



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

- (1) INCOME TAX APPEAL NO.367 OF 2002
- (2) INCOME TAX APPEAL NO.588 OF 2002
- (3) INCOME TAX APPEAL NO.589 OF 2002
- (4) INCOME TAX APPEAL NO.590 OF 2002
- (5) INCOME TAX APPEAL NO.591 OF 2002
- (6) INCOME TAX APPEAL NO.592 OF 2002
- (7) INCOME TAX APPEAL NO.593 OF 2002
- (8) INCOME TAX APPEAL NO.594 OF 2002
- (9) INCOME TAX APPEAL NO.595 OF 2002
- (10) INCOME TAX APPEAL NO.596 OF 2002
- (11) INCOME TAX APPEAL NO.597 OF 2002
- (12) INCOME TAX APPEAL NO.598 OF 2002
- (13) INCOME TAX APPEAL NO.599 OF 2002
- (14) INCOME TAX APPEAL NO.600 OF 2002
- (15) INCOME TAX APPEAL NO.601 OF 2002
- (16) INCOME TAX APPEAL NO.610 OF 2002
- (17) INCOME TAX APPEAL NO.611 OF 2002
- (18) INCOME TAX APPEAL NO.612 OF 2002
- (19) INCOME TAX APPEAL NO.613 OF 2002
- (20) INCOME TAX APPEAL NO.614 OF 2002
- (21) INCOME TAX APPEAL NO.615 OF 2002

The Commissioner of Income-tax)
Central-I, Old CGO Bldg., Annexe)
M.K.Road, Mumbai-400 020)..Appellant

Versus

M/s.Metro Shoes Ltd.,)
Metro House, Colaba Causeway)
Mumbai-400 001)..Respondents

Mr.B.M.Chatterji with Mrs.P.P.Bhosale &
Mr.P.S.Sahadevan for the appellant.

Mr.J.D.Mistry with Mr.Sandeep Bhimekar and
Mr.Abhishek Y.Sawant i/by Wadia Gandhi & Co. for
the respondents.

Coram : F.I.Rebello & R.S.Mohite, JJ

Date : 3rd March 2008.

Judgment :- (Per : R.S.Mohite, J)

1. The common questions of law as raised in
paragraph-5 of all these appeals are the same and

are as under :-

(i) Whether on the facts and in the circumstances of the case and in law, the ld.ITAT was legally justified in relying upon its decision dated 19/12/2001 in ITA No.1776, 1753 to 1759, 4957, 2543, 3101 to 3107 & 3645/MUM/99 in the case of M/s.Metro Shoes Ltd. in A.Ys 1987-88 to 1994-95 & 1996-97 without appreciating the fact that the said decision of the ld. ITAT has not been accepted and further appeal against the same u/s.260A of the I.T.Act, 1961 is being filed before the Hon'ble High Court ?

(ii) Whether on the facts and circumstances of the case and in law, the ld.ITAT was legally justified in holding that the statements recorded initially is not enough evidence for making addition, ignoring its own decision in the case of M/s.Parmanand Builders 51 ITD 29, wherein it was held that subsequent retraction by the deponent have no evidentiary value ?

(iii) Whether on the facts and circumstances of the case and in law, the ld.ITAT was legally justified in holding

that the Revenue could not show that the assessee did manipulate the accounts of Jaihind and Jaibharat Leather Co-op. Societies for its own benefit ?

(iv) Whether on the facts and circumstances of the case and in law, the ld.ITAT was legally justified in holding that Jaihind and Jaibharat Leather Co-op Societies incurred heavy expenditure apart from direct costs and such expenditure was met from out of the amounts charged over and above direct cost by these societies from the assessee ?

(v) Whether on the facts and circumstances of the case and in law, the ld.ITAT was legally justified in placing reliance upon the audited accounts of Jaihind Society without appreciating the fact that this society was not found to be genuine by the Mumbai Police and other authorities of the State Government and had been deregistered by the State Government ?

