

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

Reserved on: 02.03.2017

Pronounced on: 13.07.2017

+ **W.P.(C) 7207/2008**

COMMISSIONER OF INCOME TAX CENTRAL-III..... Petitioner

Through : Sh. Rahul Chaudhary, Sr. Standing
Counsel with Ms. Lakshmi Gurung and Sh. Anurag
Vijay, Advocates.

versus

M/S. RADICO KHAITAN LTD.

..... Respondent

Through : Sh. Ajay Vohra, Sr. Advocate with Ms.
Kavita Jha, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. This writ petition under Article 226 of the Constitution, preferred by the Commissioner of Income tax (hereafter referred to as "the revenue") questions and seeks the quashing of an order of 13.03.2008 made by the Income Tax Settlement Commission (hereafter referred to as "the Commission"), under Section 245 D(1) of the Income Tax Act, 1961 (hereafter referred to as "the Act").

2. The facts necessary for deciding this case are that the second respondent (which is hereafter referred to as "Radico" or "the assessee") is engaged in the business of manufacturing and marketing Indian made foreign Liquor or IMFL, country liquor etc. It also generates power for its manufacturing and bottling plants. Radico operates from four *locales*, Rampur in UP, Reengus, Hyderabad and Bajpur, Uttaranchal. Apart from its units the assessee utilizes services of other bottling plants spread over different states.

3. Radico was subjected to a search and seizure operation under section 132(1) of the Act by the revenue on 14.02.2006 in its business premises. Search was resorted to also in the residential premises of its directors; M/s Uttar Pradesh Distiller's Association (hereinafter referred to as "UPDA") and at the residence of Sh. R.K. Miglani, Secretary General of UPDA. Also, a survey under Section 133A was conducted at the business premises of M/s. Saraya Industries Ltd, one of the core members of the "Managing Committee" of M/s. UPDA. Many incriminating documents pertaining to the assessee were found and seized from these premises. Statements of various persons including Sh. R.K. Miglani were recorded under Sections 132(4) and 133A of the Act. After collecting all the material, the Assessing Officer (AO) issued notices under section 153A of the Act on 20.09.2006, for assessment years 2000-2001 to 2006-2007, requiring the assessee to file returns within 16 days from the date of receipt of the notice. Radico filed its returns on 29.09.2007 though the return for assessment year 2006-2007 was filed in the regular course on 30.11.2006, offering an amount of ₹4.5 crores for taxation. Radico thereafter filed an application under Section 245C of the Act before the Commission on 30.05.2007 covering all assessment years covered by the block period i.e. 2000-2001 to 2006-2007. The assessee declared additional income for the relevant period to the extent of ₹23 crores. The total income including the amount offered for taxation for 2006-07 thus worked out to ₹27.5 crores.

4. In terms of amended provisions of Section 245D(2D) of the Act, tax on the additional income disclosed in the application filed and interest thereon had to be paid before 31.07.2007. The assessee moved a writ petition before this court claiming that the settlement application may not be held as

non-maintainable on the ground that interest had not been paid before 31.07.2007. The court passed an order on 26.07.2007 directing the Commission to dispose off the application before 31.03.2008 as required under Section 245D (4A) of the Act in accordance with law so that the proceeding would not abate in terms of the newly inserted Section 245HA(1) of the Act. The revenue filed its report, under Rule 9 of the Income Tax Settlement Commission Rules, on 04.02.2008, alleging that concealment of income by the assessee was ₹159,82,92,966/- under various heads. This figure was revised at ₹177,84,16,966/- by filing supplementary report dated 13.02.2008.

5. After hearing the parties and considering the materials, the Commission settled the concealed income of the assessee for all the block years at ₹30 crores. The revenue states that this ignored the relevant evidence adduced by the petitioner and reasoning offered by her in the report filed under Rule 9, without assigning any basis for such determination. The revenue states that the amount of ₹ 30 crores determined by the Commission included the amount of ₹ 27.50 crores offered by the assessee in the statement of facts filed with the settlement application. Thus the Commission made an effective addition of ₹ 2.5 crores only. The revenue is further aggrieved by the fact that the Commission granted immunity to the assessee from prosecution and penalties under the various provisions of the Act.

