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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 405/2017

ALLIED STRIPS LTD.

..... Appellant

Through: Ms. Prem Lata Bansal, Senior Advocate
with Mr. R.A. Bansal, Mr. N.S. Bhatnagar and Mr.
N.C. Jain, Advocates.

versus

**PRINCIPAL COMMISSIONER OF INCOME TAX,
DELHI-1**

..... Respondent

Through: Mr. Zoheb Hossain, Senior Standing
Counsel with Mr. Deepak Anand, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

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17.05.2017

1. This is an appeal under Section 260A of the Income Tax Act, 1961 ('Act') against an order dated 19th January, 2017 of the Income Tax Appellate Tribunal ('ITAT') in ITA No. 702/Del/2013 for the Assessment Year ('AY') 2008-09.

2. The issue sought to be projected by the Assessee in this appeal concerns the additions made by the Assessing Officer ('AO') of a sum of Rs.82,79,973 on account of 'unaccounted investments'. It was urged by Ms.Prem Lata Bansal, learned Senior counsel appearing for the Assessee that at every progressive stage of the proceedings both the AO and the

Commissioner of Income Tax (Appeals) [‘CIT (A)’] and later the ITAT have indulged in conjectures and surmises in granting relief.

3. The case of the Assessee is that it is running all three shifts and the manufacturing process is a continuous one and that if the process is stopped it takes at least one week to restore the production. It is pointed out that there is no basis first for the AO to presume that the investment in unaccounted purchases for the period January to March, 2008, taking it to be three production cycle items, would be Rs.2 crores. It is submitted that when the matter travelled up to the CIT (A), the investment in stock was worked out for a period of 91 days and the production cycle was calculated at an average of 23 days. According to Ms. Bansal the above calculation overlooked the actual production cycle of the Petitioner working on three continuous shifts.

4. It is seen that the CIT (A) has actually gone on the basis of the average production of the Assessee for the previous three AYs i.e. AYs 2005-06, 2006-07 and 2007-08. The Court is unable to agree with the submission of Ms. Bansal based on the decision in *Omar Salay Mohamed Sait v. Commissioner of Income-Tax, Madras [1959] 37 ITR 151 (SC)* that CIT (A) proceeded on a ‘pure’ guess. In the present case, while it could be said that the CIT (A) was proceeding on an estimate, it was a reasonable estimate based on the past production figures of the Assessee itself. The relevant portion of the order of CIT (A) reads as under:

“On a perusal of audited statements of accounts of the appellant for last 3 years, following is the production made by the appellant:

Serial No.	Assessment Year	Production (in MT)
1.	2005-06	24392
2.	2006-07	24929
3.	2007-08	25290

The above yearly production reveals that on an average 68 MT of production is being made by the appellant daily. If we translate the quantity of undisclosed sales of 1570 tons, it gives an average of 23 days of production cycle/stock. The undisclosed sales of Rs.6.11 crore is for a period of 91 days (January to March 2008). Accordingly, the investment in the stock relating to undisclosed sales comes to Rs.1,54,51,743/(Rs.6.11 crore x 23 days/91 days). Therefore, the addition of Rs.2 crore made by the AO is restricted to Rs.1,54,51,743/-. Thus, the appellant gets a relief of Rs.45,48,257/-. This ground of appeal is partly allowed.”

5. When the matter travelled up to the ITAT it decided to give further relief to the Assessee beyond what was given by the CIT (A). The production cycle was reduced from 23 days to an average of 15 days resulting in more relief being granted to the Assessee.

6. The Court is certainly not inclined to grant any further relief to the Assessee as the basis on which the CIT (A) proceeded to arrive at the conclusion, as extracted hereinbefore, was rational and could not be said to be based on surmises and conjectures.

7. The Court is not persuaded to hold that any substantial question of law arises from the impugned order of the ITAT.

8. The appeal is dismissed.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 17, 2017
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