

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

DATE OF DECISION : 04.02.2013

1. I.T.A. No.30 of 2012

M/s Girnar Impex Pvt. Ltd. ...Petitioner

Versus

Commissioner of Income Tax ...Respondent

2. I.T.A. No.34 of 2012

M/s Girnar Impex Pvt. Ltd. ...Petitioner

Versus

Commissioner of Income Tax ...Respondent

3. I.T.A. No.344 of 2011

M/s Sundesh Springs P. Ltd. ...Appellant

Versus

Commissioner of Income Tax ...Respondent

4. I.T.A. No.351 of 2011

M/s Sundesh Springs P. Ltd. ...Appellant

Versus

Commissioner of Income Tax ...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. S.K.Mukhi, Advocate,
for the appellant.

HEMANT GUPTA, J. (ORAL)

The above mentioned four appeals arise out of the common order dated 02.06.2010 pertaining to assessment years 2003-04 and 2004-05 passed by the Income Tax Tribunal,

Chandigarh Bench, Chandigarh, (hereinafter referred to as the 'Tribunal').

All the appeals raise identical question and are of a same group. Therefore, for facility of reference, the facts are taken from ITA No.30 of 2012. The grievance of the appellant in the said appeal, in respect of the assessment year 2003-04, is in respect of disallowance of Rs.10,25,000/- on the basis of consumption of coal estimated at 2.25% then 2.80% declared by the appellant. In the assessment year 2004-05, the disallowance has been made in respect of consumables stores and oil/lubricants. The assessee has claimed following substantial questions of law as are arising for consideration by this Court:

1. Whether the ITAT is justified in confirming the disallowance and that too having made on estimate and presumption basis against the well settled law as in the case of **CIT Vs. SMT. USHA TRIPATHI [2001] 249 ITR 4 (ALL)** wherein the Hon'ble High Court confirmed the provisions of law that no additions or disallowance can be made under Block Period Assessment while computing undisclosed income u/s 158BB (1) of the Income Tax Act, 1961, on estimate basis?
2. Whether the ITAT was justified in confirming the order of authorities below qua making of disallowance @ 1/3rd on estimate and suspicion basis treating claims of expenditure on account of coal and fuel as in-genuine for not being claimed consistently without any evidence to support the additions having found during the course of search which is a basic requirement of computing undisclosed income for the block period as provided u/s 158BB(1) of the Income Tax Act, 1961.
3. Whether the ITAT was justified in reversing the order of CIT (A) as regards disallowance of 1/10th expenditure out of consumable stores, oils and lubricants on estimate basis having rightly deleted by the CIT (A) following the provisions of law expressly laid down u/s 158BB(1) of the Income Tax Act, 1961 by holding that no material was shown to have been found in the search conducted by the DRI or otherwise which could show that the

appellant had claimed excessive or in-genuine expenses under these heads and that the addition is taken to be made on the basis of surmises and conjectures could not be sustained?

4. Whether the order of the Tribunal is legally unsustainable & bad in law and perverse to the extent that in cases of Block Period Assessment, no addition as "undisclosed Income" can be made by the Revenue on estimation basis unless these are evidenced by some incriminating document as found during the search as so held in the case of **CIT Vs. R.M.PATEL, 9 DTR 260 (MADRAS)**.
5. Whether the order of the Tribunal is legally unsustainable & bad in law and perverse to the extent that the authorities below have clearly deviated from well established 'Principles of Consistency' wherein under similar facts and circumstances the Authorities below had admitted the declared results and in specific the user of coal, fuel, consumables, as declared by the appellant?
6. That the order of the Tribunal is legally unsustainable and bad in law and perverse.

The learned Commissioner of Income Tax (Appeals) has found that spiral pads were taken in possession by the Department for the period relevant to assessment year 2003-04 and 2004-05 during search operations. Such pads disclosed details of cash withdrawn from the bank account of the various coal and fuel suppliers of the appellants. On the basis of such information, the Commissioner of Income Tax (Appeals) found that the expenditure incurred on coal and fuel has been shown as Rs.52,13,356/- against the sales of Rs.18,09,50,955/-. In percentage, the expenditure incurred on purchase of coal and fuel comes to 2.80%. The Commissioner of Income Tax (Appeals) found that, in the assessment year 2004-05, the appellants have shown such expenditure as 1.9% only. Therefore, reduced the amount of disallowance from Rs.17,37,785/- to Rs.10,25,000/-.

Learned counsel for the appellant has referred to two

judgments rendered in the cases of **Commissioner of Income Tax Vs. R.M.L.Mehrotra, (2010) 35 DTR (All) 160**, and **Commissioner of Income Tax Vs. Concorde Capital Management Co. Ltd., (2009) 25 DTR (Del) 97**, to contend that while framing the assessment under Section 158BB of the Act, the assessment cannot be framed on the basis of estimation.

However, we find that in the aforesaid judgments, it has been held that the process of estimation cannot be arrived at while framing assessment, in terms of Section 158BB of the Act but assessment can be framed on the basis of material received during the course of search and seizure. Since the spiral pads, the basis of assessment in the year 2003-04 and 2004-05, were recovered during the search carried out on the residential and business premises of the appellants, we find that the disallowance on account of excessive coal is based upon the material recovered during the search operations. In fact, the Commissioner of Income Tax (Appeals) has given benefit to the assessee in respect of adding made in other years only for the reason that material taken in possession pertains to the year 2003-04 and 2004-05. We do not find that any question of law arises on the basis of such finding of disallowance recorded by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal.

In respect of disallowance of consumables, the Tribunal has set aside the findings recorded by the Commissioner of Income Tax (Appeals), inter alia, on the basis of statement of Shri Raghuvir Singh Dhiman, Factory Manager, recorded on 28.09.2004 and also the payment of cheques shown in the account of other coal traders though the payment was made to M/s S.P. Industrial Corporation. It

was found that material available on record suggests the invariability of the expenses claimed by the assessee under the impugned heads. Such finding is a finding of fact on the basis of the documents recovered during the process of search.

Therefore, we do not find that any substantial question of law arises for consideration in the present appeals.

Dismissed.

(HEMANT GUPTA)
JUDGE

04.02.2013
adhikari/Vimal

(REKHA MITTAL)
JUDGE