IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 31 of 2004

DATE OF DECISION: 13.8.2007

Shivalik Woollen Mills Private Limited, Ludhiana.

…Appellant

Versus

Assistant Commissioner of Income Tax, Ludhiana.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

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

M.M. KUMAR, J.

This order shall dispose of I.T.A. Nos. 31 and 32 of 2004 as both the appeals emerge from one composite order passed in respect of Assessment Year 1990-91 and 1992-93.

These appeals by the assessee filed under Section 260-A of the Income Tax Act, 1961 (for brevity, 'the Act'), challenge order dated 26.6.2003 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for brevity, 'the Tribunal'), in ITA No. 1424/Chandi/95, in respect of the assessment year 1990-91 and ITA No. 1425/Chandi/95, in respect of the assessment year 1992-93 (A-3). The assessee has claimed that following three questions of law would arise for our determination:-

(i) Whether in the facts and circumstances of the case the Tribunal is right by ignoring the fact that the assessee was dealing with the items on the whole sale basis and only a nominal profit of 4.5 per cent be applied by treating the sale as of raw material?

(ii) Whether in the facts and circumstances of the case, the Tribunal is right in upholding the addition of Rs. 21,39,950/- when there is no evidence to show that the sale in stock outside the books of accounts?

(iii) Whether in the facts and circumstances of the case the Tribunal is right in ignoring that the gross rate of profit should be taken at 0.5 per cent and not at 29.15 per cent when it was not clear whether the said rate of profit was in respect of the yarn trading account or it included profit in respect of job work receipt.

Briefly facts necessary for disposal of these appeals are that a notice under Section 148 of the Act was issued to the assessee on 11.2.1993 and in response thereto a return was filed by it declaring nil income. It is appropriate to mention that the assessee derived income from manufacturing and sale of shoddy yarn; and also from trading of M.S. Rounds. It is also involved in getting job work done on account of drawing and straightening of M.S. Round and bright steel bars. On 18.12.1990, a search and seizure operation was carried

out at its business premises and certain books of accounts including papers were seized. The Assessing Officer noticed that sales and labour earned have increased suitably but the gross profit rate for the years under consideration has fallen by more than 6 per cent. On the asking of the Assessing Officer, the assessee submitted that at the beginning of the manufacturing season there was theft at its factory premises on the night of 17/18.9.1989, which resulted into loss of woolen rags etc. valued at Rs. 51,02,069/-, which in turn resulted into fall in the gross profit rate. The Assessing Officer did not feel convinced with the explanation furnished and made addition of Rs. 12 lacs on account of low G.P. rate in comparison to the G.P. rate of the last year on estimate basis. The assessee had also shown a sum of Rs. 51,02,069/- as the claim receivable in an annexure to the balance sheet under the head 'current assets loans and advances', which the assessee claimed that it was receivable on account of theft. No copy of the FIR or the claim filed with the Insurance Company was furnished to the Assessing Officer despite various opportunities. The Assessing Officer also made direct inquiries from the Insurance Company by issuing summons under Section 131 of the Act. The United India Insurance Company, vide its letter dated 3.1.1991, intimated the Assessing Officer that the claim of Rs. 51,02,069/- made by the assessee stood rejected as it was found to be fraudulent. The Assessing Officer has made reference to various surveyor reports as well as the reports submitted by the investigators of private companies. Accordingly, the Assessing Officer disallowed the claim

of the assessee in the profit and loss account, amounting to Rs. 51,02,069/- and added towards the income of the assessee.

The assessee challenged the order of the Assessing Officer before the CIT (A), Ludhiana, and raised those very contentions which were urged before the Assessing Officer. In his order dated 31.8.1995, the CIT (A), Ludhiana, has observed that it was not clear from the order of the Assessing Officer as to how and on what basis he concluded that the alleged fictitious entries as reflected in the balance sheet for the assessment year 1990-91 were representing the cash available with the assessee because the entry suggested the amount receivable and certainly not the cash available with the assessee. According to the CIT (A), the Assessing Officer had misdirected himself. It was concluded that the assessee had not written off the loss caused by theft and that the claim thereof was receivable. It was emphasised that the transaction had become transaction of writing off a bad debt as per the provisions of Section 36(2) of the Act with effect from 1.4.1989. Such a bad debt can be considered to be written off by the assessee. The CIT (A) also held that the order passed by the Assessing Officer in this respect contravened the provisions of Section 36(2) of the Act.

