

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.550 of 2007

Date of decision: 4.3.2008

The Commissioner of Income tax,
Karnal

.....Appellant

Versus

Om Overseas, Shiv Nagar,
Krishan Pura, Panipat

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG**

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Present: Mr. Yogesh Putney, Advocate for the appellant-revenue.

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Rakesh Kumar Garg, J.

1. The revenue has filed the present appeal under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as the "Act") against the order dated 23.2.2007 passed by the Income-Tax Appellate Tribunal, New Delhi Bench 'E' in ITA No.4496/Del/2004 for the assessment year 2001-2002 raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the CIT(A), in deleting the trading addition of Rs.20,83,752/- made by the A.O., as the assessee failed to produce the quantitative details of raw material and finished products?

2. Whether on the facts and in the circumstances of the case, the findings recorded by the Ld. ITAT are perverse and contrary to material available on the record?"

2. The respondent is a partnership firm deriving income from the manufacturing and export of Duries, Rugs, woollen carpets, made ups etc. The firm filed its return of income on 24.10.2001 declaring its total income at Nil/- subsequently the assessee firm was assessed u/s 143(3) of the Act, 1961 at an income of Rs.14,60,740/-. The assessee declared gross profit of Rs.3,30,18,576/- on the total turnover of Rs.13,00,80,622/- giving the Gross Profit Rate (GPR) of 25.38% as against 29.5% declared in the immediate preceding assessment year.

3. The Assessing Officer required the respondent to explain the decline in the GPR for the relevant assessment year. The explanation furnished by the respondent in this regard was found to be unsatisfactory. Therefore, the Assessing Officer rejected the books of accounts of the assessee by invoking the provisions of Section 145(3) of the Act and applied the GPR of 27% which resulted in addition of Rs.20,83,752/-.

4. Aggrieved against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Karnal. The appeal filed by the assessee was partly allowed by the CIT(A), Karnal vide his order dated 12.8.2004 and the addition of Rs.20,83,752/- made by the Assessing Officer was deleted. While allowing the said deletion the CIT (A), Karnal, observed as under:-

“The matter has been considered. It is seen that the addition has been made by the AO without pointing out any specific defect in the books of accounts. The AO has rejected the books of accounts only on the ground that the appellant has not been able to keep records of raw material consumed in respect of each and every item produced by the appellant. The AO has rejected without any justification the explanation of the appellant

that consumption of raw material for each of the products cannot be reconciled in the case of the appellant because the product pattern was large and items of different designs and sizes etc. were produced by the appellant. There was no legal obligation on the part of the appellant to maintain such a record. Audited accounts could not have been rejected without pointing out any specific defect or deficiencies in the books of accounts maintained by the appellant. Moreover, the appellant's income was 100% exempt and there could not have been any tax liability and higher income being declared. Thus, no purpose of the revenue has been served by making such additions. Keeping in view all these facts, addition of Rs.20,83,752/- is directed to be deleted.”

5. The revenue further filed an appeal before the Tribunal challenging the order of the Commissioner of Income Tax (Appeals) on the ground that the CIT(A) has erred in law in deleting the trading addition of Rs.20,83,752/- made by AO after invoking the provisions of Section 145(3) of the Act as the assessee failed to file quantitative details of raw materials consumed despite being allowed an opportunity. The Tribunal while partly allowing the appeal on other issues vide order dated 23.2.2007, upheld the order of CIT(A), Karnal deleting the addition of Rs.20,83,752/- made by the AO. The Tribunal held that since no defect has been pointed out in the books of accounts, the AO was not justified in making addition by rejecting the book results of the assessee.

6. Learned counsel for the revenue has argued that in the present case, the books of accounts of the assessee were rightly rejected

and additions were made by invoking the provisions of Section 145(3) of the Act correctly, as from the manufacturing record maintained by the assessee it is not possible to verify the GPR declared as 25.38%.

7. We have heard learned counsel for the revenue and perused the record.

8. We find no force in the arguments raised by the learned counsel for the revenue. While allowing the appeal of the assessee, the CIT(A) has given a finding of fact that the additions have been made by the Assessing Officer without pointing out any specific defect in the books of accounts. The said finding has been further upheld by the Tribunal. During the course of arguments, learned counsel was unable to point out any illegality or perversity in the said finding of fact. Thus, we find no infirmity in the order of the Tribunal. No substantial question of law is arising for determination of this Court in this appeal and the same is hereby dismissed.

(RAKESH KUMAR GARG)
JUDGE

March 4, 2008
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(SATISH KUMAR MITTAL)
JUDGE