D.B.INCOME TAX APPEAL NO. 47/2004
(Commissioner of Income Tax -II Jodhpur Vs. M/s Meera Devi and Party)

DATE : 25.1.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. CHATRA RAM JAT,J.

Mr. Sangeet Lodha, for the appellant.

Heard learned counsel for the parties.

None present for the respondent assessee despite notice. The respondent-assessee is a liquor contractor for wholesale and retail sale for both country liquor and Indian Made Foreign Liquor and beer. The assessee has submitted his return for Assessment Year 1993-94 showing his total Income at Rs. 18,27,180/- as per his Profit & Loss Account.

The Assessing Officer had rejected the books of account on the ground of sale of country liquor as well as Indian Made Foreign Liquor were not vouched and not verifiable and resorted to the best judgment assessment. While considering the income from business of country liquor, the Assessing Officer made best judgment of its Income by applying net profit rate higher than the Net Profit declared by the assessee. On the other hand additions in profit and

gains from Indian Made Foreign Liquor were made by applying G.P. Rate on total purchase price. However, after applying G.P.Rate, no exercise for adjustment of allowable expenditure was made.

On appeal the CIT (Appeals) gave successive relief to the Assessee by reducing the income assessed by the Assessing Officer from both businesses by lump sum amount in each case.

On further appeal, the Tribunal deleted entire additions made by the Assessing Officer, though he sustained the order rejecting the books of accounts. It opined that it was the obligation of the Assessing Officer to have brought on record cogent and relevant material to justify the application of G.P. Rate and N.P. Rate applied by him. In absence of any material having been produced by the Assessing Officer, the result declared by the Assessee which were better than the previous year ought to have been accepted.

In coming to this conclusion the Tribunal had found that when assessee's own results were available before Assessing Officer and when the

previous result of the assessee were accepted, the declaration of the profit rates for the Assessment Year in question much higher than the previous year when the conditions of the business remained the same, there was no justifiable reason for making additions by increasing the rate of profit with reference to other distant dealers. However, the Tribunal held that Book of Account the assessee were rightly rejected.

It is pointed out by learned counsel for the appellant that assessee's own case relating to the Assessment Year 1993-94 was subject matter of D.B.Income Tax Appeal No. 46/2004 raising same issue in the like facts and circumstances and which has been decided on 13.9.2005.

The Court found that the case of the present assessee arises almost in similar facts and circumstances in which the case of CIT-II, Jodhpur Vs. M/s Sunil Talwar Murlidhar & Party, Jodhpur had arisen which was subject matter of D.B. Income Tax Appeal No. 48/2004. The appeal No. 46/2004 was decided in the following terms:-

> "In our opinion, on the fact of it, it is contradictory in terms that the very foundation on which the books of accounts rejected by the Assessing Officer and which order has been affirmed by the Tribunal, should be taken to be the basis of accepting the assessee's results because no material was produced by the Assessing Officer. It is to set at naught the initial presumption which at least shifted the burden on the assessee to prove that results declared by his books of accounts are still correct. The burden of proving exact facts to sustain the additions made on best judgment with definiteness is to convert best judgment, which is in the very nature a guess work, to an assessment in accordance with rejected books of account to a definiteness. The Tribunal has failed to consider the undisputed and unquestionable fact on which th Assessing Officer has proceeded to make the assessment, even the fact was not disputed by the assessee that cost price was verifiable for a\carrying the guess work, Therefore, in our opinion, the decision of the Tribunal in deleting the additions made by the Assessing Officer is reduced by the commissioner cannot be sustained in law."

The principle fully governs the facts of the present case also. The court after considering that no criteria emerges from the order of the Assessing Officer in adopting different basis for best judgment assessment in the case of Country Liquor and India Made Foreign Liquor and not giving any deductions in the gross profit, the matter requires reconsideration and remitted the case back to the Tribunal for deciding the

appeals afresh in accordance with law."

Following the aforesaid decision, we allow this appeal. The judgment of the Tribunal is set aside. The case is remitted back to the Tribunal for deciding afresh in accordance with law.

No order as to costs.

(CHATRA RAM JAT),J. **(RAJESH BALIA),J.**

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