IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

386 **ITA-115-2000 (O&M)**
Date of Decision : 17.1.2020

M/s. New Adarsh Industries ...... Appellant

Versus

Commissioner of Income Tax Amritsar and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE AVNEESH JHINGAN
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Present : Mr. Alok Mittal, Advocate
for the appellant.

Mr. Vivek Sethi, Senior Standing counsel with
Mr. Vivek Issar, Jr. Standing counsel
for the respondents.

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AJAY TEWARI, J. (Oral)

1. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 21.2.2000 of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar passed in Income Tax Appeal No. 849 (ASR)/1993 relating to Assessment year 1988-89 reversing the order of the Commissioner of Income Tax (A) and maintaining the order of the Assessing Officer. The appellant has raised following questions of law :-

> *"(a) Whether in the facts and circumstances of the case, the orders Annexure P-1 and P-3 are legally sustainable ?*
>
> *(b) Whether in the facts and circumstances of the case, the addition of Rs.2,44,242/- on account of alleged unaccounted*

for sales is legally sustainable inspite of stock as per the books of account tallying with the stock statement as furnished to the bank ?

(c) Whether in the facts and circumstances of the case, the respondents were legally justified in making the addition of Rs.2,44,242/- on account of unaccounted for sales on mere presumptions and sermises without there being any independent evidence on record to corroborate the same ?

(d) Whether in the facts and circumstances of the case, the addition of Rs.2,44,242/- is legally sustainable the same being based on mere presumptions and inspite of the said sales having been accepted by the Sales Tax Department as correct and also with their being no discrepancy in the stock statement as per the books of account of assessee and as per the stock statement furnished to the bank ?"

2. Brief facts of the case are that the appellant was engaged in business of manufacturing and sale of conduit pipes and had filed its return of income relating to assessment year 1988-89 on 26.8.1988 disclosing an income of Rs.28,460/-. Instead of accepting the return a notice under Section 143 (2) was issued. This was done primarily on the ground that while going through the hypothecation register of the bank, it transpired that the value of the goods hypothecated to the bank on two dates i.e. 10.10.1987 and 15.2.1988 were more than those reflected in the stock register of the appellant. The Assessing Officer concluded that these were sales made outside the book of accounts and thereby added a sum of Rs. 2,44,242/-. The appellant filed an appeal which was allowed by the Commissioner primarily on the ground that even though this discrepancy was pointed out by the Assessing Officer yet the final sales, figures, stock and the book of accounts as on 31.3.1988 were accepted by

the Revenue authority which meant that whatever excess stock there may have been was sold during the year, was reflected in the books of accounts. The Tribunal however, did not consider this aspect but went on to hold that the appellant had not been able to explain the discrepancies which had occurred in the value of the stock represented in the hypothication register and the stock at the premises and consequently, set aside the order of the Commissioner restoring the order of the Assessing Officer. Hence the present appeal.

3. Learned counsel has reiterated the argument which found favour with the Commissioner's appeal and we also find those reasons to be more logical than the decision of the Tribunal. Once the closing balance and the final books of accounts have been accepted it is clear that whatever goods were produced during the year were sold and thus the discrepancies which may existed on two days in an year would not be determinative.

4. Consequently, the appeal is allowed and the impugned order dated 21.2.2000 is set aside.

5. Since the main case has been decided, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17.1.2020
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No