

inspecting Assistant Vs. D.R. Bansal

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Court : Income Tax Appellate Tribunal ITAT Nagpur

Decided On : Sep-23-1997

Reported in : (1998)65ITD241(Nag.)

Appellant : inspecting Assistant

Respondent : D.R. Bansal

Judgement :

1. The Departmental appeal bearing ITA No. 822/Nag/1984 was originally disposed of by the Tribunal vide its order dt. 28th June, 1985. The facts, in brief, relating to the appeals are as under : There was a search and seizure operation by the Department at the office and residential premises of the assessee on 20th July, 1982, which continued upto 29th July, 1982. Certain papers were seized from the residence of the assessee. On the basis of the seized materials, certain actions were proposed by the AO and a draft order under s. 144B of the IT Act, 1961 was made and referred to the IAC, proposing the addition of Rs. 5,06,071. The IAC directed to add Rs. 2,08,904 which consisted of Rs. 1,29,830 towards profit earned from unaccounted business and Rs. 29,074 made towards unexplained investment. It was the case of the Department that 105 loose sheets regarding cash transactions and another 178 sheets containing cash transactions are real and genuine books of accounts of the assessee, partners and firm of Bansal Brothers, and Chhattisgarh Iron and Steel Works, pertaining to the unaccounted business not disclosed before the Department in its regular return of income. It was the case of the assessee that these documents seized by the

Department were fabricated by Lalson and Rajan, two accountants of the assessee on directions of one Mr. Bakshi. In first appeal, after hearing the assessee's counsel and the Department's Representatives, the additions were deleted by the learned CIT(A) holding that the documents were fabricated by two accountants at the instruction of Mr. Bakshi.

2. There was prolonged hearing before the Tribunal. Either of the parties sought adjournments for some reason or other and the matter was finally fixed for hearing on 21st February, 1985 on which date, the Departmental Representative sought an adjournment on the ground that the seized papers were not available since they were sent for the expert's opinion. In the adjournment application, it was mentioned that since March month being busy month, the matter may be adjourned to April's 3rd week. However, the case was heard on 4th April, 1985. On that day, it was adjourned to 8th April, 1985 for want of time. On 10th April, 1985, the Departmental Representative expressed their inability to proceed with. The matter was heard and disposed of by the order dt.

28th June, 1985 confirming the order of the learned CIT(A).

3. Against the above order of the Tribunal the Department filed the Misc. application bearing M.A. No. 17/Nag/1985. It was the case of the Department before the Tribunal in Misc. application that on 25th March, 1985 and 4th April, 1985, the documents were not available with the Department as they had been sent to the experts for their opinion. It was also the case of the Revenue that the assessee produced their hand-writing expert's opinion even without following the procedure under r. 29 of the ITAT Rules, 1963, whereas the Department's request was rejected in adjourning the case.

4. It was the case of the assessee that when the Department made an application for adjournment on 21st February, 1985, papers were with the Department but they misled the Tribunal which is clear from the fact that the papers seized were sent to expert's opinion only by March.

5. After hearing the contending parties in the Misc. application, the Tribunal vide its order dt. 19th July, 1996 allowed the Department's Misc. application to a limited

extent holding that the principles of natural justice had been violated as the assessee was allowed to produce experts' opinion without following the procedure as contemplated under r. 29 of the ITAT Rules whereas the Department's request for adjournment was rejected. Vide para. 9 of its order, the Tribunal directed to allow both the parties an opportunity to move their respective applications under r. 29 for the admission of evidence in the shape of expert opinion of handwriting experts. It is under these circumstances that we are called upon to appreciate the evidence, produced by both the parties under r. 29, and to decide the issue in view of the facts now brought on record by both the parties.

6. The learned Departmental Representative submitted that the CIT(A) was influenced by the order of the Tribunal in the case of IAC vs. D.R. Bansal, in ITA No. 822/Nag/84. Thus, he decided the issue against the Department Chhattisgarh Iron & Steel Works which only shows that the Tribunal has decided the issue in favour of the assessee appreciating the experts' opinion produced by the assessee. Thus, he submitted that the evidence now adduced by way of expert's opinion by the Department should be taken note of. Supporting the expert's opinion produced by the Revenue, the learned Departmental Representative submitted that though in the cross-examination, minor discrepancies were admitted due to natural variation that may occur, he being well experienced and qualified person, his opinion cannot be brushed aside.