6. The revenue argues that the Commission failed to appreciate that the assessee did not make a full and true disclosure of its income, which had not been disclosed before the AO and the manner in which, such income had been derived. It is alleged that the assessee did not disclose any basis to

arrive at a figure of ₹27.50 crores for concealed income offered in the settlement application. The assessee had in its application stated that:

"The applicant had maintained books of accounts in respect of business carried on by it. The business operation of the applicant is largely conducted through employees at various places. The payment made to these employees are all routed through the books of the applicant. During the course of search, certain papers have been found and seized by the Income Tax Department, which may reflect the utilization of funds routed through employees in such a manner and a fashion other than what is reflected in the books of accounts. The management of the applicant company is not in a position to comprehend the veracity of the material found during the course of search but in any case, to buy peace of mind, the applicant company offered a sum of Rs.27.50 crores before the Income Tax Department in statements U/S 132(4), out of which, Rs.4.5 crores have already been included in the regular return of income for assessment year 2006-2007. The applicant company begs to submit that the figure of wastages shown in the books of accounts is as per the norms of the industry and the same has been shown to have been sold to various persons in the unorganized sector, thus there may be certain amount of difference between such sales of waste material in the books of accounts and in reality, generating certain income outside books. There are no regular records maintained for such transactions/activities and thus it is not possible to actually pin point the quantum of income arising out of certain expenses of disallowable nature incurred by the employees of the company out of the funds budgeted by the company for some other purpose and income arising out of actual realization of waste material. The applicant is not in a position to identify the exact amount arising out of such transactions, which could be much less than the income offered in statement u/s 132(4) but with a view to buy peace of mind and settle the income tax case of the applicant, the additional income offered of Rs.27.5 crores in statement u/s 132(4) is being offered in various years including Rs.4.5 crores effected in regular return for assessment year

2006-2007, meaning thereby a net amount of additional income offered before the Hon'ble Commission would be Rs.23 crores in various years. The applicant company has distributed the additional income in various years as per its perception, Hon'ble Commission may redistribute the same in various years for the proper settlement of the case as per its perception. "

7. The revenue contends that the assessee made vague statements in its application. In terms of Section 245C (1) of the Act, the assessee was required to make full and true disclosure of the income including the manner in which, such income was earned.

8. The revenue questions the Commission's findings in treating the papers and evidence, regarding illegal payments made by the assessee through UPDA to various officials and politicians found from its premises (i.e. of UPDA) and from the residence of Sh. R.K. Miglani as third party documents. In this context, it is argued that this reasoning is incorrect and contrary to the evidence placed on record by the revenue. UPDA is not an unrelated third party. In fact, it is an association of persons of distillers of UP of which, assessee is one of the controlling members of the "Core Committee". The papers regarding the illegal payments and determination of the percentage to be paid by the assessee, found and seized during simultaneous search are signed by its director, as the assessee was one of the core members of the committee of UPDA, which used to determine the quantum of bribes to be paid by the various members depending upon the level of production of liquor by each member distillery.

9. It is argued on behalf of the revenue that the Commission's finding with respect to ₹ 29.95 crores payments made towards illegal gratification and bribes, (on the ground that such inference could not be drawn) is entirely

erroneous. Highlighting that the Commission's view with respect to a lack of corroboration, learned counsel submitted that the unaccounted illegal payments made by the assessee to various public servants and politicians were in fact fully corroborated from the documents found and seized for from various premises of the assessee Company as well as from the residence of UPDA and its officers. In this regard learned counsel relied upon the Rule 9 report filed by the income tax authorities before the Commission. Pointing out that these were credible, learned counsel stated that the surrender or disclosure made to the commission by the applicant and with respect to concealed income of ₹ 25 crores was in fact not specified and details were lacking. It was also urged that the assessee incurred expenditure on payment of bribes to officials; the amounts were through undisclosed income which was claimed as genuine business expenditure. Evidence was forthcoming to the revenue during the search, which clearly belied such expenditure. In this regard the contents of the laptop of the assessee's managing director seized during the search and the details found in the form of tables retrieved were disclosed as annexures to the Rule 9 report. It was submitted that these documents referred to in detail the payments made to *Abkari* officials, the Circle Inspector, constables etc. likewise bribes were paid at Rajasthan to various government officials to the tune of ₹ 8,22,996/- for financial year 2005-06.

