

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

I.T.A. No.321 of 2010 (O&M)
Date of decision: 4.8.2010

M/s V.K. Timber Pvt. Ltd.

-----Appellant.

Vs.

Commissioner Income Tax (Appeals) & another.

-----Respondents

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:- Mr. Akshay Bhan, Advocate for the Assessee.

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the assessee under Section 260-A of the Income Tax Act, 1961 (for short, “the Act”) against the order dated 27.11.2009 in I.T.A. No.2518/Del/2008 passed by the Income Tax Appellate Tribunal, Delhi, for the assessment year 2005-06, proposing to raise following substantial questions of law:-

- “i) Whether in facts and circumstances of the case, the action of the authorities below in ignoring the documents produced on record to show the fall in the Gross profit is legally sustainable in the eyes of law?
- ii) Whether in facts and circumstances of the case, the action of the authorities below in rejecting the claim of the assessee without their being any material evidence to rebut the claim of the assessee/appellant is legally sustainable in the eyes of law?

- iii) Whether in facts and circumstances of the case, the action of the authorities below in rejecting the claim of the assessee when all the details regarding the source of unsecured loans have been given and have been explained satisfactorily is legally sustainable in the eyes of law?
- iv) Whether in the facts and circumstances of the case, the action of the authorities below in not allowing the claims of the present assessee/ appellant when the same have been duly explained and proved is legally sustainable in the eyes of law?
- v) Whether in fact and circumstances of the case, the action of the authorities below, impugned orders Annexure A-1 and A-3 are legally sustainable in the eyes of law?"

2. The assessee is a timber merchant. During the course of assessment, the Assessing Officer noticed declaration of steep decline in gross profit of the assessee and the assessee was required to produce books of account and explain the reasons for decline. After considering the reply, it was held that the gross profit declared by the assessee was not genuine. Having regard to material on record, the assessment was made by applying higher gross profit rate i.e. 2.44%, which was the rate declared in the earlier year. The Assessing Officer also did not believe the genuineness of the credit entries from Ram Niwas and Chand Ram. The said amount was added to the income of the

assessee. On appeal, CIT(A) partly allowed the appeal and accepted the explanation of the assessee for declining G.P. Rate. The addition on account of credit entries of Ram Niwas and Chand Ram were also deleted. The revenue carried the matter to the Tribunal who restored the order of the Assessing Officer. It was held:-

“11. We have heard the rival contentions and perused the material on record. Apropos gross profit, we find that AO asked pertinent queries and assessee only gave a general submission that g.p. rate is decreasing every year due to higher volume of sale and increasing market competition. AO specifically asked to substantiate the claim besides further asked to produce stock register and vouchers in this behalf, which were not produced. Therefore, assessee's reply was considered on this general reply. In CIT (A)'s order, there is no mention about the furnishing of stock details or the papers, which were not filed before AO. Some statements were given comparison, CIT(A) has held that the g.p. reported by assessee is comparable. He has taken into consideration carriage expenses on general basis. In our view, when there is specific fall in g.p. and assessee does not produce relevant stock details and supporting material, addition is called for to correct the profits earned by the assessee. The assessee failed to produce quantitative details before AO. In our view, CIT(A) should have insisted for these documents and without their availability the relief could not be given. In view thereof, we hold that CIT(A) has given relief on subjective considerations without considering the vital

aspects on which AO proceeded to make the additions. In view thereof, we uphold the G.P. addition as made by AO.

12. Apropos the credits of Shri Ram Niwas and Shri Chand Ram, it has not been disputed that the assessee did not give any interest to these persons. Shri Ram Niwas owns 7-8 acres of land and fathered five children, on 30th June, 2006 one of his daughters was married. This is suppressing and against human probabilities that the creditor, an agriculturist, had a family to maintain, having marriageable daughter, neither amount was repaid nor interest was given at the time of marriage. It is not the claim of the assessee that he is relative or a dear friend. In view thereof, we are unable to agree with CIT(A) that Shri Ram Niwas had Rs. 5 lacs readily available as cash no lend to the assessee for years together without charging interest and not insisting for repayment even when his daughter was getting married on which a huge amount of Rs. 7.5 lacs had been contended to have been spent. In view thereof and considering Hon'ble Supreme Court judgment in the case of Sumiti Dayal (supra) and on consideration of human probabilities and attending circumstances, we uphold the order of AO on his issue. The addition sustained on this account.

13. Apropos Shri Chand Ram, he also owns 7-8 acres of agricultural land fathered three children, had no other property or fixed deposit. Although he had smaller family, he deposited only Rs. 4 lacs in cash on 20th April, 2004 and gave this amount by ways of interest free loan to the assessee in the same type of

circumstances as in the case of Ram Niwas. This credit also suffers from the same inconsistencies and improbable human conduct as mentioned in the case of Shri Ram Niwas. In view thereof, for the same reasons, we uphold this addition made by AO. In view thereof, on ground Nos. 2 & 3, we reverse the order of CIT(A) and restore that of AO.”

3. We have heard learned counsel for the assessee.

4. Learned counsel for the assessee submits that the Tribunal was not justified in interfering with the view taken by the CIT(A) and there are valid reasons for decrease in the G.P. Rate. He further submitted that credit entries of Ram Niwas and Chand Ram were genuine entries as held by the CIT(A) and finding of the Tribunal to the contrary is erroneous.

5. It cannot be disputed that the findings recorded by the Tribunal are findings of fact which cannot be interfered with even if two views are possible.

6. No substantial question of law arises.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 04, 2010
MITTAL)
ashwani

(AJAY KUMAR
JUDGE