The learned Departmental Representative submitted that the statements of Shri N. B. Lalson and Shri Rajan cannot be accepted and taken note of since they are interested parties who still continued to be in the services of the assessee. Thus, he submitted that the evidence now adduced by the Revenue in the form of expert's opinion should be taken note of and should be admitted as an evidence and the matter calls for fresh decision in view of the above. In the alternative, the learned Departmental Representative submitted that the matter requires to go back since the assessee's experts were not cross-examined.

6.1 Opposing the above submissions, the learned counsel for the assessee invited our attention to the paper-book p. 4 which is the opinion from Ajit Kumar Ghosh. In the said opinion, it is stated that it is difficult to come to a conclusion that the

writings are of Shri K. K. Bansal for the following reasons : "(i) The disputed writings (held to be writing of Mr. Bansal) marked Q-1 to Q-11 are mostly figure writings whereas the admitted writings marked A/1 & A/2 are speedy extended writings. On comparison of the disputed writings and figure writings marked Q-1 to Q-11 with A/1 & A/2 are different from admitted writings by : The learned counsel further brought our attention to paper-book p. 5 also which is an opinion from Shri C. T. Bhanagay, Government Consultants for questioned documents. He also states vide his opinion dt. 3rd April, 1985 that it is not possible to express any definite opinion. The learned counsel also invited our attention to paper-book pp. 46 to 54 which are the opinion from K. R. Pillai, Advocate, and handwriting and fingerprints expert. After examination of the documents vide paper-book pp. 50 and opinion on pp. 58 and 59, he certified as under : "I am, therefore, of the opinion that all the 11 questioned documents and the 3 admitted documents have been written by one and the same person and the handwriting and the digital works in all the 11 questioned documents and the handwritings and digital work in all the 3 admitted documents of p. 95 and 124 are of one and the same person for the reasons stated below : 1. The finger and wrist movement is employed in both the questioned and admitted writings.

3. The alignment is ascendant in the questioned and admitted writings.

4. The slant is mostly verticle in the questioned writings and admitted writings.

5. The pen position is little inclined to the writer in questioned writings and admitted writings." 6. The pen pressure is heavy in both the questioned and admitted writings.

7. The speed is similar in both the questioned and admitted writings.

8. The pictorial effect is striking the similar in both the questioned and admitted writings.

The learned counsel further brought to our attention the expert's opinion given on p. 53 (p. 8 of the opinion). This is comparative study of the original deposition of Mr. Lalson made before the First Class Magistrate, Durg and all the 11 questioned

documents executed in the 14 photographs in set. No. 1. Hence deposition made before Magistrate in 4 pp., as Set. No. 4. After studying this, he certifies as under : "I have carefully and thoroughly examined the above referred 11 questioned documents exhibited in 16 photographs in set No. in original as well as in the enlarged photographs thereof and also the admitted document of affidavit of Shri N. B. Lalson dt. 23rd April, 1986 of four pages in original as well as the enlarged photographs thereof as in set No. 4 and found that the handwriting and digital work in all 11 questioned documents from Q-1 to Q-11 in 16 enlarged photographs are identical with the handwriting and digital work in the affidavit dt. 23rd April, 1986 of Shri N. B. Lalson referred above as in set No. 4. I am of the confirmed opinion that the 11 questioned documents as well as the affidavit in 4 pages made before the First Class Magistrate on 23rd April, 1986 have been written by one and the same person i.e. L. B. Lalson and that the digital work in the 11 questioned documents as well as in the admitted documents of affidavit are of one and the same person".

Page 55 - opinion of C. T. Sarwate. In his opinion, he states that "after a thorough examination and comparison I have reached the conclusion that the questioned writings marked Q-1 to Q-11 on the photographs have not been written by the writer of the standard and specimen writing marked A/1 to A/37". The papers marked Q-1 to Q-11 are the alleged writings of Mr. K. K. Bansal and writing marked A/1 to A/37 are standard and specimen writings of Mr. K. K. Bansal.

