

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

% Judgment delivered on: 14<sup>th</sup> January, 2010

+ **ITA 1418/2009**

**COMMISSIONER OF INCOME TAX** ..... Appellant  
Through: Ms Rashmi Chopra

versus

**VIMAL MOULDERS (INDIA) LTD.** ..... Respondent  
Through: None

**CORAM:**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal is directed against the order passed by the Income Tax Appellate Tribunal (ITAT) on 21<sup>st</sup> November, 2008 in ITA No. 349/Del/2005 pertaining to the block period from 1<sup>st</sup> April, 1996 to 3<sup>rd</sup> September, 2002.

2. The Assessing Officer had noticed discrepancy of stock and, therefore, held that this represented undisclosed income to the tune of Rs18,80,710/-. The discrepancy in the stock was on the basis of a visit by the anti-evasion Wing of the Central Excise Department of the respondent's factory premises.

3. The Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. However, the addition was set aside by the ITAT. The ITAT held as under:

“10. After considering the totality of the facts and circumstances of the case and taking into account the decision of CESAT, we are of the considered view that no addition is as so upheld and enhanced by the Id. CIT(A), is called for. On perusal of the A.O.’s order as well as Id. CIT(A) order, there is no doubt in saying that these additions have been made purely on the basis of the facts stated in the show cause notice issued by the Excise Department. No independent enquiry or verification has been made either by the A.O. or by the Id. CIT(A). The basis for addition is only the proceedings initiated by Excise Department. When the CESAT finally decided the issue in favour of the assessee holding that there was no such discrepancy in the stock as so initially made out by the Excise Department, we find that there is no any justification to sustain this addition in the hands of the assessee. In this connection, a reference may be made to a decision of Hon’ble High Court of Madras in the case of Commissioner of Income-tax vs. Vignesh Kumar Jewellers reported in 2008, 12 DTR (Mad) 293, reliance upon which was placed by the Id. counsel for the assessee where the Hon’ble High Court has held and observed as under:-

Extracted from head-note

*“The additions were made only by relying on the findings of the customs authorities and the said findings, which are the basis for making additions, are now set aside by the appellate authority. The AO has not made any independent enquiry and also there is no corroborating evidence to support the case of the Revenue. It is also found that even the assessee, whose statement was recorded by the Central Excise authorities, has not been examined by the AO. Further, the assessee was not given an opportunity to cross-examine them. Based on the above findings, both the authorities are correct in deleting the additions made by the AO. The findings given by the authorities are based on valid materials and evidence and it is a question of fact and not perverse. Further, the Revenue has not produced any material evidence to take a contrary view that of the Tribunal. Hence, there is no error or illegality in the order of the Tribunal warranting interference and the order of the*

*Tribunal is in accordance with law and the same is confirmed. In these circumstances, no substantial question of law arises out of the order of the Tribunal.”*

**11.** In the light of the discussion made above, we, therefore, delete the addition amounting to Rs.18,80,170/- made by the A.O. and further confirmed by the Id. CIT(A), and the addition of Rs.7,76,498/- on account of unexplained shortage of stock of raw material as enhanced by the Id. CIT(A). Thus the ground No.4, 5 and 6 are decided in favour of the assessee and against the revenue.”

**4.** On 8<sup>th</sup> January, 2010 when this matter first came up for admission before us, we passed the following order:

**“ORDER**  
**08.01.2010**

In this appeal, the only question that arises is with regard to discrepancy of stocks of raw materials between the books of accounts and the physical verification. The said discrepancy was pointed out when the officers of the Anti-Evasion Wing of the Central Excise Department made a visit to the respondent’s factory premises. It is on the basis of that discrepancy that the additions have been made by the Assessing Officer and the same have been confirmed and enhanced by the Commissioner of Income-tax (Appeals). However, the additions have been deleted by the Income-tax Appellate Tribunal by virtue of the impugned order in view of the fact that the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has returned a finding that there was no discrepancy in the stocks. Apart from the evidence produced by the Central Excise Department with regard to the discrepancy in stocks, there is no evidence on record which has been placed by the Income-tax Department to establish any discrepancy in the stocks. The learned counsel for the appellant / revenue seeks time to examine the records and to place the material, if any, before this court to show that the Income-tax Department also had independent evidence with regard to the discrepancy in stocks.

Renotify on 14.01.2010.”

**5.** The learned counsel for the appellant/Revenue has not been able to point out any independent evidence with regard to the discrepancy in stocks.

**6.** Consequently, we see no reason to interfere with the order passed by

the ITAT. No substantial question of law arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**JANUARY 14, 2010**

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