**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 22.07.2019

1. ITA No.266 of 2018 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

2. ITA No.273 of 2018 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

3. ITA No.275 of 2018 (O&M)

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

4. **ITA No.300 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

5. **ITA No.301 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

6. **ITA No.302 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

7. **ITA No.303 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan Enterprises, G-12, Guru Gobind Singh Colony Jalandhar

...... Respondent

8. **ITA No.304 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan
Enterprises, G-12, Guru Gobind Singh Colony
Jalandhar

...... Respondent

9. **ITA No.308 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan
Enterprises, G-12, Guru Gobind Singh Colony
Jalandhar

...... Respondent

10. **ITA No.310 of 2018 (O&M)**

Pr. Commissioner of Income Tax, Jalandhar-I, Jalandhar

...... Appellant

versus

Anthony F.R. Madasser, Prop. M/s Navjeevan
Enterprises, G-12, Guru Gobind Singh Colony
Jalandhar

...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

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Present : Mr. Vivek Sethi, Advocate
for the appellant.

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<u>AJAY TEWARI, J. (Oral)</u>

1. This order shall dispose of the above mentioned ten appeals. Since common questions of law and facts are involved therein, they are being decided by this common order. For the sake of convenience the facts are being taken from ***ITA No.266 of 2018***.

2. ITA No.266 of 2018 has been filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar passed in MA No.34/(ASR)/2017 (arising out of ITA No.115(ASR)/2015) dated 06.11.2017 for the Assessment Year 2011-2012. The dispute relates to the assessment years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013.

3. These 10 appeals have been filed against the orders of the Income Tax Appellate Tribunal, Amritsar deciding 20 appeals (10 filed by the Assessee and 10 filed by the Revenue).

4. The issue involved is whether allowance was to be given to the Assessee for books and other study material out of which some were obtained on discount and some were sold at a discount/distributed free of cost.

5. The brief facts are that the Assessee is a proprietor of M/s Navjeevan Enterprises. He is an ordained priest and his church runs several educational institutions in the area. Through the firm he was acquiring books and other study material for onward transmission to students in the various schools aforesaid. The return was selected for scrutiny and it was discovered that the purchase bills were prepared by the seller at MRP rates but discount ranging from 10% to 50% was

allowed and it was alleged that the Assessee was selling the books on the MRP rates.

6. During the proceedings before the Assessing Officer the Assessee placed some material to substantiate his assertion that he was selling books at a discount. However, the Assessing Officer held against him holding as follows :-

> "*6.2 The assessee is an individual running a business where books and other stationery items are sold on retail basis. He is not running a charitable organization. The assessee though is a member of charitable/religious organization, as an individual he is running a business. His normal course of business is to run business and to earn profit. The claim of the assessee that he is doing charity by supplying free and discounted sets of books is unreliable and unsubstantiated. Even otherwise this is nothing but diversion of funds/income. It is a kind of donation in the name of religion. The assessee in his personal capacity is free to do charity and give/part away his income to a religious/charitable organization. The assessee is free to deal with his income post tax, in manner he deems fit, but not at the cost of tax. In this case, since the assessee is closely connected with a religious organization, has routed the charity to the organizations before paying the appropriate taxes on the net income Charity/donation has been included in the cost of expenditure of his business and in turn the assessee has reduced his profits to that extent. This is a subterfuge to deflate the true taxable income. The income has been diverted before paying the tax. This is not a case of business expediency to do charity by giving extraordinary discount or free sales. The assessee has inflated his expenditure in the name of charity. The charity has not been done for the purpose of promoting the business. This is not a*

normal course of activity in a case of any retail book sellers. The claim of the assessee is unreliable, abnormal, and unreasonable and not a normal usual trade practice of the business of a retail book seller. The charity has neither been done for the furtherance of business nor wholly and exclusively for the purpose of business. In the course of doing business certain activities are allowed but these should be for the furtherance of business and the expenses should be incurred wholly and exclusively for the purpose of the business or profession. In this case the assessee has failed to establish that this act of charity was on account of business expediency and for the furtherance of business. The assessee has failed to show that the charity was not on his personal account and has miserably failed to show the connection between donation/charity and the business of the retail sale of books to schools."

