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**(2005) 07 AHC CK 0016**  
**In the Allahabad High Court**

H.M. Sarif and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 21-07-2005

**Acts Referred:**

Income Tax Act, 1961 — Section 256(1)

**Citation :** (2008) 296 ITR 523 : (2006) 157 TAXMAN 458

**Hon'ble Judges :** Rajes Kumar, J;R.K. Agrawal, J

**Bench :** Division Bench

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**Judgement**

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, (hereinafter referred to as "the Act") for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in placing reliance upon the statements of karkhanadars in a situation when the assessee had not been provided with full copies of statements prior to the cross-examination (when no such prayer was made before the Income Tax Officer), particularly, when the assertions in the statements were based only on memory and coming to the conclusion that there had been inflation in purchases and maintaining addition of Rs. 1,11,813 in the trading account, on this count?

2. The present reference relates to the assessment year 1982-83.

3. The brief facts of the case are as follows:

The applicant is engaged in the business of export of brassware. A number of defects in the maintenance of account books were noticed by the Income Tax Officer and additions were made to the trading account on account of suppression of sales, inflation of purchases, etc. The Income Tax Officer also noticed that the gross profit shown by the assessee for the assessment year 1982-83 under consideration was at 4.90 per cent, as against 11.3 per cent, disclosed by the assessee in the immediately preceding assessment year. There

was, thus, fall of 6.13 per cent, in the gross profit rate. So far as suppression of sales is concerned, the Tribunal deleted the additions and, there is no dispute as such. The Income Tax Officer, however, examined the increase in the purchases rates as compared to the immediately preceding assessment year. For this purpose, he examined five karkhanadars whose statements were recorded and the assessee was allowed to cross-examine them which was duly done by the assessee. The result of the examination and the cross-examination of these five karkhanadars is recorded in paras 3 to 8 of the Tribunal's order. The statements of the karkhanadars revealed that the assessee had inflated the purchase rates. Actual purchases were at lesser rates while in the books of account, the same were recorded at higher rates. It was also noted that the payment vouchers maintained by the assessee were not reliable.

4. The Commissioner of Income Tax (Appeals) deleted the addition for the reason recorded in his order in paras 5 to 9. The Appellate Tribunal for the reasons recorded in para 12 of its order upheld the addition of Rs. 1,11,813 in the trading account on inflated purchases. The Tribunal held as follows:

The other point which needs our consideration is whether there was any justification on the part of the Income Tax Officer to make gross profit addition of Rs. 1,11,813, and whether the Commissioner of Income Tax (Appeals) was justified in deleting the same. We have noted in the earlier part of this order the various defects, etc., noted by the Income Tax Officer and also the statements of karkhanadars recorded by the Income Tax Officer. The learned Commissioner of Income Tax (Appeals) has tackled this issue purely from the angle of comparable cases, i.e., the past history of the assessee, by taking into consideration the export incentives and also without taking into consideration the export incentives. His approach has been that so long as the gross profit rate disclosed by the assessee compares favourable with other assessee in this line of trade or the past history of the case of itself, no additions will be called for even though technically speaking, provisions of Section 145(2) may be applicable. We are one with the Commissioner of Income Tax (Appeals) on this account so long as the Assessing Officer has not brought any positive inflation of purchase, expenditure or suppression of sales. Statements of karkhanadars recorded by the Income Tax Officer as noted earlier suggest that the assessee was getting the signatures of karkhanadars on blank vouchers prepared by it and entries therein were made later on to suit its conveniences. No questions were put to these witnesses in the cross examination on behalf of the assessee to demolish these assertions by the witnesses. This clearly shows that the assessee has accepted what the karkhanadars has stated about the state of affairs of the vouchers. Another point made out is that in a number of cases, signatures of karkhanadars were taken on counter foils of cheques, but actually payments made to them were in cash. This fact has also not been assailed on behalf of the assessee in the cross examination. It is also noticed that the rates charged by these karkhanadars in a number of cases are lesser than those recorded in the books of account. In the cross examination, it was highlighted on behalf of the assessee that these