(vi) Whether on the facts and in the circumstances of the case and in law, the ld.ITAT was legally justified holding that the facts of the assessee's case in

A.Y.1986-87 were different from the facts in the case of M/s.Metro Shoes Ltd. in A.Y.1995-96 and were actually comparable to the facts in the case of M/s.Dawood & co., whereas the assessee had itself admitted before the ld.CIT(A) that the facts in it's case were similar to A.Y.1995-96 in the case of M/s.Metro Shoes Ltd.?

(vii) Whether on the facts and in the circumstances of the case and in law, the ld.ITAT was legally justified in directing the Assessing Officer to adopt the gross profit @ 25% in respect of retail sales, whereas, there was inflation of 60% in the cost of purchases show in the books of the assessee ?

(viii) Whether on the facts and circumstances of the case and in law, the ld. ITAT was legally justified in holding that consideration of non-payment of sales-tax during A.Y.1986-87 was a figment of imagination ?

2. The brief facts from which these appeals arise are as follows :-

(a) The Economic Offences Wing of Mumbai Police conducted an investigation into the conduct of several shoe traders including the present assessee M/s.Metro Shoes Limited. The investigation was conducted on the allegations that the assessees and other shoe traders had floated numerous co-operative societies of cobblers which included a large number of bogus or non-existent members with the intention of obtaining from the Government various facilities including soft loans at low interest rates as contemplated by various Government schemes meant to benefit individual and poor cobblers. In the course of these investigations, it was suspected that the assessees and other shoe traders had inflated their rate of purchases from these co-operative societies with a view to reduce profits chargeable to income-tax. This was done either by obtaining bogus purchase bills or over invoicing the purchase amounts the co-operative shoe-manufacturing co-operative societies. The present assessees were suspected to have floated and controlled the operations of three such co-operative societies by name M/s.Jaihind Sahakari Charmoutpadak Sangh Ltd (JHSCL), M/s.Jai Bharat Leather Producers Co-operative Society Ltd. (JBLPCSL) and Vishal Leather Industrial Co-operative Society (VLICS). On enquiries made into the affairs of these societies, the Income-tax authorities concluded that cheap loans were obtained in the names of fictitious

members from various financial institutions and other Govt.agencies at normal rate of interest. That the loans so obtained were withdrawn by bearer cheques and were utilised for financing their purchases by Metro Shoes and M/s.Metro Shoes Ltd., the two main concerns of the 'Metro group'. That the co-operative societies were also used by over invoicing the purchases made by these two concerns and for this, the societies were charging a commission at 2% to 3% and the balance was being refunded in cash to Mr.Rafique Tejani who was one of the partners of Metro shoes.

(b) Another aspect which came to notice of the Income-tax department was the purchases from the co-operative societies were exempted from sales-tax upto 31.3.1994 and thereafter from May-1994, these co-operative societies were required to pay 4% sales tax on their sales. The record of these societies indicated that they were manufacturing shoes by purchasing raw material and also making payments of labour charges. But on enquiries made, it was found that no such manufacturing activities were done by these societies. It was also found that the loans obtained in the names of cobblers were withdrawn from their bank account by bearer cheques and ultimately routed to the persons who managed the Metro group.

(c) On such investigation the office bearers of the 3 co-operative societies as mentioned hereinabove were examined under Section 131 of the Income-tax Act as well as by the Assessing officer and they were also examined by the Excise Department.

(d) In so far as present assessee is concerned, on the basis of statements recorded as aforesaid, the A.O. concluded that they had inflated their purchase costs to the extent of 60% and it was the inflated amount that was reflected in the books of account maintained by the assesseees. The Assessing Officer therefore, issued a show cause notice to the assesseees. The reply as filed in response to the show cause notice was rejected and the purchase cost was reduced by 60% from the cost price as recorded in the books of account of the assesseees. The first assessment made by the Assessing Officer was for the A.Y.1995-96 and on the aforesaid basis, amount of Rs.2,36,20,278 was added to the income of the M/s.Metro Shoes Limited and amount of Rs.2,75,26,480 was added to the income of M/s.Metro Shoes.