7. And ultimately held that the Assessee had not disclosed profits to the tune of Rs.3,47,83,926/- and consequently assessed the income at Rs.5,06,79,282/-. It may be mentioned here that the similar is the position for all the years covered by these appeals. In appeal the Commissioner, Income Tax accepted the assertion regarding discounted/free sale of books and granted the following relief :-

"6.8 In view of the above stated facts and in the circumstances of the case, the trading addition made by the Assessing Officer on account of undisclosed profits is restricted to Rs.1,78,35,234/- and balance addition of Rs.1,69,48,692/-, Rs.3,47,83,926/- (-) Rs.1,78,35,234/-] is directed to be deleted. In nutshell, the assessee will get a relief of Rs.1,69,48,692/- [Rs.3,47,83,926/- (-) Rs.1,78,35,234/-] out of total trading addition of Rs.3,47,83 the result, the ground No.2, 3 and 4 of appeal taken by the assessee are partly allowed.

> *6.9 As the addition has been worked out on the cost of sales, no separate addition on account of discount allowed by the assessee and on account of free distribution of books is required to be made again otherwise it will tantamount to double addition. Moreover, the plea of the assessee that he has made sales at discount and has also given books to teachers free of cost has been accepted in the absence of any contrary finding. In view of these facts and in the circumstances of the case, separate addition of Rs.1,51,59,103/- made by the Assessing Officer on account of free distribution of books and on account of discount allowed by the assessee to poor students on the recommendations of various school is directed to be deleted. In the result, ground No.5 of appeal taken by the assessee is allowed."*

8. Both the Revenue and the Assessee further filed appeals before the Tribunal. The Tribunal found that the CIT Appeal had allowed relief on account of free distribution of books after getting remand report from Assessing Officer and consequently dismissed the appeals filed by the Revenue and, gave some more relief to the Assessee. The subsequent miscellaneous applications for modification also having been dismissed the present appeals have been filed.

9. The primary contention of the learned counsel for the appellant before us was that there was no material on the record to support the conclusions arrived at by the Commissioner as well as the Tribunal. However, a perusal of the judgments reveals that material was there before the Assessing Officer. In this connection reference may be made to the following paragraphs of the Order passed by the Assessing

Officer (Annexure A-1) :-

> *"1. We have already explained in detail the procedure of discounted sale to your goodself and also provided the details of sale at concessional sale vide para 4 of our letter dated 10/2/2014. These concessional sale is made to the needy students by various schools and on the recommendation of the School authorities we make the sale. We had also requested that these may be verified from the respective schools principals. We had also submitted the detailed procedure vide para 4 of our reply dated 03/03/2014. Even quarterly VAT 15 returns and yearly return VAT 20 was submitted vide para 11 of our reply dated 10/2/2014. No defect was pointed out in these VAT returns by your good self till date. We make the entries at net sale and this practice is being followed regularly by the assessee and accepted by the department in earlier years. This trade practice is being adopted by all the traders in this trade.*
>
> *5. Regarding supplying of cost price of discounted items, we submit that books and stationery Items are supplied in every year at discount and concessional rates to various needy students of different schools as per the directions of principals of various schools. Further, it is stated all the documentary evidence in the form of recommendatory letters from the principals of various schools for supplying of free books to teachers have already been placed on your file.*
>
> *6. In the last hearing on 3/3/2014 before your goodself, it was explained that the vouchers where the payment has been made through account payee cheque has not been signed since the payment has been made through a/c payee cheque and other vouchers such as conveyance, telephone, travelling etc. which has been referred are duly supported by the bills which were attached with the vouchers and which were also photo copied by your goodself. We are also enclosing details of salary paid during the year."*

Likewise, reference may be made to the following paragraph of the order passed by the Commissioner (Annexure A-2) :-

> *"iv). Then again since the assessee is working on a missionary spirit, he is required to sell the books/stationery free of cost to the needy students on the recommendations of Principal of each school and for which the list was given to the Assessing Officer and along with that necessary confirmation from the Principal were filed during the course of assessment proceedings and which have not been doubted by Assessing Officer and the cost of such books is Rs.48,87,251/-."*

10. In the circumstances, the contention that there was no material is wrong. The Assessing Officer disbelieved the material while the Commissioner and Tribunal believed the same. The view taken by the Commissioner and the Tribunal can not be said to be perverse or based on no evidence. No other question of law arises.

11. Appeals stand dismissed.

12. Since the main cases have been decided, the pending C.M. Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 22, 2019
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No