the appeal as well as the pending applications is dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 14, 2016

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