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

Decided on 9th March, 2015

+ ITA 743/2014

R.L.TRADERS

..... Appellant

Through: Mr.K.R.Manjani and
Mr.B.K.Manjani, Advs.

versus

INCOME TAX OFFICER WARD 29(1)

..... Respondent

Through: Mr.Rohit Madan adn Mr.Ruchir
Bhatia, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.03.2015

1. Issue notice.
2. Mr.Rohit Madan, Advocate accepts notice on behalf of the Revenue.
3. With the consent of the parties, matter is finally heard.
4. The question of law urged in this appeal is “*Whether the ITAT and the lower authorities fell into error in rejecting the appellant/assessee’s accounts on the footing that quantitative tally of the ingredients and raw materials were not maintained and proceeded to arrive at an improper GP Rate as well as the turn-over figures*”.
5. The assessee carries on his business in preparation and trading of Hing. The assessee filed its return for the Assessment Year (AY) 2010-11

and declared an income of ₹3,15,210/-. In the scrutiny the Assessing Officer (AO) rejected the turn-over figures and the G.P.Rate of 3.57% of the total sale and instead directed that G.P.Rate of 10% be applied, against the total turn-over of ₹6,14,84,607/-. The AO consequently added ₹39,54,014/-. The CIT(Appeals) partially accepted the assessee's contentions and granted relief to the extent that G.P.Rate was applied at 6.55% (as in the preceding year) and confirmed the addition of ₹21,21,220/-. The Income Tax Appellate Tribunal (ITAT) on the assessee's further appeal refused to grant any relief and confirmed the finding of the lower authority.

6. The assessee argues that the AO and other authorities fell into error in not taking into consideration that quantitative tally of ingredients and raw material was available in the records. It is contended that the AO's opinion was influenced by the fact that the GP Rate claimed was 3.57% for the concerned AY as against the total turn-over of ₹6,14,84,607/-. Learned counsel urges that the previous years' turn-over figures did not follow any uniform pattern, both in respect of turn-over as well as in respect of GP Rate, and that the department in all its previous years had accepted the books of accounts and the method of maintaining them. In light of this, the assessee urges that the CIT(Appeals) – and ITAT – did not apply their mind in considering whether the facts and material placed on record reflected that the relevant documents evidencing procurement of raw material existed and that a qualitative tally of the same had been made. Learned counsel for the assessee argued that the Revenue went ahead with the pre-disposed mind that the quantitative tally of the raw materials was not maintained in the assessee's books.

7. Counsel for the Revenue contested the assessee's submissions by

pointing out that by two appeals the assessee's contention was rejected after due consideration of material on record. Learned counsel highlighted that before the AO, the assessee had contended that due to family problems, the total turn-over for the current year in question had been lesser than previous years.

8. This Court has carefully considered the submissions both before the CIT(Appeals) as well as the ITAT. The assessee categorically appears to have submitted that a quantitative tally of all the raw materials consumed in the making/preparation of the final marketable product was being maintained. Even though CIT(Appeals) noticed this contention as a matter of fact, the said authority did not render any finding. The ITAT instead went by the findings of the lower authority and merely based its conclusion on the interpretation of Section 145(2) of the Income Tax Act, 1961. In fact, there is an assumption in para 9 that the assessee did not maintain quantitative details of ingredients such as mixing gum, starch and oil.

9. This Court is of the opinion that having regard to the assessee's stand that such details were forthcoming both by way of books as well as through a quantitative tally, the CIT (Appeals) should have addressed himself to the issue and rendered clear findings. Failure to have done so has prejudiced the assessee. Consequently, the impugned order is hereby set aside. The matter is remitted back to the CIT (Appeals) for fresh examination of the books of accounts, specifically with regard to whether the quantitative tally was undertaken of the raw material used by the assessee in its business activities and if so, the inference is to be drawn from it and the other available material on the record. All rights and contentions of the parties are reserved.

10. The question of law is accordingly answered in favour of the assessee and against the Revenue.

11. The appeal is, therefore, partly allowed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 09, 2015

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