karkhanadars did not maintain any books of account and whatever they stated was from memory and, therefore, the same could not be believed against the entries in the books of the assessee duly supported by voucher signed by them. The submission was that oral evidence could not be accepted on the face of the written evidence. It may be, but at the same time the assessee has failed to produce the sale order books and other evidence about the booking of order which has almost been asserted by the witnesses. This fact has not been assailed on behalf of the assessee in the cross-examination also. These discussions therefore suggest that there has been inflation in purchases made by the assessee. The Commissioner of Income Tax (Appeals) has ignored this aspect while deleting the addition. What is the extent of such inflation is also available from the statements of the karkhanadars. According to the statement of Shri Amir Hasan, the supplies were made by him at the rates between Rs. 32 and Rs. 35 whereas in the books of the assessee such recording is between Rs. 33.50 and Rs. 38. Thus, there is inflation to the extent of Rs. 1.50 to Rs. 3 per item. According to the statement of Shri Sayyed Kishwar Ali, the entire raw material was of the assessee-firm and he only charged wages which were the order of Rs. 60,000 to Rs. 65,000 while in the books of the assessee such recording is at Rs. 78,500. There is thus difference of Rs. 13,500 reflecting in action to the extent of 19 per cent, of the expenses. In the case of Shri Mohd. Furkan, selling rate by him has been stated at Rs. 3 per piece while in the books of the assessee it is recorded at Rs. 3.50. In other words, the inflation is at 17 per cent. To our mind, even if the assessee's gross profit appeared favourably with the past history of the case still addition on account of inflated purchases was called for because then the past history of the assessee and other comparable case will be meaningless and the real profits will be which are arrived at after taking into consideration the positive inflation or positive suppression of sales. The Income Tax Officer has recorded a finding that the assessee does not maintain stocks with reference to karamal as well as finished goods on day-to-day basis or even on month-to-month basis. The sales whether in the form of overseas sales or inland sales are not relatable to particular purchases. Expenses in the form of ulchai colour, painting, plating, polishing, etc., were also not subject to verification as the assessee had expressed doubts for calling those persons for purposes of examination. What is the effect of non-availability of the day-to-day stock register? No check can be exercised to verify whether the entire purchases including opening stock are reflected in the sales or not. There is likelihood of suppression of sales in the process or even under-valuation of the closing stock or inflations of purchases and no check can be exercised that the goods debited in the purchase account including opening stock are fully reflected in the sales of the closing stock. The exercise of incentive for the purpose of arriving at comparable gross profit appears to have been done only before the Commissioner (Appeals). There is no mention in the order of the Income Tax Officer whether such an exercise was made before him by the assessee. It is, therefore, not verifiable as to whether the incentives received by the assessee pertained to the same year or they pertained to earlier assessment years. This

exercise without relevant fact having been brought on record will not lead to correct conclusion. Therefore, the tally given by the assessee before the Commissioner of Income Tax (Appeals) has remained unverified. Learned Counsel for the assessee stated at the time of hearing that there was no suggestion during the course of hearing from the Revenue that the incentives were for earlier years also and, therefore, the incentive included in different years pertained to the same year. We are afraid that such belated statement cannot be accepted without any supporting evidence. The past history of the assessee without taking into consideration the export incentive has also been relied upon by learned Counsel for the assessee. To our mind that also does not hold the assessee inasmuch as in the immediately preceding assessment year the gross profit rate shown by the assessee was at 11.03 per cent and in the assessment years preceding that the gross profit ranged between 0.50 per cent, to 0.66 per cent. The only reason given for lower gross profit rate for the assessment year 1981-82 that there was an increase in the purchases and decrease in the sale rates. We have noted earlier that the assessee has been inflating the purchases. Rate of such inflation has been found to be 17 per cent. Total purchases are not made available. Sales are stated to be at Rs. 18,33,728 and the gross profit rate shown thereon is 4.9 per cent, or 5 per cent, round. Taking the gross profit rate on the basis of purchase price of the goods sold there against would be of the order of Rs. 17,40,000. The rate of inflation worked out earlier is from 17 per cent to 19 per cent. Even if the lower rate of inflation of 17 per cent, is taken into consideration, the inflation of purchases of Rs. 17,40,000 works out to Rs. 2,96,000 against which the Income Tax Officer has made an addition of Rs. 1,11,813 which works out to a little over 6 per cent. We have already noted earlier that no positive evidence was brought on record by the Income Tax Officer to hold that there was suppression of sales to the extent of Rs. 48,465. That has been deleted by us as addition was merely conjectural we have already noted earlier that any inflation in the purchase and disallowances thereof will tend to increase the gross profit. We have found that the purchases have been inflated and the additions made by the Income Tax Officer works out to a little over 6 per cent, as against the inflation made by the assessee from 17 per cent, to 19 per cent. In such circumstances we hold that the learned Commissioner of Income Tax (Appeals) was not justified in deleting the trading account addition of Rs. 1,11,813. His order on this count is reversed and that of the Income Tax Officer is restored.

5. Heard Sri. R.R. Agarwal, learned Counsel appearing on behalf of the assessee and learned standing counsel and perused the order of Tribunal and authorities below:

The facts of the case is that after the statements of karkhanadars the opportunity of the cross examination was given to the assessee. At no stage assessee sought the copies of the statement. On the basis of the statement, cross-examination was made. Thus, the assessee was aware about the contents of the statements. Therefore, in case, if the copies of the statement were not

provided by the assessing authority before cross-examination, it cannot be said that the reliance could not be placed on such statement. We see no infirmity in the view of the Tribunal in relying upon the statements of karkhanadars in coming to the conclusion that there had been inflation in purchases resulting in the addition of Rs. 1,11,813.

For the aforesaid reasons, question referred to us is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.