On further appeal of the revenue, the Tribunal concluded by referring to the voluminous evidence in the form of reports of surveyors and investigators that no theft had been committed on the premises of the assessee in respect of the alleged stock worth Rs. 51,02,069/-. It also further concluded that the assessee have manufactured goods out of raw material worth Rs. 51,02,069/- and

then sold the manufactured goods. It rejected the contention raised by the assessee that nominal profit of 0.5 per cent was to be applied by treating the sales as wholesales and that of raw materials. Adverting to the quantum of addition to be made on the aforementioned basis, the Tribunal opined that the Assessing Officer had reached the conclusion that the assessee must have manufactured goods worth Rs. 73,41,165/- out of stock of Rs. 51,02,069/-, who had worked out the addition by applying the G.P. rate of 29.15 on the value of the manufactured goods, which were worth Rs. 73,41,165/- and went on to observe as under:-

> "……The AO has adopted the G.P. rate of 29.15% which in our opinion, is not correct. In this case, the assessee had shown G.P. @ 6% as mentioned at page-2 of the asstt. orde. However, it is not known whether such G.P. rate was shown on the entire receipts including the labour charges amounting to Rs. 3,35,30,847 or only on goods manufactured and sold. Further, we find from page-2 of the asstt. order that the AO had made the trading addition of Rs. 12 lacs on account of low G.P. and such addition was agreed to by the assessee. Since we do not know whether such addition was made only on account of goods manufactured and sold or in respect of the entire receipts of Rs. 3.35 crores, we are unable to correctly work out the G.P rate accepted by the AO by including the agreed addition of rs. 12 lacs. Thus, we are of the opinion that the G.P. rate by including the addition

> of Rs. 12 lacs on account of goods manufactured and sold, required to be recomputed and addition on account of undisclosed sales of goods manufactured out of the stock of Rs. 51,02,069 also requires to be computed at the same G.P. rate as applied on the disclosed sales. In the light of these facts, we consider it fair and reasonable to set aside the order of the CIT (A) and direct the AO to recompute the addition in accordance with our observations made herein above in this order after allowing reasonable opportunity to the assessee."

On the question as to whether the assessee is entitled to claim loss of Rs. 51,02,069/- debited as insurance claim in the profit and loss account for the assessment year 1992-93, the Tribunal concluded that once findings have been recorded that no theft was committed at the premises of the assessee, a presumption is liable to be raised against the assessee that it had manufactured goods out of such raw material and sold the same in open market. The addition of Rs. 21,39,950/- made against the assessee had, thus, been sustained. Therefore, no claim of loss as debited towards insurance claim in the profit and loss account was acceptable. It was further observed that the insurance company had already rejected the insurance claim of the assessee on 3.1.1991. The Tribunal in the concluding paras 5.31 and 5.32 observed as under:-

> "5.31 Hence, for the reasons stated above and relying upon the decision of the Tribunal in the case of the assessee passed in a.y. 89-90, supra, we are of the

considered opinion that once the assessee's claim of Rs. 51,02,069 has been rejected by the Insurance Co. on 3.1.91 the same should have been claimed by the assessee in the a.y. 91-91 but the same has not been done by the assessee. Hence, the assessee is not entitled to claim this loss and consequent deduction for the same in the a.y. 92-93 and accordingly it is held that the assessee is not entitled to claim deduction/allowance in respect of Rs. 1,02,069 as loss debited in the P&L account as insurance claim rejected. Accordingly, issue no. iii is decided in favour of the revenue and against the assessee.

5.32. As a result of our findings on issues No. iii given herein above in this order, the respective grounds of appeal taken by the revenue for the asstt. year 92-93 in ITA No. 1425/Chandi/95 are allowed."

We have heard learned counsel for the assessee at a considerable length and with his assistance have perused the orders passed by the Assessing Officer, CIT (A) and the Tribunal. We further find that no question of law would emerge for our determination nor any such arguments have been advanced warranting admission of the appeals. When we examine Question No. (i) as claimed by the assessee, it reveals that the same is a pure question of fact wherein it is claimed that the woolen rags worth Rs. 51,02,069/- was deemed to have been sold by applying the nominal profit of 4.5 per cent. Obviously, these are questions of facts. Once it

has been established that the story of theft on the night of 17/18.9.1989 is false then the raw material has to be treated the way the assessee has used the similar raw material in the preceding years. A reasonable inference has been drawn by the Tribunal confirming the view taken by the Assessing Officer. Even the second question upholding the addition of Rs. 21,39,950/- cannot be considered to be unrealistic. There is ample evidence on record to substantiate the aforementioned conclusion. This is again a pure question of fact. Similar is the position with regard to the third question which has been claimed by the assessee. Therefore, we are unable to find any substantial question of law warranting admission of the appeals.

In view of the above, these appeals are wholly misconceived and the same are dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 13, 2007
Pkapoor

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