Thus, he opines that it is not the writings of one and the same person. Vide para (B) of the opinion, he states that he examined the writings marked Q-1 to 11 & photographs and on comparing them, it is found that they are the standard writing and specimen writing marked L/1 to L/7, and he certifies that : "After a thorough examination and comparison I have reached to a conclusion that the questioned writings marked Q-1 to Q-11 and standard and specimen writing marked L-1 to L-7 have been written by one and the same person." While on the opinion dt. 12th May, 1986, Mr. Ajit Kumar Ghosh, Examiner of Questioned documents, CTD West Bengal, states that he had examined 16 photographs containing writings and figures marked Q-1 to Q-11 with 37 photographs containing admitted writings and figures said to be of Mr. K. K. Bansal, marked A/1 to A/37 and compared with 7 photographs containing admitted writings and figures writings said to be of Shri

Lalson marked AL-1 to AL-7 and after this, he states that, writings and figures marked Q-1 to Q-11/3 are written by one and the same person marked AL-1 to AL-7 whereas Q-I to Q-II/3 are written by some person of the writing marked A-1 to A-37 i.e. Mr. Bansal. As to the Govt. Examiner of the questioned documents Mr. Santok Singh and Shri D. D. Goel, vide their opinion dt. 30th April, 1985 they state that they "have examined the documents and red enclosed writings stamped and marked A-1, A-1/1 to A-37 also Q/1 to Q/11/3 and states that they "were all written by one and the same person". They further state that it is not possible to express any definite opinion on the writings marked Q-1/3, Q-4, Q-10/1 and Q-10/3 on the basis of the material at hand".

7. Here before us there are two sets of opinion, one filed by the assessee and the other by the Department. The opinion by the assessee's experts on the handwritings are detailed, specifying differences and similarities, with some other set of alleged writings. Q-1 to Q-11/3 are of the disputed documents, A-1 to A-10 to A-37 are of Mr. K. K.Bansal, standard and specimen writings. L-1 to L-7 are of Mr. Lalson.

In the opinion of Mr. Pillay, he specifically states that in Q-1 to Q-11 and A-1 to A-37, the following differences have occurred : (b) The execution of capital letters is quite different in both the sets.

(c) The word 'for' is executed in quite different manner and letter 'f' is also executed in different manner in both sets.

(f) The lower curve in the disputed writings are executed on the top, but it is executed like small letter 'l', it is one of the most significant different between questioned writings and admitted writings.

(j) Capital letter 'R' in the word 'Rate' is executed in different form in both the sets. In the questioned writing, it is executed like copy book style in the admitted writings.

"1. The finger and wrist movement is employed in both the questioned documents and admitted writings.

3. The alignment is ascendant in the questioned and admitted writings." In the individual peculiarities also, he mentioned the similarities as under : "1. Capital letter 'A' is executed in similar matter, there is acute angle on the top of this letter in both the sets.

Thus, he certifies that the questioned documents are not of Mr. K. K.Bansal but that of Mr. Lalson. Thus, by comparing the two opinions with reasons, we have to give more weight to the opinion of the experts of the assessee, but we restrain ourselves, considering the collateral facts, that have to be compared with additional evidence necessary to decide the issue.

8. In many cases, the hon'ble Supreme Court has held that sole evidence of handwriting expert is not sufficient to report for definite reason that writings is of certain person or not. The evidence of handwriting expert, unlike of finger prints expert, is generally of foul character and fragilities even are quite often noticed. On other words, unless there is some circumstantial evidence of the collateral evidence, the opinion of expert should not and cannot be the sole basis to decide the issue. In the case of Magan Biharilal vs. State of Punjab AIR 1977 SC 109, the hon'ble Supreme Court held that "it is now well settled that expert opinion must always be received with care, caution and perhaps none so with more caution than the opinion of a handwriting expert. It is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot be itself form the basis for a conviction". In the case of Chatt Ram vs. State of Haryana AIR 1979 SC 1890, Hon'ble Supreme Court held that "Expert opinion of the handwriting, even if admissible, was not a safe basis for finding a forgery". In other words, so as to form an opinion in a case like this expert's opinion is admissible under s. 45 of the Evidence Act which reads as under : "Opinions of expert - When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identify of handwriting or finger impressions are relevant facts.

