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

\+ **ITA 594/2019**

PR. COMMISSIONER OF INCOME TAX -10 ..... Appellant

Through: Mr.Zoheb Hossain, Sr. Standing Counsel

versus

SHRI PRAKUL LUTHRA ..... Respondent

Through: Mr.Rohit Kumar Gupta, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.07.2019**

C.M.No.30364/2019 (Delay in re-filing the appeal)

1. For the reasons explained in the applications, the delay in re-filing the appeal is condoned and the application is allowed.

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2. The Revenue has filed an appeal against the order dated 1st August, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.110/Del/2013 for Assessment Year (AY) 2008-09.

3. The question sought to be urged was whether the ITAT was justified in affirming the order of the Commissioner of Income Tax (Appeals) [CIT (A)] in deleting the addition made by the Assessing Officer (AO) of

Rs.1,77,73,854/- by rejecting the books of accounts of the Assessee under Section 145 of the Act?

4. The Assessee has filed his return of income on 16th October, 2008 which was picked up for scrutiny and notice issued to him under Section 143 (2) by the AO along with a questionnaire. The assessment was completed by an order dated 29th December, 2011 under Section 143 (3) at an income of Rs.2,52,96,070/- resulting in an addition of Rs. 1,77,73,854/- on account of revised gross profit (GP). According to the AO, the Assessee had inflated the expenses and showed artificial excess consumption to the tune of 9.67%. According to the AO, the books of accounts did not present a true and fair picture of the Assessee's state of affairs.

5. The matter travelled to CIT (A) in appeal at the instance of the Assessee. The CIT (A) in the order dated 23rd October, 2012 noted that the Assessee has disclosed a Gross Profit (GP) margin of 13.81%. The Assessee was in the business of manufacturingd various types of garments and a uniformity in GP across different kinds and styles of garments was not possible. It was noted that the normal cycle of shipping of garments, from order to delivery, ranged from 70 to 90 days. Therefore a month-wise GP profit working would not present a correct picture of the trading results. The manufacturing cycle was for about three months. Therefore, drawing up a month-wise trading account on the basis of Tally would not provide a correct picture of the GP.

6. According to the CIT(A) the AO failed to substantiate the allegation that

the associate concerns of the Assessee had sold the goods to the three entitites i.e. M/s Sakshi Creation, M/s Latika Enterprise and M/s Laurel (India) Implex Ltd. which in turn sold them to the Assessee resulting in over invoicing. The CIT (A) also noted that the Assessee had shown, by the reference to the audited books of accounts, that the average per unit consumption of fabric was 0.4382 Kgs for the period April to December, 2007 and 0.4071 Kgs for the entire previous year. Accordingly, the so called artificial consumption of 9.67% was held not to be sustainable. The addition was accordingly deleted.

7. Aggrieved by the order of the CIT (A), the Revenue appealed to the ITAT which by the impugned order has dismissed the said appeal. The ITAT has, *inter alia,* noted that the Revenue accepted the books of accounts of the Assessee for the earlier and subsequent AYs i.e. 2007-08 and 2009-10, both in scrutiny assessments under Section 143 (3) of the Act, without making any additions of a similar nature. Even in AY 2010-11 AO accepted the book result of accounts of the Assessee as submitted, under Section 143(3) of the Act. It was in these circumstances ITAT observed that "instead of re-casting the trading account per month the AO should have brought some independent and concrete material on record to reject book results in the AY in appeal." The ITAT also referred to the rule of consistency as explained by the Supreme Court in ***Radha Soami Satsang 193 ITR 321*** and ***Rxcel Industries Ltd. 358 ITR 295***.

8. Mr. Zoheb Hossain, learned Senior Standing counsel for the Revenue, assailed the impugned order essentially on the ground that there was no

warrant for the observations that the AO had failed to bring out any single instance of round tripping resulting in inflation of the consumption figures by the Assessee. He drew our attention to the order of the AO to emphasise that the AO had undertaken very detailed examination of the books and gave cogent reasons for arriving at a conclusion of the possible round tripping of money taken out from the business of the Assessee by examining the transactions involving the aforementioned three entities i.e. M/s Sakshi Creation, M/s Latika Enterpries and M/s Laurel (India) Implex Limited. It is further submitted that even if this Court is not inclined to examine the issues, in view of the discrepancies pointed out by the AO it should remand the matter to the CIT(A) for a fresh determination. In support of this submission Mr Hossain relied on the judgment dated 8th February, 2018 of this Court in ***Principal Commissioner of Income Tax-21 v. M/s Mehta Construction Co.***

9. Mr. Hossain was unable to dispute the fact that for the immediately preceding and subsequent AYs, the Assessee's books of accounts were in fact accepted by the AO in scrutiny under Section 143 (3) of the Act without making any addition. He was unable to explain how this would be tenable particularly considering that it is inconceivable that the accounts of a particular AY are found unacceptable under Section 145 of the Act but not those of the immediately preceding or subsequent AYs. If accounts of a particular AY are found not reflecting the true state of affairs, they would undoubtedly impact the accounts for the immediately preceding or subsequent AY. In other words it is inconceivable that the accounts of one particular AY in isolation is rejected and not those of the immediately

preceding or subsequent AY. While as explained in ***Honey Enterprises v. Commissioner of Income Tax (2016) 381 ITR 258 (Del)*** the rule of consistency is not inflexible, and has to be applied given the facts and circumstances of a particular case, as far as the case on hand is concerned, for the reason explained hereinabove, its invocation by the ITAT in the impugned order cannot be faulted.

10. Further, in view of the detailed findings given by the CIT(A) by examining the accounts afresh and holding that there was no justification for the AO to make the addition, which findings have been concurred with by the ITAT, no case is made out for remand of the matter to the CIT (A).

11. No substantial question of law arises from the impugned order of the ITAT. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019
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