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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 18th July, 2019

Decided on: 31st July, 2019

ITA 828/2005

COMMISSIONER OF INCOME TAX

.... Appellant

Through: Mr. Deepak Anand and Mr. Zoheb
Hossain, Senior Standing Counsel for
Revenue

versus

RAJIV GUPTA

.... Respondent

Through: Mr. Ved Jain, Mr. Kislaya Parashar
and Ms. Umang Luthra, Advocates

AND

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ITA 833/2005

COMMISSIONER OF INCOME TAX

... Appellant

Through: Mr. Deepak Anand and Mr. Zoheb
Hossain, Senior Standing Counsel for
Revenue

versus

AJAY KUMAR GUPTA

... Respondent

Through: Mr. Ved Jain, Mr. Kislaya Parashar
and Ms. Umang Luthra, Advocates

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These two appeals are by the Revenue and are directed against the

common order dated 27th January, 2005 passed by the Income Tax Appellate Tribunal in ITA Nos. 3919/Del/2001 and 3920/Del/2001 for the Assessment Year (AY) 1998-99.

2. In ITA No. 828/2005 while admitting the appeal on 21st September, 2005 the following question of law was framed for consideration:

"Whether the ITAT was correct in law in confirming the order passed by the CIT (Appeals) holding that the provisions of Section 145(3) were not applicable completely ignoring the fact that the Assessing Officer has rejected the account books of the assessee?"

3. In ITA No. 833/2005 an identical question was framed subsequently when the said appeal was admitted by the order dated 21st March, 2006.

4. This Court has heard the submissions of Mr. Deepak Anand, learned Counsel for the Revenue and Mr. Ved Jain, learned counsel for the Assesseees.

5. The background facts are that the Respondent/Assessee in ITA No. 828/2005 is the proprietor of M/s S.R. Jewells whereas the Respondent Assessee in ITA No. 833/2005 is a proprietor of M/s Kishan Lal and Sons. Both are dealing in the business of trading in gold and silver items.

6. The Assessee in ITA No. 828/2005 filed his return of income for the AY in question on 31st October, 1998 declaring a loss of Rs.1,35,570/-. As far as the Assessee in ITA No. 833/2005 is concerned, he filed a return declaring

an income of Rs.1,87,750/-. Both the returns were picked up for scrutiny.

7. At this stage, it requires to be noticed that a search and seizure operation under Section 132 of the Income Tax Act, 1961 ('Act') was carried out on the Bamalwa Group of Calcutta. The said group had declared huge amount of silver and silver utensils under the Voluntary Disclosure of Income Scheme, 1997(VDIS). The sale of silver as claimed by them through various jewellers in Delhi had been carried out only on paper to bring the sale proceeds in regular books of accounts.

8. It was noticed by the Assessing Officer (AO) that both these Assesseees had contributed in the said process by giving accommodation entries by issuing account payee cheques towards purchase of fictitious silver items. Simultaneous with the above search and seizure operation, a similar search and seizure operation was also carried out in the premises of the two Assesseees on 16th February, 2000. The purchase of silver as claimed by the two Assesseees was confirmed to be from the persons of the Bamalwa Group who had declared silver in their VDIS declarations.

9. A perusal of the assessment orders dated 30th March, 2001 passed in each of these matters reveals that several opportunities were given by the AO to the two Assesseees to furnish the complete names and addresses of the alleged 'buyers' of silver from whom cash had been received. No record was produced to explain how such a huge amount of silver was transported to Delhi. Since the Assesseees were not able to substantiate the sales as declared in the books, the accounts were rejected and Section 145 (3) of the Act was

invoked.

10. The AO on examining the accounts came to the conclusion that the Assessee had given accommodation entries to persons who had declared high quantities of silver in the VDIS declarations for the purposes of earning commission thereon which ranged at 5% to 7% of the interest.

11. What is significant is that queries were asked of the Assessee by note sheet entry dated 13th December, 2000 to furnish names and addresses with respective amounts of all the alleged buyers of silver items. This was reiterated by a letter dated 29th December, 2000. The Assessee failed to comply with this request. On 12th March, 2001 a specific letter was again addressed in which it was stated as under:

"With reference to the abovementioned proceedings, vide note sheet entry dated 19-1-2001, you were asked to furnish bill wise details of silver purchased and sold. However vide your reply dated 22-2-2001 you have only given summary of sale of silver. However, you have not given the complete name and address of the parties to whom you have sold silver.