10. It was also argued on behalf of the revenue that the findings of the Commission with respect to the ₹29 crores, being inadmissible on account of the statements being made by a third party, i.e. Sh. R.K. Miglani and that he was not subjected to cross-examination, are erroneous. It was submitted that the contents of those documents were to a certain extent corroborated by the

materials found in the assessee's search. Moreover, the financial break-up found in the laptop of the assessee's managing director, corroborated the revenue's position that there was substantial concealed income in the form of underreported production, distribution and sale of liquor the proceeds of which were used to bribe public officials. It was also submitted that the revenue was able to demonstrate that a sum of ₹ 91,14,15,451/- was claimed as bogus expenditure for four years, i.e. 2000-01; 2001-2002; 2002-03; 2003-04 and 2004-05. These were in the form of alleged payments to M/s. Fair & Square Private Ltd. and M/s. Rimjhim Ispat Pvt. Ltd. [hereafter "Rimjhim"]. It was stated that Rajan Jassel was a known and notorious entry operator who used to provide accommodation entries by charging Commission. His statement for February 2004, disclosing that his business was to take cash and that in cheques for providing accommodation entries was taken into account by the revenue in its submission but wrongly rejected. Likewise it was submitted Rimjhim dealt with steel rolling mills and steel products and therefore could have no knowledge of molasses; the assessee's reliance upon payments made under a contract for supervision and inspection charges to this entity were questionable. The assessee was unable to throw any light much less reasonably explain what kind of services and supervision would be obtained from a concern that was unrelated to the business carried on by it, i.e. liquor production bottling and distribution.

11. Furthermore, the assessee had debited huge amounts in its books without vouchers and supporting bills for sales promotion. These expenses were examined post-investigation and were discovered to be self-serving documents on which no reliance could have been placed. It was lastly urged that there was sufficient documentary evidence in the form of annexures

filed along with the Rule 9 report, i.e. material retrieved from the assessee 's managing director's laptop to show that there was suppression of profit to the extent of ₹ 32.32 crores. Likewise the materials retrieved from the laptop also showed working of revised revenue generation for financial year 2004-05 to the tune of ₹ 33.35 crores through booking bogus expenses in the same manner, as was done for the previous year. This unaccounted cash was utilized for illegal expenditure which could not be claimed in the books of account and were to the tune of ₹17.35 crores. Of this ₹ 9.7 crores was made was spent to words bribery etc.

12. It was submitted that even though the orders of the settlement Commission are final, and judicial review is exercisable in limited classes of cases, where the findings rendered are so unreasonable or palpably and manifestly contrary to the evidence on record, the court can exercise its discretion and interfere with such findings. It was therefore argued that in the present case the Commission's findings fall in such limited category and that this court should exercise its discretion to set them aside.

13. Learned senior counsel for the assessee at the outset argued that this court has extremely narrow and limited jurisdiction to interfere with findings rendered by the Commission. He relied on the decisions reported as *Jyotendra Sinhji Vs. S.I Tripathi & Ors* 201 ITR 621 (SC) to say that discretion can be exercised only when the order of the Commission is contrary to any of the provisions of the Act if it has also prejudiced the petitioner / appellant. These are apart from grounds of bias, fraud and malice, which constitute a separate and independent category. Reliance was also placed on *R.B. Shreeram Durga Prasad & Fatechand Nursing Das v. Settlement Commission* [1989] 176 ITR 169. It was submitted that even

wrong appreciation of facts cannot be a ground for interfering with findings of the Commission. It was submitted that in *Commissioner of Income Tax v. Anjum M. H. Ghaswala & Ors* 252 ITR 1, the Supreme Court observed that the Commission has sufficient elbow room to arrive at a settlement which it deems fit so long as such settlement is not in conflict with the mandatory provisions of the section like in the quantum and payment of tax and/or interest. The decision of this court in *Capital Cable (India) Pvt Ltd vs. Income-tax Settlement Commission* 267 ITR 528 too was relied on. The court held, in that decision that:

"When the Act provides that the order shall be final and conclusive, the final judgment or the final decision of the Settlement Commission does not lose its force and as such because in a different case subsequently a view is taken indicating that the views expressed are wrong. A final decision however wrong is still final and its binding force does not depend upon its correctness. There must be an end of litigation. The Settlement Commission is provided under the Income-tax Act for the said purpose. "

14. Learned counsel argued that the present case is not one where the Settlement Commission has blindly and mechanically accepted the application filed by the assessee. The Commission has increased the undisclosed income surrendered by the respondent applicant by a further amount of ₹2.5 crores to arrive at the final income of ₹30 crores. This, it was urged, clearly showed application of mind.

