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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **I.T.A. 918/2005**

M/S P.H. KUMAR & CO. Appellant
Through: Mr. Aseem Chawla, Mr. Manu K.Giri
and Mr. Surat Mehta, Advocates

versus

INCOME TAX OFFICER Respondent
Through: Mr. Zoheb Hossain, Sr. Standing
Counsel and Mr. Deepak Anand,
Junior Standing Counsel for the
Revenue

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **05.08.2019**

1. This is an appeal by the Assessee against the impugned order dated 22nd February, 2005 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 1861/Del/2004 for the Assessment Year (AY) 2001-2002.

2. While admitting this appeal on 27 October, 2005, the following question of law was framed by this Court for consideration:

"Whether disallowance of Rs.2 lacs as business loss by the Tribunal is perverse having regard to the fact that the fire incident causing the loss and the payment of the amount of loss were both undisputed?"

3. The Assessee is a Franchisee of "Madura Garments", a division of M/s Indian Rayon & Industries Limited (hereafter 'the company'). It has a showroom in Delhi. It entered into a franchisee agreement on 12th July, 1995 with Coats Viyella India Limited and it was appointed franchisee to sell "Allen Solly" brand of products at its showroom in Karol Bagh, New Delhi. As a franchisee, the Assessee was obliged to stock and sell the products supplied by the aforementioned company only. Under clauses 21 and 22 of the Franchisee Agreement, it was the Assessee which was accountable to the company in case of loss of goods.

4. In November, 2000, the franchise agreement was cancelled and in the final account statement prepared by the company, a sum of Rs. 2 lakhs on account of stock shortage was debited and recovered from the assessee. In the return filed for AY 2001-2002, in computing the income, the Assessee claimed shortage of Rs. 2,22,080/- which included shortage of Rs. 2 lakhs debited by the company in the final statement.

5. The Assessee states that it has asked from the company, details of shortage of stock. It was however informed by the company that there was fire accident at the premises of agents of the company, therefore, the company could not provide to the Assessee, the details of shortage of stock. The company accordingly issued a certificate to that effect. Before the Assessing Officer (AO), despite the Assessee producing the said certificate, the claim of Rs. 2 lakhs on account of shortage of stock was disallowed on the ground that the Assessee had failed to furnish details of either the nature of or period of shortage.

6. The Assessee's appeal was dismissed by the Commissioner of Income Tax (Appeals) [CIT (A)] by an order dated 16th February, 2004 observing that the company had wrongly recovered the loss from the Assessee. The CIT (A) observed that the Assessee should have raised a dispute with the company instead of claiming it as a deduction.

7. The Assessee appealed then to the ITAT. While disagreeing with CIT (A) that the loss on account of shortage of stock was the liability of the company and not of the Assessee, the ITAT nevertheless upheld the disallowance on the ground that the Assessee had failed to substantiate such loss by furnishing details of the shortage.

8. Having heard learned counsel for the parties, the Court is of the view that the plea of the Assessee ought to have been accepted in the first instance by the AO. The Assessee placed on record the agreement under which it was obliged to bear the loss for shortage of stock. The Assessee also placed on record the statement of account in terms of which it had to pay the company Rs.2 lakhs towards shortage of stock. It is not as if the Assessee did not make an effort to ascertain the details. It was informed that on account of fire, those details could not be provided as the records had been destroyed. This was not something in the control of the Assessee. On its part it gave the full details to the AO including the FIR number reporting the loss of records due to the fire.

9. The Court fails to appreciate how the Assessee could have done anything more to substantiate the fact that it had to pay Rs.2 lakhs to the company towards the shortage of stock. The fact of the Assessee having actually paid the company the said amount is also not in dispute.

10. Learned counsel for the Revenue submitted that even in earlier AYs deductions have been claimed by the Assessee on account of shortage of stock for the varying amounts. The Court fails to see how this could be a factor that works against the Assessee. Being in the business of running a showroom for wearing apparels, shortage of stock is not an unusual phenomenon.

11. For the aforementioned reasons, this Court answers the question of law framed in the affirmative i.e. in favour of the Assessee and against the Revenue. The impugned orders of the AO, CIT (A) and ITAT are accordingly set aside. The appeal effect will be given after permitting deduction of Rs.2 lakhs in computing the income for the AY in question. The appeal is allowed in above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 05, 2019

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