You are again given another opportunity to furnish complete name, address of all the persons to whom you have sold silver along with quantity and amount. In case you do not furnish complete name and address of the parties to whom you have sold silver, please explain why the amount involved should not be taken as unexplained credit entries in your books."

12. The reply that each of the Assesseees gave was that the sales were in cash. However, information regarding the complete names and addresses of the parties from whom the cash was received was not furnished. Another

letter dated 22nd March, 2001 was issued to them by the AO. Yet another opportunity was given to prove the identities, genuineness and creditworthiness of the persons from whom the Assessee had claimed to receive the cash.

13. In the case of the Assessee in ITA 828 of 2005, of the total 2570 bills, details only in respect of 10 bills were furnished where the amount involved was very small. Even in these cash memos the description of utensils and articles of silver items had not been mentioned. The total amount of cash sales was Rs.29,90,06,343/-.

14. As regards the Assessee in ITA No. 833/2005, the AO found the situation to be no different. It was noted that the silver which the said Assessee had allegedly sold to persons who declared silver in the VDIS declarations had been shown as sold entirely in cash. The daily cash sales were in the range of Rs.85 lakhs. Here again no details were forthcoming. There were as many as 3142 cash memos of such sales for a total amount of Rs.40,21,80,331/-. The details only in respect of 15 such cash memos were provided. These showed purchase of silver from MMTC and Customs. However, when he was asked to produce evidence of purchases other than those from MMTC and Customs, the Assessee was unable to do so.

15. The AO noted that in each of the cases there was no record to show how such huge amount of silver was transported to Delhi and how the buyers contacted the Assessee. It was in these circumstances that it was concluded that the two Assessee had failed to prove the identity of the so-called

buyers of silver. It is in these circumstances that the AO came to the conclusion that each of the Assessee had failed to prove the identity of the persons to whom cash sales had been made, in the sum of nearly Rs.30 crores and over Rs.40 crores respectively.

16. The conclusion drawn by the AO that “there was no silver at all and the story of purchase and sale of silver is entirely concocted” appears to be based on the evidence before him. It is a matter of concern that this exhaustive evidence has not even been discussed in the impugned orders of the CIT (A) and the ITAT which have set aside the AO’s orders.

17. Mr. Ved Jain, learned counsel appearing for the Assessee placed reliance on the decision of this Court in ***CIT vs. Jindal Dyechem Industries Pvt. Ltd. 2012 (4) TMI 423*** to urge that the addition made by the AO on account of cash sales which was subsequently deleted by the CIT (A), which was concurred with by the ITAT, was not interfered with. The facts of that decision were entirely different and the amount involved was Rs.1.20 crores.

18. The Court finds that in the present case the sales of over Rs.30 crores in one case and Rs.40 crores in another being put forth entirely as ‘cash sales’ had no valid basis in the books of accounts. It was obligatory on the Assessee to satisfactorily account for the creditworthiness, identity and genuineness of the transactions of the so-called providers of such cash to each of them in such huge sums. Plainly this was not forthcoming and the AO rightly therefore disregarded the accounts of both Assessee under Section 145 (3). The satisfaction recorded by the AO in the present cases

that the books of account maintained by each Assessee deserved to be rejected cannot, in the circumstances, be said to be perverse.

19. In *Kachwala Gems Jaipur v. Joint Commissioner of Income Tax (2007) 12 SCC 761* it was held that the AO can reject the assessment under Section 145 (3) of the Act if he finds that there are defects in the books of accounts and where bogus purchases are shown by the Assessee in order to reduce gross profit. It was further held by the Supreme Court that:

“It is well settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts.”

20 In the present cases, the discussion of the evidence on record both by the CIT (A) and the ITAT is found to be cryptic and without adverting properly to the facts referred to by the AO.

21. For all of the aforementioned reasons, this Court answers the question framed in the negative i.e. in favour of the Revenue and against the Assessee by holding that the ITAT erred in confirming the order passed by the CIT (A) and in holding that Section 145(3) of the Act was not applicable.

22. In the considered view of the Court, the AO rightly rejected the books of accounts of both Assesseees and the additions made by him are required to be

restored.

23. The appeals are accordingly allowed. The impugned orders of the ITAT and CIT (A) in both appeals are hereby set aside. The assessment orders of the AO for the AY in question are restored.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 31, 2019

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