15. Counsel argued that the revenue alleged that a payment of ₹29.95 crores to UPDA, should have been added as undisclosed income of the assessee. In this context is submitted that the revenue's averment to the effect that the alleged payment to UPDA representing the assessee's

undisclosed income is conjectural, premised on surmises. In the course of search at the premises of the respondent, no documents were found evidencing the alleged payment nor did the search yield any unaccounted cash, bullion, jewellery etc. The revenue merely sought to rely on the *ex-parte* bald statement of Sh. R.K. Miglani, General Secretary of UPDA to substantiate the allegation that the assessee had paid monies outside the books of accounts to UPDA. Further no independent/corroborative evidence had been found to support the allegation of payment and the said allegation was based merely on the basis of inferences drawn from certain loose papers, which is not permissible in law. That apart, it was contended that UPDA, who is involved in making illegal payments, has categorically denied the same before Tax Authorities vide letter dated 15.11.2007.

16. It was stated that the Commission did not find any merit in the revenue's case for the reason that-

- (a) papers which were found were in respect of the third party,
- (b) though extensive search had been conducted in the case of the assessee, directors and employees, no papers were found to show that any payments had been made by it to UPDA,
- (c) no opportunity had been given to cross-examine Shri R.K. Miglani,
- (d) there was no independent corroborative evidence led by the petitioner-Department to support the allegation that the assessee paid monies to UPDA outside the books of account. Such allegation could not be supported with reference to papers found at the premises of UPDA.

17. Similarly, urging the court not to interfere with the Commission's findings, learned senior counsel stated that the argument with respect to bogus expenditure is unfounded; the Commission had taken the revenue's

submission into consideration in this regard, in Paras 16 to 20 of the impugned order. It was submitted that merely because an “entry operator” allegedly managed one of the concerns it did not follow that the amounts paid to him could not be genuine. Learned counsel also highlighted that the payments made to Rimjhim were justified; he submitted that the agreements, which the assessee had entered into with, that concern, could not be displaced or discounted. As to the nature of expenditure, learned counsel submitted that the different nature of business of the assessee and Rimjhim *ipso facto* could not lead to the conclusion that the latter concern could not provide supervisory and other connected services to the assessee, in an unrelated business.

18. It was submitted that the reliance by the revenue on computer material and alleged detailed working out of profits of the assessee, from its managing director’s laptop, are clearly aspects that were gone into by the Commission at the revenue’s behest. The Commission had taken note of the revenue’s argument as well as the stand of the assessee that it was a very profitable concern and that the inchoate nature of the material relied on did not in any way establish that they were actual figures or that the amounts earned or profits made were of a greater magnitude than what was reported to the revenue.

Analysis and Findings

19. The Commission was set-up under Section 245B of the Act with the objective of settling tax liabilities in complicated cases avoiding endless and prolonged litigation and consequential strain on investigational resources of the Income-tax Department. An assessee can apply for settlement in respect of an assessment year that is pending; no application is permissible once

proceedings are pending under Section 153A. The assessee's application should make full and true disclosure of income that was originally not revealed in the return (Section 245C). Under Section 245-D(1A) the revenue could object to the continuance of settlement proceedings; the proviso enables the Commission to proceed, after hearing the objections and ruling on it.

20. Section 245D outlines the procedure which the Commission has to follow after receipt of application (for settlement). Section 245D (1) stipulates that on receipt of an application (under Section 245C), the Commission should, within seven days from the date of its receipt, issue a notice to the applicant requiring him to explain as to why the application should be allowed to be proceeded with. After hearing the applicant, the Commission has to, within a period of 14 days (from the date of the application), by an order in writing, reject the application or allow the application to be proceeded with. Proviso to Section 245D (1) stipulates that where no order is passed within the above mentioned period by the Settlement Commission, either allowing the application or rejecting the application, the application shall be deemed to have been allowed to be proceeded with. Section 245D (2B) obliges the Commission to call for a report from the Commissioner; that official has to furnish the said report within 30 days of receipt of the communication from the Commission. Under Section 245D (2C) where a report of the Commissioner, is furnished within the specified period, the Commission has the discretion to, (within 15 days of receipt of report) and by an order in writing, declare the application in question as invalid. In such case, the Commission has to send a copy of such order to the applicant and the revenue (i.e. Commissioner). The first proviso

to Section 245D (2C) ensures that an application shall not be declared invalid by the Settlement Commission unless an opportunity has been given to the applicant of being heard. The second proviso says that where the Commissioner has not furnished the report within the specified period, the Settlement Commission should proceed further in the matter without the report.

