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

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Decided on: 22.01.2014

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ITA 399/2013

COMMISSIONER OF INCOME TAX-III Appellant

Through: Mr. Rohit Madan, Sr. Standing
Counsel.

versus

SUNRISE TOOLING SYSTEM PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The Revenue claims to be aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) dated 30.11.2011 in ITA No.3136/Del/2010. It is urged that the findings of the ITAT in the facts and circumstances of the case are perverse. The Revenue seeks to urge that the Tribunal fell into error in not taking into consideration the statement of Sh. D.K. Jain, a director of the assessee. During the course of that statement, the

said partner had alleged that the sum of ₹43,34,496/- claimed to be part of the purchase transactions, in fact, were bogus and that the assessee firm had shown that such amounts were paid to Shree Laxmi Industrial Corporation for non-existent purchases.

2. The relevant facts are that for the assessment year 2006-07, the Assessing Officer (AO) made an addition of ₹43,34,496/-, concluding that the statement of one D.K. Jain, the Director, disclosed that the amount represented non-existent or bogus transaction. The assessee had claimed that the said amount was towards the purchases from one Shree Laxmi Industrial Corporation. The AO – and later the Commissioner of Appeals in assessee’s unsuccessful appeal - held, entirely basing themselves upon the statement of said D.K. Jain that the said Shree Laxmi Industrial Corporation had paid back ₹40,16,000/- in cash.

3. The ITAT in its impugned judgment took note of the statement of D.K. Jain and the retraction of the assessee on 21.02.2008. It was also noticed that the said statement was recorded in the course of survey under Section 133A and consequently did not have any evidentiary value. The Tribunal also took note of the fact that no copy of the statement was given to the assessee to enable him to cross-examine D.K. Jain.

4. Then the ITAT went to hold as follows:

“8. At page Nos. 39 to 45, a copy of letter dated 28.02.2008 by the assessee to the AO has been

made available. In this letter at page No.40, it was pointed out to the AO that no statement can be recorded on oath during the course of survey u/s 133A of the Act and such statements has no evidentiary value. It has been further pointed out that the assessee has already retracted such statements when it was submitted in response to the notice issued u/s 148 of the Act. At page No.46 has been placed copy of letter dated 12.12.2008 of the assessee addressed to the AO enclosing the sales-tax return as filed by Shree Laxmi Industrial Corporation for the FY under consideration before the sales-tax authorities showing that purchases reflected in the account of assessee from the firm stood declared by the above firm in the sales-tax return. In other words, they had shown the sales to the assessee company. The said goods supplied by them to the assessee have been utilized by the assessee company in the regular course of manufacture of various tools, dyes, cutting tools etc. submitted by the assessee. At page No.47-112 have been placed the sales tax documents of Shree Laxmi Industrial Corporation, at page no.113-131 has been placed confirmed copy of accounts in the books of Shree Laxmi Industrial Corporation with purchase bills. At pages No.132-176 has been made available a copy of stock registered and at page nos. 187-230 of the paper book has been made available a copy of bank statements of Shree Laxmi Industrial Corporation. The copies of these documents have been furnished under the certificate of the assessee that these documents were made available before the authorities below. None of the authorities below has commented upon the genuineness of these documents or the reasons for ignoring consideration of these documents by them while deciding the issue of genuineness of the claimed purchases made from

Shree Laxmi Industrial Corporation. The opportunity of cross-examining Sh. Nitin Aggarwal, a partner of Shree Laxmi Industrial Corporation has also been denied to the assessee on wrong basis by the authorities below that an opportunity of cross examines needs to be given only when third party is involved or a party not known to the assessee or a hostile witness is involved and further that the onus for cross-examination does not lie with the department but lies with the assessee who allegedly made purchases in his books of accounts from the said concerns. We do not agree with such finding of the Ld. CIT(A) as onus lies on the department to establish that the claimed purchases were not genuine since the allegation of books purchases was levelled by the department and primary evidence in the form of the relevant documents were made available by the assessee in support of the genuineness of the claimed purchases made from Shree Laxmi Industrial Corporation. The onus to establish that the same were bogus was thus shifted to the department. In any case when sales declared by the assessee have not been doubted, it was not proper on the part of the AO to deny the claimed purchases on the basis of which sales were made. In such circumstances, only option if any was available with the department was to estimate the income of the assessee during the year on the basis of trading result of earlier three years, made available at page no.38 of the paper book filed on behalf of the assessee. The same has been reproduced hereinabove in the preceding paragraph. On perusal of which we find that during the year, the assessee has shown better gross profit at a better GP rate of 27.67% in comparison to the GP profit and GP rates of earlier two AYs. In the AY 2005-06, the assessee

has shown GP rate on 25.67% and in AY 2004-05, the GP rate shown is 25.47%. Since the assessee has shown better GP rate during the year, we find that there is no justification to make addition even on this account. We thus while setting aside the orders of the authorities below on the issue direct the AO to delete the addition in question at Rs.43,34,496/- made by the AO on account of the alleged bogus purchases made from Shree Laxmi Industrial Corporation.

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5. This Court is of the opinion that the ITAT cannot be faulted in its approach in rendering the findings of fact. Although the learned counsel for the Revenue endeavoured to submit that the ITAT fell into error in overlooking and discounting the statement of D.K. Jain on the ground that it was retracted, the discussion quoted above would show that the ITAT took note of the materials before the AO and the CIT (A), which included the assessee's books of accounts as well as the Sales Tax records of Shree Laxmi Industrial Corporation. These established firmly and conclusively that the claim of the assessee that it had purchased goods from Shree Laxmi Industrial Corporation were borne out. The ITAT also noted – and we agree with that approach entirely - that the income-tax authorities had not even rejected the books of the assessee even while finding the claim as genuine transaction to be bogus.

6. Having regard to the conspectus of the circumstances, we are of the opinion that the impugned order does not disclose

any error, warranting framing of substantial questions of law.
The appeal is unmerited and is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

JANUARY 22, 2014