

*** HIGH COURT OF DELHI : NEW DELHI**

ITA No.553 of 2004

% Judgment reserved on: 25th March, 2008

Judgment delivered on: 7th April, 2008

MRS. KRISHNA GUPTA
Prop.Studio Saket
C-269, Hauz Rani Market,
Malviya Nagar, New Delhi.

.....Appellant.

Through: Mr.A.K.Babbar with
Mr.Surender Kumar, Advs.

Vs.

THE ASST.COMMISSIONER OF INCOME TAX
Investigation Circle, 20(1),
New Delhi.

..... Respondent

Through: Mr.R.D.Jolly, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed by the Assessee against the impugned order dated 12th February, 2004 passed by Income Tax Appellate Tribunal, Delhi Bench 'C' (for short as 'Tribunal') in ITA No.145/Del/1998 relevant for the assessment year 1992-93.

2. The short facts relevant for the disposal of this appeal may be summed up as under that the Assessee was running a Proprietary Business under the name and style Studio Saket dealing in photographic films and still photography. During the impugned assessment year, the Assessee had declared its gross profit at 1.5% on the sale of photographic films at Rs.8,98,56,016 to its registered dealers.

3. During the course of assessment proceedings, the Assessing Officer issued summons under Section 131 of the Income Tax Act, 1961 (for short as 'Act') to the aforesaid registered dealers to whom the sales were made requiring them to appear along with the books of accounts, supporting bills, vouchers, bank pass books etc., but the summons received back unserved as the respective parties

were not in existence at the given addresses. The Assessee was, therefore, asked to produce these parties and also to furnish copies of the ledger accounts of these parties, bank statements, month-wise purchase and sales. It was, however, contended that the Assessee made these sales to the registered dealers in cash.

4. The Assessing Officer observed that the large amount of cash advance had been taken on various occasions from these registered dealers and sales had also been effected on credit for which the payments were received later. He was, therefore, of the opinion that the registered dealers were well-known to the Assessee or to her sons, who were looking after the business.

5. The Assessing Officer also took cognizance of the assessment proceedings for the assessment year 1989-90 in which verification of registered dealers was done and the sales tax authorities had informed that the registered dealers were not in existence and their assessments had been completed ex-parte.

6. As the Assessee failed to produce the registered dealers and copies of their ledger accounts and

quantitative details of the goods, the Assessing Officer proceeded to analyze the information whatever was available on record.

7. Thus, in the light of the available information, the Assessing Officer concluded that the Gross Profit declared at 1.5% was wholly unreliable and the registered dealers were either the bogus concerns of the Assessee's or the goods were actually sold at a premium in the market. He accordingly rejected the books of accounts and estimated the Gross Profit rate of 10% of turnover resulting into an addition of Rs.75,32,104/-.

8. The Assessee preferred appeal before the Commissioner of Income Tax (Appeals) [for short as CIT(A)]. The CIT(A) re-examined the issue in the light of these facts and material available on record and arrived at a conclusion that the Assessee had declared the Gross Profit rate at 4.3% for the first 11 months of the accounting year and for the month of March, 1992 the gross profit was declared to 1.5% for which no justification was furnished. He, therefore, re-estimated the Gross Profit rate at 5% for

the entire year and re-determined the Gross Profit at Rs.44,42,575/- resulting into an addition of Rs.30,80,502/-.

9. This order of the CIT(A) was not accepted by both the parties and they challenged the same through their appeals before the Tribunal. The Tribunal confirmed the order of the CIT(A) and dismissed the Appeals vide impugned order.

10. It is contended by the learned counsel for the Assessee that the Assessee had led the primary evidence in his possession, i.e., Sales Tax Department forms identifying the sales made to dealers which had been issued to them by Delhi Sales Tax Authorities under Delhi Sales Tax Act, 1975. He further contended that while making the sales in cash it is not obligatory on the seller to find out the antecedents of the buyer. Further, by presuming that the Assessee has earned so much profit in lump sum, the Tribunal was not correct in upholding the CIT(A) order applying Gross Profit rate of 5%. Assessment cannot be framed on assumption and presumption.

11. It has been noted by the CIT(A) in its order that ordinarily, a trader is not required to know the identity of the customer who buys the goods, makes the payment in

cash and does not maintain any account with the traders. In such a situation, it cannot be the responsibility of the trader to produce the customer for verification of sale. However, when repeated sales of substantial amounts are made during the year to the same person against huge cash advances or the sales are at credit when sale proceeds are realized, in this situation, there is a valid presumption that the customers are known to the traders. In such circumstances, the Assessee cannot be absolved of the obligation to furnish a confirmed copy of the customer's account or to produce the clients for verification of the transactions. The Assessee had received huge cash advanced from the customers and had also supplied goods on credit. The registered dealers were not produced for verification despite sufficient opportunities granted to the Assessee by the Assessing Officer.

12. The Assessee had contended before the Tribunal that he had sold at lesser rates than, the price fixed by the manufacture but no evidence to this effect was filed. The Tribunal also held that:-

“In case of short supply there is always a possibility of sale of material at certain

premium. It is also evidenced from the record that most of the times sales were affected in cash. It means that the material was not available in the market in plenty. So, there may not be any chance of selling the material at a rate of lower than the fixed price. In any case, the primary onus is upon the Assessee to place some evidence on record to justify the transactions, but he could not place the same despite various opportunities given.”

13. Though the case of the Assessee is that the Sales-tax Authorities had issued sales tax forms to the customers which established that they were in existence as the forms must have been issued after proper verification but this contention is not tenable. The Sales-tax Authorities have reported that the parties’ were not traceable and their sales tax assessments had been concluded in absentia and their registration had also been cancelled. Thus, details of sales recorded in the sales tax forms cannot be regarded as acceptable. The books of accounts maintained by the Assessee and the trading results shown therein which are not open to verification cannot be accepted. The books of accounts and the determination of profit on estimate has been, thus, rightly rejected by the Tribunal.

14. Now, coming to the Gross Profit, the rate of Gross Profit in a particular year depends on many factors, for example, the general market conditions based on demand and supply position, the rise or fall in market rates, especially abrupt ones, the capital position vis-à-vis the turnover achieved, and many others. It is for the Assessee to explain the fall, if it so happens, and to substantiate his reasons. On the estimation of profit, for the eleven months of the accounting year the Assessee has declared a Gross Profit rate of 4.3% and for the month of March it has gone down to 1.5%. No plausible reasons had been furnished. No doubt, after rejection of books of accounts, the Assessing officer has to estimate the net profit on the basis of the material available on record, but has no right to estimate it exorbitantly. The CIT(A) estimated the Gross Profit rate at 5% for the entire year keeping in view the Gross Profit rate for the 11 months and hence no unreasonableness in this estimation.

15. The Tribunal has also confirmed the finding of the CIT(A) on this issue. We also agree with reasoning given

by the CIT(A) and do not find any perversity in the order of the Tribunal.

16. Thus, in our opinion, no substantial question of law arises in this case and the present appeal filed by the Assessee is, hereby dismissed.

V. B. GUPTA, J.

April 07, 2008
Bisht

MADAN B. LOKUR, J.