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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.141 OF 2006

M/s.Reflect Optics Pvt.Ltd., Mumbai
vs.
Dy.Commissioner of Income Tax,
Range 5(1), Mumbai.

Appellant

Respondents

Mr.S.N.Inamdar for the Appellant.

Mr.R.Ashokan for the respondents.

**CORAM : V.C. DAGA &
ANOOP V. MOHTA, JJ.**

DATED : 6th January, 2009

P.C.

Heard the learned counsel for the Appellant and the
learned counsel for the Respondents.

2. We were extensively taken through the impugned order dated 30.12.2005 passed by the Tribunal wherein the Tribunal has recorded its findings as under:

"8. We have considered the rival submissions. The ld. CIT(A) has recorded a categorical finding that there was a shortage of stock as worked out by the Assessing Officer. He, therefore, upheld the finding of the survey Team with regard to the shortage of stock to the extent of 2,41,314 pieces. He has considered all the submissions made on behalf of the assessee before the AO as also before him. No material has been placed before us to show that the stock worked by the survey team was incorrect. On the other hand, we find that the discrepancies in stock position were clearly admitted by Shri Anil Hingorani, in response to question No.12 of the statement recorded on the date of survey. The burden was on the assessee

to correctly work out the stock as per the books of account and reconcile the same with the stock physically found at the time of survey. All the relevant facts were within the special knowledge of the assessee. There is noting on record to show that the said burden was satisfactorily discharged by the assessee at the time of survey. If the assessee still wanted to challenge the correctness of the stock position found at the time of survey the burden the was on the assessee to bring sufficient material on record to show that the stock position, as stated by the assessee itself, or the stock position as worked out by the survey team was incorrect. This was not done. What the assessee has attempted to show in the present case is that the stock counting was not property done for which there is no evidence. In this view of the matter, we confirm the finding of the ld. CIT(A) that there was discrepancy in the stock recorded in the books vis-a-vis the stock physically found at the time of survey."

3. The Tribunal has remanded this matter with certain directions contained in paragraph 18 which is reproduced hereinbelow:

"18. We have considered the rival submissions. The Assessing Officer has made the addition with the observation that the assessee has not submitted specific details showing quantity wise and lot wise valuation of closing stock. He, therefore, valued the closing stock at Rs.72,72,190/- as against the value of closing stock shown by the assessee at Rs.26,07,032/-. Since the addition has made by the Assessing Officer with the observation that requisite details were not filed, it is considered appropriate to set aside the order of the ld. CIT(A) and restore the matter to him with direction to examine the issue afresh. He should obtain the quantitative details of closing stock as also its value. He, should, in particular, record his finding on the following aspects of the case:

(a) Physical quantity of closing stock as also its reconciliation with the stock found at the time of survey.

- (b) Basis of valuation of closing stock i.e. cost price or market price or lower of the two.
- (c) The basis of working out the rate at which the closing stock was worked out, i.e. cost price or market price as on the date of valuation of closing stock."

4. We were also taken through the statements of Shri Sunil Hingorani recorded under Section 131 of Income Tax Act, during the course of survey proceedings at the premises of the assessee on 15.11.1995 and 28.11.1995.

5. Our attention was drawn specifically to question No.12 of the statement recorded and answer reflected in the statement recorded on 15.11.1995 and to the question together with the answer given to question No.12 reflected in the statement dated 28.11.1995. Having gone through the same, no fault can be found with the view taken by the Tribunal as it revolves around the appreciation of evidence which can hardly be said to be perverse or contrary to the material available on record. The view taken by the learned Tribunal is reasonable and possible view. We see no substantial question of law arising in the Appeal warranting its admission. The Appeal is, therefore, dismissed in limine with no order as to costs.

[ANOOP V.MOHTA,J.]

[V.C. DAGA,J.]