21. The Commission, under Section 245D (3) *inter alia*, in respect of a valid application may call for the records from the revenue and after their examination, if it is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the revenue to enquire or so investigate and furnish a report on the matters covered by the application and any other matter relating to the case. The Commissioner (revenue) has to furnish the report within a period of 90 days of receipt of the communication from the Commission. If the revenue does not furnish a report within the said period of 90 days, the Commission may proceed to pass an order under Section 245D (4) without such report. The latter provision authorizes the commission to pass orders as it thinks in accordance with the Act, after examining the records and report of revenue, under Section 245D (2B) as well. Section 245D (6) states that every order passed under Section 245D (4) should provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement is to be paid and all other matters to make the settlement effective. It specifically enacts that the terms of settlement are to indicate that the settlement would be void if it was subsequently found by the Commission that it had been obtained by fraud or misrepresentation of facts. Section

245D (7) provides that where a settlement becomes void under sub-section (6), the proceedings in respect of the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Commission and the income tax authority concerned, may, notwithstanding anything contained in any other provision of the said Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void. Section 245F enacts that in addition to the powers conferred on the Settlement Commission under the said Act, it would also have all the powers which are vested in an income tax authority under the said Act. Section 245F (2) also stipulates that where an application has been allowed to be proceeded with under Section 245D, the Commission shall, until an order is passed under Section 245D (4), have, (subject to Section 245D (3)), exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under the said Act in relation to the case.

22. What triggered the assessee's settlement application in this case was the search and seizure operations conducted by the revenue in its premises, the premises of its directors and the offices of the UPDA as well as that of Sh. Miglani, a functionary of the UPDA. The main thrust of the revenue's grievance in these proceedings is with respect to amounts said to have been clandestinely given to UPDA as the assessee's contribution towards "slush funds" to be used as pay-offs to politicians and public officers in return for favourable treatment. In short, the revenue's case is that the materials seized from UPDA and the statements made by Sh. Miglani to the assessee to the

extent that it concealed over ₹ 35 crores in payments into the fund, and for payments to police, state excise and other officials.

23. The revenue's argument mainly hinges upon the clandestine payments to UPDA and statements of its Secretary General. These include various tables and charts mentioning the names of distilleries (members of the association) and the expected payment from such distilleries. These documents were signed by the Sh. Miglani and on behalf of the different distilleries. The revenue had prepared a chart for each assessment year and the payment made by the assessee to the fund, according to it, worked out to ₹ 29.95 crores. This was allegedly used to bribe public officials and politicians. The reasoning of the Commission was that these documents were in the possession of UPDA and the statements of Sh. Miglani were made not in the course of its search (i.e. of the assessee's premises) and therefore corroboration of the statements as well as the documents with the materials seized from the assessee's premises in this regard was necessary. The question here is whether this reasoning is sound.

24. Section 132 no doubt mandates a presumption in respect of search and seizure operations; yet textually the presumption relates to material documents and books of account seized of from the assessee's premises and the presumption that can be made from it, not from materials seized and statement recorded, of third parties. Only if the materials that are sought to be relied upon emanate from the premises of the party subject to assessment, that the presumption can be drawn. This is evident from Sections 132 (4) and (4A) of the Act, which read as follows:

“Section 132.... (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.”¹

Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.]

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.”

It is evident that in the absence of these foundational facts, the revenue is under an obligation to establish through materials relatable to the assessee, what it alleged against it. What were the best pointers for further investigation were the discovery of material and evidence, which the revenue claim pointed to the assessee's failure to disclose full facts and income, should have resulted in further investigation and unearthing of material in the form of seized documents from the assessee's premises. Unfortunately the linkage between the material seized from the assessee's premises and those from UPDA's premises as well as the statement of Sh. Miglani was not established through any objective material. It is now settled law that block assessments are concerned with fresh material and fresh documents, which emerge in the course of search and seizure proceedings; the revenue has no authority to delve into material that was already before it and the regular assessments were made having regard to the deposition, the inability of the revenue to establish as it were, that the assessee's expenditure claim was bogus, or it had underreported income and that it resorted to over invoicing and diversion of funds into the funds allegedly maintained by the UPDA, was not established. The findings of the Commission therefore cannot be faulted as contrary to law.