(e) Aggrieved by these additions the assesseees filed an appeal before the CIT (Appeals) and these appeals were decided by the CIT (Appeals) by his order dated 18.1.1999. By his order the CIT (Appeals) came to the conclusion that there was no evidence to indicate that the inflation in the purchase price by

the Metro group from the co-operative societies was adopted at the uniform rates of 60%. He discussed the statements of various witnesses and concluded that there were various contradictions in such statements. He held that the books of account maintained by the assessee did not reflect true and correct profits on the business of the assessees. He held that extent of inflation of purchase price could not be determined with exactitude as the amount of inflation varied from pair to pair depending on the design, quality and price of the footwear. He noted that in the case of Regal shoes, the gross profit rate was 48%. That the Metro group was also in the same business and functioning from the same locality and in such circumstances, CIT (Appeals) applied gross profit rate of 48% on the sales proportionate to the purchases, made from the various co-operative societies. After detailed working, the CIT (Appeals) sustained an addition of Rs.42,34,505/- in the case of M/s.Metro Shoes and amount of Rs.44,71,900/- in the case of M/s.Metro Shoes Ltd.,

(f) Against the orders passed by the CIT (Appeals) cross appeals were filed before the ITAT and the 4 appeals were disposed off by a detailed common judgment and order by which the ITAT reduced the gross profit rate in respect of the assessees from 48% to 43.57% The two appeals filed by the firm and

company belonging to the Metro group were therefore, allowed to the aforesaid extent and the 2 cross appeals filed by revenue were dismissed.

(g) The record indicates that aggrieved by this decision of ITAT, the Income-tax department filed Income Tax Appeal Nos.486/2002 and 487/2002. The record indicates that these appeals however, came to be dismissed as long back as on 7.11.2000 for non removal of office objections and for more than 7 years no attempt has been made to restore these appeals.

(h) After the assessment of the Metro group for the A.Y.1995-96, the Income-tax department reopened the assessments of M/s.Metro Shoes Ltd., and M/s.Metro Shoes and an partner Rafique Malik for a block period from 1987 to 1997. These assessments were also carried upto the stage of ITAT and ITAT relying upon its earlier decision passed for the A.Y. 1995-96 gave the same findings by fixing the gross profit of a Metro group at Rs.43.57%. They observed that from the assessment years 1988-89 to 1994-95 the gross profit rates of the assessee were 42.10%, 41.79%, 41.35%, 41.39%, 40.87%, 42.35% 41.95% and 41.53% That these gross profit rates were in confirmity with the rate of 43.57% determined in the ITAT's order for the year 1995-96. The present appeals have been filed by revenue against the

findings of ITAT for the block assessment period.

(i) We find that in this case the main appeals i.e. 486/2002 and 487 of 2002 against the original reasoned order fixing the gross profit at 43.57%, have been dismissed over 7 years ago. No efforts have been made by the Income-tax department to set aside the order of dismissal. Even otherwise, on perusal of the impugned judgment and order passed by ITAT, we find that the books of account maintained by the assesseees were consistently and at every stage held to be unreliable. In the circumstances, the method by which has been consistently followed by the appellate authorities and the Tribunal was to find out as to what could be said to be a proper and fair gross profit in similarly placed shoes industries. As far as Metro group is concerned, the finding is that the gross profit shown by them is a highest and is consistent with the gross profit disclosed for a number of years prior to the year when the irregularities came.

. We find that question as to what should be the gross profit for the purposes of taxing such income is purely a question of fact. There is no substantial question of law involved in the questions as raised, and the said questions turn purely on questions of fact. In the circumstances, in our opinion, this is not a fit case for

entertaining the appeals. Appeals stand dismissed.

(R.S.Mohite, J)

(F.I.Rebello, J)