As a general rule, the opinion that of beliefs of third parties are irrelevant and inadmissible. It is the duty of the Court to form its own opinion on the facts stated. But there are few exceptions to the above rule, when the question involved needs experience or knowledge or where special study of subject or subject experience is necessary. In such case, expert's help be sought under s. 45 of the Evidence Act. Law permits Court to form an opinion on the basis of expert's opinion when the question of identity of handwriting or impressions are involved.

9. Here we are called upon to form an opinion on the basis of the handwriting alleged to be written by two different individuals. Though the expert's opinion is admissible as a piece of evidence, it is well settled that "expert opinion should be received with care, caution and perhaps none so with more caution than the opinion of handwriting expert", in view of the many decisions of the apex Court. It is stated that "handwriting experts talk in terms of pseudo signs and try to create an impression by tallying glibly of pen pressure, pen hold, pen presentation, pen pause, pen lift, hand movement, wrist movement, angle of pen, change of pivot, lapse of any kind, embellishment, terminals etc.". They are the type of terminology witnesses, and like other, calls for another bias in favour of the party engaging them. "Moreover, their opinion are professionally ascertained and they are brought only when they are in favour of the party calling". They know on whose behalf, why they have been called, and what the party calling wishes to have. It tries to collect amount from weight to be given to their opinion.

10. In the case of Kamesh vs. State AIR 1962 AP, it was held that it is unfair to take expert handwriting opinion as sufficient basis for conviction. They can be relied upon, when supported by various items of external evidence. Experts opinion is only a base of evidence which has to be considered along with other evidence. In the case of Takkar Prasad, AIR 1963 SC 1728, the hon'ble Supreme Court held that expert evidence of handwriting cannot be said to be conclusive, because it is after all the opinion evidence. It is stated that "at the most, expert's opinion can raise suspicion as to genuineness of the documents but it is of no value unless confirmed by other evidence.". Lalson in his book "Expert and Opinion Evidence" says "evidence of the genuineness of the signature based upon the comparison of handwriting and all the opinion of the expert is entitled to proper

consideration and weight. It cannot be composed, however, that it is of the last order of evidence or at the most unsatisfactorily correct. We believe that in this opinion, experienced layman unites the principles of legal provisions. Of all kind of evidence admitted, this is the most unsatisfactory".

11. Sec. 73 of the Evidence Act, permits comparison of signature, writing or seal with others admitted or proved. Sec. 73 reads as under : "Sec. 73. Comparison of signature, writing or seal with others admitted or proved - In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words of figures alleged to have been written by such person." Sec. 45 states as to who is an expert and s. 47 explains as to who is a person said to be acquainted with the handwriting of the another person. Sec. 45 of the Evidence Act has already been reproduced above.

Sec. 47 of the Evidence Act reads as under : "Sec. 47 Opinion as to handwriting, when relevant. - When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation. - A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by the person in answer to documents written by himself or under his authority and addressed to the person, or when, in the ordinary course of business, documents purporting to be written by the person have been habitually submitted to him." 12. Before us, there are two views of experts, one produced by the assessee and other by the Department. The stand of the Department is that the alleged writings were seized from the residence of the

assessee at the time of search and seizure. It has to be compared with the other alleged writings of the assessee. On the other hand, it is the stand of the assessee that it was implanted by two persons at the instance of somebody else with the intention of getting rewards. The assessee has produced affidavit from two persons stating that it was implanted by them on the instance of one Mr. Bakshi who made the other to believe that they will be rewarded. These two persons were cross-examined and they admitted the fact that it was implanted by them.

13. We have also seen hereinabove that the Department's expert has not stated as to why he has come to the conclusion that alleged seized papers are written by Shri K. K. Bansal. Whereas the assessee's expert specifies as to why he is coming to such conclusion. Regarding the value of handwriting expert's opinion, we have seen that the expert's opinion should be accepted with caution and reservation as compared to other expert's opinion like fingerprints, etc. The Department's expert was cross-examined in the connected case, a sister concern, namely, Chhattisgarh Iron & Steel Works, Bhilai. The cross-examination was done in the presence of CIT(A). Answering to question No. 12, the expert states that "it is advisable to have similar type of standard writings as that of questioned writings but it is always not necessary".