25. As far as suppression of profits for various financial years, alleged by the revenue, the Commission was of the opinion that the documents relied upon were work estimates and projections that revealed tentative profitability in respect of the assessee's activities towards sale of country liquor i.e. that the documents did not reflect actual figures. The documents reflected profit methods for both years which left the Commission to infer they were in fact not based upon actuals but alternative projections. Here again the view taken

by the Commission cannot be said to be unreasonable as to warrant interference. Likewise, so far as suppression of profits for financial year 2004-05 is concerned the revenue in its Rule 9 report stated that the extra money generated was ₹ 33.35 crores and expenditure incurred was ₹ 17.35 crores [of this substantial bribe amount were paid]. According to the revenue major expenditure out of this ₹ 17.35 cores was illegal and could not be allowed. The assessee's stand was that the internal indications in the document itself showed that the figures were tentative calculations as evidenced from the expression "expected" and that it did not have anything to do with actual state of affairs. The assessee's managing director prepared these estimates. The Commission accepted this contention and concluded that the revenue's arguments were based upon surmise; the Commission also felt that the documents did not disclose that any payments made were illegal. Furthermore it relied upon the document observing that it contained no writings highlighting that in case a means was made in further expenses would have been incurred in respect of various divisions of the assessee. Here too the interpretation of the documentary evidence by the Commission – which is to be viewed with caution, does not appear to be contrary to law or unreasonable. In the circumstances the revenue's contentions on this aspect too cannot be accepted.

26. The last aspect is with his with respect to alleged bogus expenditure claimed by the assessee to the tune of ₹ 9,11,41,457/-. This expenditure was claimed in the original assessments as payments made to Fair N Square Pvt. Ltd and Rimjhim. The revenue alleged that the first Company (Fair N Square) was involved in entry operations and that expenditure claimed by the assessee was bogus and entirely fictitious. To say so it relied upon the

statement of one Rajan Jassel. The assessee counters to this by saying that Jassel's statement was recorded on 4th February 2004 long before the date of search in its case. Furthermore, the assessee states that there was nothing in the statement of Jassel that he had received the amounts from the assessee which were bogus; that he provided it some accommodation entries to others could not have been the sole basis for discrediting the expenditure claimed by the assessee, Radico for the relevant assessment year.

27. The assessee had relied upon the written agreement between it and Fair N Square Pvt Ltd dated 31st March 2001; likewise in the case of Rimjhim, the agreement of 1st June 2002 describing the terms and conditions and various services rendered by that company was relied upon. The assessee had relied upon it in earlier income tax proceedings. It is quite clear that the assessee, in the original returns disclosed this expenditure as well as the expenditure in respect of services rendered by Rimjhim. In case the revenue wished to discredit that material, it should have relied upon fresh material. It relied upon the statement of an employee of Rimjhim who claimed that there was no written agreement with the assessee nor were any such documents available. The statement however does not mention about any written agreement of 1st June 2002. This statement was recorded after the search and not during the regular assessment proceedings. As to why the expenditure claimed by the assessee at the relevant time was suspect, and whether it was on account of any fresh material is not clear. In any event the Commission concluded that the agreement of 01.06.2002 envisions supervision services by Rimjhim.

28. In this regard, the court is of the opinion that while expenditure claimed by itself might be suspect, the revenue had a further obligation to

investigate further and more deeply into the matter having regard to the fact that the agreement between the assessee and Rimjhim was disclosed earlier. The mere statement of one employee of Rimjhim would not have discredited the agreement itself. It was incumbent upon the revenue-had it suspected the expenditure, (in the over four-month period given to it to furnish its report under Rule 9), to elicit particulars from the concerned AO having jurisdiction over Rimjhim as to whether that concern in fact had received the amounts towards the assessee's claim. The omission in this regard and lack of any particulars to discredit the services and expenditure claimed by the assessee, justified the Commission's conclusion that the addition of ₹9.11 crores demanded by the revenue or other arguments on the basis that the assessee did not disclose such amount, was not warranted. The Commission's findings are not contrary to law or unreasonable.

29. On an overall assessment of the materials that the Commission was confronted and had to deal with, its findings are neither unreasonable nor contrary to law. The findings are based on a proper appreciation of facts, which this court affirms. For these reasons, the writ petition has to fail; it is accordingly dismissed, without order on costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

JULY13, 2017

