

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 254 of 2009 (O&M)

DATE OF DECISION: 24.7.2009

Commissioner of Income Tax-II, ChandigarhAppellant

Versus

M/s Diplast Plastics Limited, 52, Sector 28-A,Respondent
Chandigarh.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Ms. Urvashi Dhugga, Advocate
for the appellant.

ADARSH KUMAR GOEL, J. (Oral)

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of Income Tax Appellate Tribunal, Chandigarh Bench-B dated 29.12.2004 passed in ITA No. 379/Chandi/2002 for the assessment year 1998-99, proposing to raise following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the order of the CIT (Appeals) dismissing the evidence found during the survey proceedings u/s 133A as "rough notes" and not treating the differences as "serious defects" in the "regular audited books of accounts" produced at the time of assessment proceedings."

2. A survey under Section 133A of the Act was conducted at the

business premises of the assessee on 17.9.1999 and certain loose papers and documents were found. The Assessing Officer held that trading results declared by the assessee were not verifiable. The assessee could not co-relate the transactions in the books of accounts with the RG register. Since the Assessing Officer was not satisfied with the explanation of the assessee, he made addition to the declared income. On appeal, the CIT (A) set aside the addition for detailed reasons. It was held that the assessee was able to reconcile the entire material recovered during the survey with the return already filed. This finding has been affirmed by the Tribunal. It was observed as under:-

“We also find that the defects pointed out by the Assessing Officer while framing the assessment were on account of omissions, wrong postings and totaling errors which stood duly reconciled and explained by the assessee. Since the Assessing Officer while rejecting the books of account mainly relied on the loose slips found during the course of survey which were also duly reconciled and explained by the assessee before the Commissioner of Income-tax (Appeals) and considering the fact that the books of account maintained by the assessee were duly audited and Assessing Officer had not pointed out any specific defect whatsoever in such books of account maintained by the assessee and lastly keeping the past history of this case in mind wherein a GP rate of maximum 16.66% was fully accepted by the Revenue, we are of the considered view that the Commissioner of Income-tax (Appeals) was justified in deleting such addition made by the Assessing Officer by rejecting books of account and estimating the GP rate at

22.01% as against 13.20% declared by the assessee which was without any basis and without pinpoint any defects in the regular books of account maintained by the assessee.”

3. We have heard learned counsel for the appellant.
4. Learned counsel for the revenue submits that the CIT(A) as well as the Tribunal have erred in appreciating the material recovered during the survey. The explanation of the assessee was not proper and the finding of the Assessing Officer should have been maintained. It was submitted that the view taken by the CIT(A) as well as the Tribunal was perverse.
5. We have heard learned counsel for the appellant and perused the order of the CIT(A) as well as the Tribunal.
6. We are unable to hold that the findings are perverse. The CIT (A) as well as the Tribunal has discussed the entire evidence and recorded a concurrent finding of fact.
7. In view of above, no substantial question of law is involved. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 24, 2009
pooja

(DAYA CHAUDHARY)
JUDGE

Note:-Whether this case is to be referred to the ReporterYes/No