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

+ **ITA 323/2024**

**PRINCIPAL COMMISSIONER OF INCOME TAX -10
DELHI**Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Parth Semiwal, Mr.
Apoorv Agarwal, JSC with Ms.
Nupur Sharma, Mr. Manav
Goayl, Mr. Gaurav Singh, Ms.
Divya Verma and Mr.
Bhanukaran Singh Jodha,
Advocates.

versus

MAM RAJ CHUNNI LALRespondent

Through: Mr. Rakesh Gupta, Mr. Somil
Agrawal and Mr. Dushyant
Agrawal, Advocates.

**CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA**

ORDER

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05.07.2024

CM APPL. 37059/2024 (36 Days Delay in Refiling)

This is an application seeking condonation of 36 days in refilling of appeal. For the reasons stated in the application, the delay of 36 days in refilling of appeal is condoned. Application is disposed of.

ITA 323/2024

1. The Principal Commissioner impugns the order of the Income Tax Appellant Tribunal [**'Tribunal'**] dated 12 December 2023 and posits the following questions for our consideration:-



“(1) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred by not appreciating the fact that the detailed inventory of stocks of all the godowns were prepared on 27.01.2012 and the same has been duly confronted to the partner of assessee firm at the time of recording of his statement on 27.01.2012 in response to which, vide answer to question no. 15 the additional income being excess stock has been surrendered?

(2) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred by not appreciating that in provisional trading a/c based upon the inventory made by the survey team with the help of the assessee's employees has been duly confronted to the partner of assessee firm Sh. Pradeep Kumar, which bears his signature?

(3) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred by ignoring the fact that the surrender of additional income representing the excess stock amounting to Rs.3,30,01,250/- was made by Sh. Pradeep Kumar partner of M/s Mam Raj Chunni Lal after the complete inventory of stock found at both the business premises was confronted to him?

(4) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred by ignoring the fact that in the assessee's line of business, the actual stock kept in such godown are way more than the capacity of such godown since a good quantity is kept outside the godown/building?

(5) Whether on the facts and circumstances of the case, the Hon'ble ITAT has also erred by not appreciating the detailed analysis of facts made by AO including the retraction made by the assessee which is after paying the 1st instalment of advance tax on the surrendered income?

(6) Whether the impugned order passed by the ITAT is perverse on the fact and in law since perversity of fact and law is also a question of law”

2. The principal dispute related to the discrepancy in the stock inventory which was prepared on 27 January 2012 and 28 January 2012. As would be evident from the findings which have ultimately come to be recorded by the Tribunal, in the inventory which was dated 27 January 2012, the stock was valued at Rs. 1,65,79,744/- and had been signed by the representatives of the respondent-assessee. In the subsequent stock inventory, which came to be prepared, the stock was valued at Rs. 4,53,41,031/-.

3. It is the aforesaid difference in figures which led the



Department to take the view that the difference in the valuation of stock of Rs. 6,30,57,930/- and the value of the stock declared on 27 January 2012 as per the figures appearing in the books would be liable to be subjected to tax.

4. We note that on a due consideration of the aforesaid facts, the Tribunal has rendered the following observations:-

“20. We have perused the statement of S/Shri Moolchand and Anil Kumar Goyal. There is nothing in their statements which throw any light as to the value of the stock. Since the regular munim who maintained the stock at Alipur was on leave Shri Moolchand assisted the survey team in preparing the stock inventory on 27.01.2012 at Alipur premises where he was working as a labourer for the last eleven or twelve months. He did not get any salary but only labour charges for handling the bags i.e. keeping them in or bringing them out of the premise. The stock inventory prepared by the survey team at Alipur premise on 27.01.2012 was valued at Rs. 1,65,79,744/- and contains his signature, signature of Shri Anil Kumar, signature of partner Shri Pradeep Kumar (with seal of the firm) and two witnesses. Since Shri Anil Kumar who was munim, a regular employee getting salary of Rs. 13,000/- p.m. for attending to accounts work at Naya Bazar premise was present at Alipur premises at the time of survey, his statement was also recorded in which in reply to question No. 3 “How much stock is lying in the godown,” he stated “I have no idea about stock and I am doing account work at Naya Bazar”. There is no dispute at all in so far as value of stock of Rs. 11,37,125/- found at Naya Bazar premise and inventorised during survey. It is thus obvious that the existence of excess stock which formed the basis of the impugned addition was not supported by the two employees in their statement as alleged by the Revenue in its ground No. 3.

21. Coming to the statement of Shri Pradeep Kumar, partner relied upon by the Revenue surrendering the excess stock, suffice is to quote the finding of the Ld. CIT(A) recorded at page 16 of his appellate order that “one thing is certain that the surrender by the assessee appears to have been obtained by misleading him”. At page 19 of the Paper Book is a copy of stock inventory valued at Rs. 4,53,41,031/- prepared on 28.01.2012 and signed by some Parmod. It is this value of Rs. 4,53,41,031/- added to the inventorised stock valued at Rs. 1,65,79,774/- found on 27.01.2012 in survey at Alipur premise coupled with inventorised stock valued at Rs. 11,37,125/- at Naya Bazar premise in survey on 27.01.2012 totalling in all to Rs. 6,30,57,930/- with which the partner Shri Pradeep Kumar was confronted in question No.15 of the statement. The excess stock surrendered by the partner represents the



difference between the said value of Rs. 6,30,57,930/- and value of stock declared as on 27.01.2012 by the assessee as per books at Rs. 3,00,56,680/-.

22. During the assessment proceeding as also appellate proceeding, the assessee challenged the veracity of the stock inventory prepared on 28.01.2012 and signed by some Parmod on grounds that it is not signed by any of the partner of the assessee firm; it bears the name of some Parmod who is not associated with nor related in any manner with the assessee; survey was over on 27.01.2012 but this list bears the date 28.01.2012; the stocks as per the list could not be accommodated in the said premise at Alipur as per the certificate of the registered valuer submitted; inventory prepared at the time of survey on 27.01.2012 shows the weighment in kg whereas the inventory details as per this list shows weighment in quintals. None of these contentions could be assailed by the Ld. AO by bringing on record any convincing and cogent reasons. During appellate proceedings the Ld. CIT(A) gave specific opportunity in writing to the Ld. AO to rebut the above contentions raised by the assessee but the Ld. AO and his Range head JCIT utterly failed to do so. This was very disheartening to the Ld. CIT(A) and in our opinion rightly so.

23. It is now well established that statement surrendering undisclosed income during survey proceedings under section 133A is not conclusive. It can be retracted by explaining or withdrawing admission, if any made in such statement. Assessment of tax cannot be made solely on the basis of such sworn statement made by the assessee under section 133A(3)(iii) of the Act. If no enquiry is made even after retraction to discredit the confessional statement, it is not open to the Ld. AO to rely upon the statement. In the case at hand, the retracted statement of the partner of the assessee firm is supported by explanation which has not been found to be false.”

5. In our considered opinion, the aforesaid findings are founded purely on an appreciation of facts and do not give rise to any substantial question of law.

6. Accordingly, the appeal fails and shall stands dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 5, 2024/vp