

(2008) 08 DEL CK 0196

Delhi High Court

Case No: IT Appeal No. 947 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Goverdhan India (P.) Ltd.

RESPONDENT

Date of Decision: Aug. 18, 2008**Citation:** (2009) 177 TAXMAN 29**Hon'ble Judges:** Rajiv Shakdher, J; Badar Durrez Ahmed, J**Bench:** Division Bench**Advocate:** Prem Lata Bansal, for the Appellant;

Judgement

Badar Durrez Ahmed, J.

The revenue has filed this appeal in respect of assessment year 2001 -02 against the order dated 30-11 -2007 passed by the Income Tax Appellate Tribunal in ITA No. 5679/Delhi/2004.

2. The assessee claimed to have made sales of 1315 shawls of the value of Rs. 50,36,600 to one Ambrose International Corporation. The Assessing Officer issued summons to Ambrose International Corporation for confirmation with regard to the said sales. The said party sent a copy of its accounts which disclosed that it had purchased only 705 shawls of the value of Rs. 28,19,400 from the assessee. The assessee was asked to explain this difference of Rs. 22,17,200. The assessee sent a letter dated 12-3-2004 wherein the assessee stated that the accounts maintained by Ambrose International Corporation were not accurate and did not reflect the true position. Some instances such as the cheque for Rs. 4.50 lakhs bearing No. 291431 were mentioned in the said letter. More importantly, the assessee requested the Assessing Officer, through the said letter dated 12-3-2004 that if Ambrose International Corporation did not certify its account as per the assessee's books, then the said party be called to the Assessing Officer's office for the purposes of cross examination by the assessee. The letter dated 12-3-2004 issued by the assessee was considered by the Assessing Officer to be evasive and he rejected the same. It is also relevant to note that no opportunity of cross examination of any

representative of Ambrose International Corporation was given to the assessee.

3. Rejecting the pleas raised by the assessee, the Assessing Officer treated the entire amount of Rs. 22,17,200 as unexplained credit and added the same to the taxable income of the assessee. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who confirmed the addition made by the Assessing Officer.

4. The assessee took the matter further in appeal before the Tribunal. After considering all the facts and circumstances of the case, the Tribunal deleted the additions made by the Assessing Officer. In particular, the Tribunal noted that the assessee's accounts had been audited and that the assessee had filed all its details. There was no material on record to suggest any defect found by the Assessing Officer in the purchases made by the assessee which had been sold during the relevant year. Importantly, the Tribunal returned a finding that copies of sale bills were produced by the assessee before the Assessing Officer and those bills had been countersigned by the said party (Ambrose International Corporation). The Tribunal concluded that the sales, thus stood confirmed and had been made to a person who was identifiable. After noting that the assessee had made a request for cross examination, which had been denied by the Assessing Officer, the Tribunal held that the assessee's reply dated 12-3-2004 which carried such request was not evasive. On facts also the Tribunal held that since the Assessing Officer could not point out any defect in the books of account maintained by the assessee, the Assessing Officer ought not to have made the addition purely on the basis of presumptions. The Tribunal also noted that the sales shown by the assessee could not be rejected by merely relying upon a copy of the accounts submitted by the third party particularly where a serious objection had been raised with regard to the authenticity of the said accounts. This assumes greater significance because the assessee had requested for cross examination of the third party and such request had not been allowed by the Assessing Officer.

5. In such circumstances, we find ourselves to be in agreement with the findings returned by the Tribunal and the conclusions arrived at by them. The Assessing Officer ought not to have relied upon the copy of the accounts submitted by Ambrose International Corporation, when the same were disputed by the assessee as not reflecting the true and correct position and particularly when the assessee's request for cross examining the representative of Ambrose International Corporation was not allowed.

6. Before parting with this appeal, we would like to record that the learned Counsel for the appellant sought to raise the issue that there was some discrepancy between the amount reflected in the balance sheet under the head "Sundry debtors" and the balance shown in the accounts of Ambrose International Corporation in the books of the assessee. However, we cannot entertain this plea at this stage, because such a plea was not raised before any of the authorities below. No substantial question of

law arises for our consideration. The appeal is dismissed.