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

Decided on 4th February, 2015

+ ITA 383/2013
COMMISSIONER OF INCOME TAX DELHI-XIII Appellant
Through: Mr.Sanjay Kumar, Jr.Standing
counsel.

versus

CHANDER PRAKASH PABREJA Respondent
Through: Mr. V.K.Sabharwal, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M.No.12111/2013 (delay)

For the reasons stated in the application, the delay of 42 days in re-filing the appeal is condoned.

The application stands disposed of.

ITA 383/2013

1. The substantial question of law sought to be urged by the Revenue is: Whether in the circumstances of the case the Income Tax Appellate Tribunal (ITAT) was correct in holding that the addition of ₹47,37,120/- brought to tax by the Assessing Officer (AO) was unwarranted.
2. The assessee during the relevant Assessment Year (AY) 2005-06

claimed benefit of Section 44AF of Income Tax Act (hereinafter referred as “the Act”), and had filed a return disclosing income of ₹2,15,292/-. Subsequently, the assessment was reopened under Section 147 of the Act. Assessing Officer (AO) framed an assessment under Section 144 since no response was forthcoming on the part of the assessee. The AO considered the source of a separate cash deposit of ₹31,29,880/- and further amount of ₹16,07,240/-. After adding these amounts, the AO reassessed the income on regular basis bringing them to tax under Section 68 on the ground that this amount was the assessee’s income from undisclosed sources. The assessee’s appeal was partly allowed restricting to net profit rate of 5% applied on the amount declared under Section 44AF, i.e. ₹ 2,36,856/-. The ITAT also accepted the assessee’s contention and rejected the Revenue’s appeal. After re-accounting the entire facts and circumstances and extracting the findings of the CIT(Appeals), the impugned order concludes as follows:

“7. The aggrieved assessee carried the assessment order in appeal before the Id. CIT(A) who sought remand report from the Assessing Officer. The assessee was also provided opportunity and in turn the assessee filed the rejoinder. The Id. CIT (A) considered the remand report as well as the rejoinder. We also perused the remand report and the rejoinder of the assessee and observations made in the impugned order. The Id. CIT(A) on the basis of assessment order for assessment year 2008-09, wherein the cash deposit of Rs.57,48,067/-in Punjab National Bank was claimed to be the sale proceeds of his business of aluminum sections, accepted the claim and considering the past history. At page 15 of the impugned order, there is a submission of the assessee that a separate bank account was maintained by the assessee, which he used to deposit the sale proceeds of the business in the bank, which were not disclosed in the

income-tax return. There is a further finding that the bank statement for the relevant period from 01/04/2004 to 31/03/2005 was examined by the CIT(A) and it was found that there was cash deposit on various dates against the sale of material and the withdrawal refers to payment made against such purchases of the material. As per Sec. 44AF, which prescribes the special provision for computing profits & gains of retail business, a sum equal to 5% of the total turn over in the previous year on account of such business, the profit can be qualified. The Id. CIT(A) on the basis of facts of assessment year 2008-09 quantified the net profit rate at 5% and ultimately held that the amount of Rs.2,87,403/- was only assessable from undisclosed business. No other material was brought on record by the Revenue to substantiate its version, therefore, we find no infirmity in the stand of the Id. CIT(A). Therefore, it is upheld.

8. However, keeping in view the totality of facts and the past history of the assessee, we are making it clear that our above decision may not be quoted as a precedent, as the assessee is expected to maintain its books of sale and cooperate with the department. With this observation, the order of the Id. CIT(A) is upheld.

9. So far as the cross-objection raised by the assessee regarding issuance / service of notice is concerned, it was not pressed by the learned counsel for the assessee, therefore, the same is dismissed as not pressed.”

3. We have heard the counsel for the parties. The assessee urged that the AO made no effort to discern as to the character of the amounts and that

some of them at least constituted expenses. It is further argued that the assessee had voluntarily disclosed receiving ₹ 16,07,240/- during the course of the assessment and under the circumstances was entitled to the benefit of Section 44AF. It is lastly contended that for other periods the assessee's returns were accepted which implied that this method of accounting was also acceptable to the revenue.

4. As is evident from proviso to Section 44AF, the benefit of presumptive rate of taxation on 5% of turnover for retail traders and others of such category as are covered by the provision is subject to ceiling for turnover of ₹40 lacs. The underlying principle is that the Income Tax authority accepts the entire figures furnished by the assessee at face value and there will be a presumptive rate of net profit which would be further subjected to taxation.

5. In the present case the assessee had sought the benefit of that provision but the revenue found later that the amounts deposited in its account were far and excessive than what was disclosed. That the assessee did not dispute the deposit of ₹16 lacs *ipso facto* would not absolve him from failing to disclosed it in the first instance. The same reasoning would apply for the other amount of ₹31,29,880/-. So far as the assessee's explanation that some of the entries pertained to expenditure goes, the AO observed that the assessee did not maintain any books of accounts and produced any supporting document. His evidence was endorsed by the CIT (A). The CIT(A), however, took note of all the circumstances and confined the relief to the extent that the assessee had sought and justified.

6. In our opinion, the ITAT's decision, which has merely stated the CIT(A)'s finding and does not contain any reasoning, appears to be guided

by the decision on the assessment of other years. Furthermore, the ITAT was conscious of the fact that this decision favouring the assessee was perhaps unsupportable in law, as is evident from its observation in para 8 that the impugned order would not be quoted as a precedent.

7. Having regard to the circumstances, we are of the opinion that ITAT's order cannot be sustained. It is accordingly set aside. The question of law is answered in favour of the Revenue.

8. The appeal is consequently allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 04, 2015

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