

O-81

ITA/295/2009

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

M/S. SAMADDAR BROTHERS

-Versus-

COMMISSIONER OF INCOME TAX,
BURDWAN & ANR.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 13th February, 2023

Appearance :

Mr. Ramendra Nath Biswas, Adv.

Mr. Avra mazumdar, Adv.

Mr. Suman Bhowmick, Adv.

Mr. Samrat Das, Adv.

...for the appellant.

Mr. Soumen Bhattacharyya, Adv.

...for the respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 30th June, 2009 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.151/Kol/2008 for the assessment year 1995-96.

The appeal was admitted on 23rd March, 2010 on the following substantial questions of law:

- (i) *Whether on the facts and in the circumstances of the case the addition of Rs.3,10,374/- under the heading "Trading Account" being the estimated profit at the rate of 8.4% on the excess stock amounted to ₹36.09 lakhs is vitiated in law ?*
- (ii) *Whether on the facts and in the circumstances of the case the addition of Rs.49,640/- under being the estimated profit at the rate of 8.65% on the alleged unaccounted purchase price of goods at Rs.5,72,732/- amounts to double taxation on the same goods ?*
- (iii) *Whether on the facts and in the circumstances of the case the addition of Rs.10,25,022/- as confirmed by the Tribunal is vitiated in law ?*

We have heard Mr. Ramendra Nath Biswas, learned counsel assisted by Mr. Avra Mazumdar, Mr. Suman Bhowmick and Mr. Samrat Das, learned Advocates for the appellant and Mr. Soumen Bhattacharyya, learned standing counsel for the respondent/revenue.

The present proceedings arise out of a second round of litigation. In the first round, the learned Tribunal has recalled its order and the matter was remanded to the Assessing Officer for a fresh assessment. Three issues arise for consideration.

We have very carefully perused the orders passed by the Assessing Officer, the CIT(A) as well as the Tribunal in

the earlier round as well as in the present round of litigation and noted the submissions of the learned Advocate for the appellant and that of the learned standing counsel for the respondent/revenue.

With regard to the first issue, the learned Tribunal has examined the factual position and noted that there was a survey at the business premises of the assessee on 9th September, 1994 under Section 133A of the Act. During the course of such survey, stock of inventories was taken in the presence of the assessee-firm and it was found to be of the value of Rs.66,11,036/-. The contention of the assessee was that the goods found in the said shop do not exclusively belong to the assessee but also in respect of other firms which were situated in the other floors of the same building. The survey team found that there was no separate sale counter found in the other floors of the building and the assessee could not show any separate trade licence, sale memo, purchase memo, books of account etc. in the individual name of the three other persons. During the course of assessment, the assessee filed a list of total stock as on the date of survey i.e., 9th September, 1994, according to which, the assessee-firm had a stock of Rs.12,58,555.01 whereas the other three firms had stock of different values. Thus, the explanation sought to be offered by the assessee was that the total stock was not exclusively of

the assessee-firm. The Assessing Officer did not accept the stand of the assessee as the assessee could not explain the excess physical stock found during the course of survey and he took the profit of 8.65% on the alleged difference of stock and added the same to the profit of the assessee-firm which worked out to Rs.4,16,246/-. On appeal, the CIT(A) deleted the addition. Aggrieved by the same, the revenue preferred appeal before the Tribunal and the Tribunal directed the Assessing Officer to compute the profit at 8.6% on Rs.36.09 lakh instead of Rs.48.12 lakh which came to Rs.3,10,374/- instead of Rs.4,16,246/-. This direction was issued by the Tribunal by order dated 18th December, 2003. Subsequently, the order of Tribunal was recalled and the matter was restored to the Assessing Officer for fresh adjudication. The Assessing Officer again estimated the gross profit at Rs.4,16,246/-. The CIT(A) granted partial relief and deleted the addition of Rs.1,05,872/- and restricted the disallowance to Rs.3,10,374/-. Aggrieved by such order, the assessee preferred appeal before the learned Tribunal. The learned Tribunal took note of the facts recorded by the authorities and found that there was no dispute that the assessee was dealing in clothes and hosiery wherein stock has been inventorised by the survey team in the presence of the partners of the assessee and the same was valued at Rs.66,11,036/- which was in excess of what was

entered in the books of accounts. Thus, in the absence of any explanation given by the assessee either before the Assessing Officer or before the CIT(A) or before the Tribunal, the Tribunal rejected the plea. Thus, we find that the learned Tribunal rightly took note of the facts and refused to interfere with the order passed by the CIT(A) which had granted partial relief to the assessee and in the absence of any error or perversity in the order passed by the Tribunal, we are not inclined to interfere with the same. Accordingly, the substantial question of law no.1 is answered against the assessee.

With regard to the substantial question of law no.2, the Assessing Officer at the time of assessment proceedings found that as per the "Mahajani Khata" marked as 'SKM-8' found during the course of survey, the assessee-firm had purchased goods worth Rs.5,72,732/- from different parties during the period 1st April, 1994 to 31st March, 1995. The assessee failed to produce any supporting material regarding the purchases which were found recorded in the said Khata but not found in recorded in the books of account of the assessee produced at the time of the assessment proceedings. It was further found from the said Khata that payments were made to the parties on different dates mostly after the purchases. Thus, the Assessing Officer concluded that the assessee sold goods worth

Rs.5,72,732/- which were not recorded in the books of account and earned profit out of books. Therefore, the Assessing Officer estimated profit at the rate of 8.65% on this amount which worked out to Rs.49,640/-. This order was affirmed by the CIT(A). The assessee challenged the order before the Tribunal contending that no separate addition on the basis of the Khata is to be made after addition has been made by estimating the profit on excess stock on the basis of Khata itself and it would amount to double taxation. The learned Tribunal, on going through the entire facts, held that the assessee did not produce any material to substantiate their submission and rebut the findings recorded by the Assessing Officer which was affirmed by the CIT(A). Therefore, in absence of any evidence produced by the assessee, the addition was sustained. We find that there is no error in the approach of the Tribunal which had taken note of the facts, more particularly, that the assessee failed to discharge the burden cast upon him but producing evidence. For such reason, the substantial question of law no.2 is answered against the assessee.

So far as substantial question of law no.3 is concerned, this also pertains to sums of money paid to the different parties by the assessee-firm during the aforementioned period and the payments were not found recorded

in the books of account of the assessee firm. Therefore, the Assessing Officer treated the same as undisclosed income and added it to the total income. This order was affirmed by the CIT(A). The assessee challenged the said order before the Tribunal. The Tribunal accepted the submission of the revenue that there was no explanation furnished by the assessee for not recording the payments in the books of account and, therefore, the Tribunal did not find any infirmity in the order passed by the Assessing Officer on addition of Rs.10,25,022/-. Furthermore, the Tribunal noted that the assessee could not produce any evidence or material before the lower authorities or before the Tribunal and merely stated that the transactions were not related to the business of the assessee-firm. Furthermore, the Tribunal noted that despite opportunity granted by the Tribunal on the earlier occasion when the matter was remanded to the Assessing Officer for fresh decision, the assessee did not avail the opportunity. This could be confirmed by perusal of the assessment order from which it is seen that in spite of repeated notices issued to the assessee, the assessee did not turn up nor respond to those notices thus showing that the did not cooperate in the assessment proceedings. Thus, we find no error in the order passed by the learned Tribunal confirming the said addition of Rs.10,25,022/-.

For all the above reasons, the appeal filed by the assessee (ITA/295/2009) is dismissed and the substantial questions of law are answered against the assessee.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Kumar