

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

INCOME TAX TRIBUNAL APPEAL No: 199 of 2008

Income Tax Tribunal Appeal under Section 260-A of the Income tax Act 1961 against the order dated 16-11-2007 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench "A", Hyderabad in I.T.A.No.293/Hyd/2005 for Assessment Year 1989-90 preferred against the order dated 16-02-2005 on the file of the Commissioner of Income Tax (Appeals)-II, Hyderabad in ITA.No.0036/CIT(A)-II/04-05 preferred against the order dated 18-03-2004 passed in PAN / GIR No.H-102 on the file of the Assistant Commissioner of Income Tax, Circle 1(4), Hyderabad.

Between:

M/s. Hoe Leather Garments Ltd., 12-1-709, Berban, Hyderabad.

...Appellant

AND

Asst. Commissioner of Income Tax, Circle-1 (4) Hyderabad.

...Respondent

Counsel for the Appellant: Mr. A.V.A. Siva Kartikeya

Counsel for the Respondent: Mr. J.V. Prasad, Standing Counsel for Income-tax

The Court delivered the following: JUDGMENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

ITTA No. 199 of 2008

JUDGMENT: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. A.V.A. Siva Kartikeya, learned counsel appears for the appellant/assessee.

Mr. J.V. Prasad, learned Senior Standing Counsel for Income-tax appears for the respondent/Revenue.

2. This appeal under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') is directed against order dated 16.11.2007 passed by the Income-tax Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal'). The subject matter of the appeal pertains to the assessment year 1989-90. The appeal has been admitted on the following substantial question of law.

“Whether the Income-tax Appellate Tribunal is justified in sustaining the addition of a sum of Rs.25,88,026/- under the head of unproved cash purchases?”

The factual background for which aforesaid substantial question of law arises for consideration need mention infra.

3. The assessee company is engaged in the manufacture and export of finished leather. The assessee filed the return of income on 20.12.1989 for the assessment year 1989-90 disclosing an income of Rs.4,37,738/- under the provisions of Section 115J of the Act. The return filed by the assessee was processed under Section 143(1)(a) of the Act and on 26.03.1992, the assessment was completed under Section 143(3) of the Act determining the total income of the assessee at Rs.23,15,595/- under the regular provisions of the Act. Being aggrieved by the additions made, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who partly allowed the appeal. Against the order passed by the Commissioner of Income-tax (Appeals), the Revenue filed an appeal before the Appellate Tribunal. The Appellate Tribunal by an order dated 17.06.2002 set aside the order passed by the Commissioner of Income-tax (Appeals) and remitted the matter to the Assessing Officer to put the material collected

and relied on by the Assessing Officer to the assessee and call for the explanation and reframe the assessment.

4. In pursuance of order of remand, a notice under Section 143(2) of the Act was issued to the assessee and the material collected and relied on by the Assessing Officer was put to the assessee and the assessee was asked to furnish its explanation as to why the purchases worth Rs.25,88,026/- should not be disallowed as unproved cash purchases. The assessee furnished a written reply on 11.02.2004. The assessee however did not adduce any evidence in support of its claim except filing copies of letters addressed to the Commissioner of Income-tax (Appeals). The Assessing Officer therefore by an order dated 18.03.2004, rejected the claim of the assessee and the cash purchases claimed by it to the extent of Rs.25,88,026/- were treated as unproved cash purchases. The Assessing Officer also directed initiation of proceedings under Section 271(1)(c) of the Act.

5. Being aggrieved, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) by an order dated 16.02.2005 *inter alia*

held that the assessee has failed to produce the stock register, inward register and complete purchase details of Rs.25,88,026/-. The Commissioner of Income-tax (Appeals) further held that several details produced before him are in Urdu for which English translations are not provided for by the assessee. It was further noticed that the assessee has failed to produce the primary documents before the Assessing Officer during the reassessment proceedings and has not produced the primary documents even during the appeal. Accordingly, the Commissioner of Income-tax (Appeals) affirmed the finding recorded by the Assessing Officer that purchases of Rs.25,88,026/- are bogus and unverifiable purchases and dismissed the appeal.

6. The assessee thereupon filed an appeal before the Income-tax Appellate Tribunal. The Tribunal by an order dated 16.11.2007 *inter alia* held that the assessee has neither produced the stock register nor any other evidence to indicate the receipt of raw material in the factory. It was noticed that the authorities during the course of personal inspection found that the assessee was maintaining the stock register for the

subsequent year. The primary authority therefore concluded that the assessee has withheld the best evidence available with it from the knowledge of Assessing Officer. It was further held that even before the Appellate Tribunal, the assessee has not produced any material. The Appellate Tribunal dismissed the appeal. Hence, this appeal.

7. Learned counsel for the assessee submitted that the addition of a sum of Rs.25,88,026/- under the head of unproved cash purchases in the facts and circumstances of the case is unjustified. It is contended that the Assessing Officer erred in making an addition of the aforesaid amount under the head of unproved cash purchases which is contrary to the record.

8. On the other hand, learned counsel for the Revenue has submitted that no substantial question of law arises for consideration in this appeal and the matter is concluded against the assessee by findings of fact which are based on the material available on record and by no stretch of imagination, it can be said to be perverse.

9. We have considered the submissions made on both sides and have perused the record.

10. It is trite law that this Court in exercise of powers under Section 260A of the Act cannot interfere with a finding of fact unless and until the same is shown to be perverse (See **Syeda Rahimunnisa vs. Malan Bi by LRs¹ and Principal Commissioner of Income Tax, Bangalore vs. Softbrands India Private Limited²**).

11. The assessee in the course of reassessment proceeding did not produce stock register or any other evidence to indicate the receipt of raw material in the factory. Thus, the finding with regard to the addition is based on meticulous appreciation of evidence on record. The aforesaid finding of fact by no stretch of imagination can be said to be either perverse or based on no evidence.

12. For the aforementioned reasons, the substantial question of law framed by this Court is answered against the assessee and in favour of the Revenue.

¹ (2016) 10 SCC 315

² (2018) 406 ITR 513

13. In the result, the appeal fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad Bench "A", Hyderabad.
2. The Commissioner of Income Tax (Appeals)-II, Hyderabad.
3. The Assistant Commissioner of Income Tax, Circle 1(4), Hyderabad.
4. One CC to Mr. A.V.A. Siva Kartikeya Advocate [OPUC]
5. One CC to Mr. J.V. Prasad, Standing Counsel for Income-tax[OPUC]
6. Two CD Copies

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HIGH COURT

DATED:06/01/2025

JUDGMENT

ITTA.No.199 of 2008



**DISMISSING OF
THE APPEAL**

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31/01/25
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