Answering question No. 18, he states that "though I compared 'S' of stock in Q-1 with stock of A-2 with the letter 'xx' 's'; whereas it is capital in Q-1, hence letter 'S' is not comparable. Answering question No. 19, he states that "I agree that all the words with 'S' in A-1 are part of the sentences. As it is in the book form I say that 'S' of the statement in the second line of A-1 is capital 'S'. 'S' of statement in line 4 of A-1 is small one and it is of different shape, than the disputed 'S'. Answering question No. 22, he states that "'S' of stock in A-8 is of different shape that of Q-1. They are dissimilar and is not connected with the letter 't'." Answering to question No. 23, he states that "it is incorrect to say that the word 'Book' in Q-1 is in cramped space. He further states that : "Oval of 'oo's are not round in A-2. They are also not round in Q-1.

You can say that 'k' in Book of Q-1 looks line 'm' or 'w'. The letter 'k' in the word 'Books' in line 3 of A-2 give an appearance of the letter 'h' whereas the same letter

of the word 'book' against details appears like to be 'm' or 'w' as that of Q-1." Answers to Question Nos. 27, 28, 29, 32, 33, 34, 35 and 36 are reproduced below for appreciation : "No. 27 : All the documents were sent to me by the IAC (Asst.), Raipur. Original document were produced by the presenting officer yesterday and I inspected the same in the Court.

No. 28 : I do not agree that the letter 'y' in Q-1/4 and of 'city' in A-15 are different except that the letter 'y' in A-15 being terminal one is slanted towards right whereas in Q-1 it is intermediate one. I do not agree that in these 'y's fork is different, the 'y' of Goyal in A-15 is not different to the 'y' of physical in A-1/4 though it shows natural variation. The first shoulder of 'y' in Q-1 is at a lower height than the second one in Q-1/4 whereas they are almost at the same height in A15.

No. 29 : The linking of 'si' in Q-1/4 is in one pen operation while in the word 'Sita' it is in one operation. It is incorrect to say that it is almost on the curve of 's'. It is correct to say that many people may write 'si' combination in this manner. The finish of 'd' of Q-1/1 is completely different from 'd' of A-8.

No. 32 : The letters DRB are of different design that Q-2. It is correct to say that I have not specifically mentioned the standard writing where the figures 4, 6 and 5 are found similar to that of question writings. The other figures were compared but as there were no characteristics features in them and as such I have not mentioned".

No. 33 : The word 'Swarna' in Q6 was compared with the word 'Swarna' in A-35. Barring this swarn was available only in A-20. 'w' in A-35 have angular basis while in Q-6 they are also angular but not that sharp and similar sharpness is found in A-20. The size of word swarna in Q-6 is smaller than in A-35.

No. 34 : KKB, VKB are detached in A-8 and slow whereas these initials are connected and rapidly written in Q-2. They appear to be different due to slow speed and consciousness on the part of the writer. The writing mark A-8 and A-9 are slow and conscious in their production and an attempt has been made to disguise by writing detached form of letter and different letter of design etc.

No. 35 : I have not given anything in writing earlier of this effect. Pen presentation can be measured in pen ink writings and not in ballpen or pencil writing. This is one of the general writing characteristics taken into consideration for the examination. I agree that some difference will be there in pen and pencil writing depending upon the quality of the implements used for writing.

Similar is the position with ball pen.

No. 36 : In Q1/2 it is pencil writing whereas Q-1, Q-1/2, Q-1/4, Q-4 are ballpen writings. The writings Q-2/1, Q-3, Q-3/1, Q-5, Q-5/1, Q-5/2 Q-5/3, Q-6, Q-7, Q-8, Q-9, Q-10 are ink writings." 14. Handwriting may be proved by the evidence of a person familiar with such writings as provided under s. 47 of the Evidence Act, or by the testimony of an expert competent to make the comparison on a scientific basis as provided under s. 45 of the Act, or by the Court by comparison with a writing made in its presence, or admitted, or proved to be the writing of the person. In the case of Sarojini vs. Haridas 26 CWN 113, it was held that "it is not difficult to forge the handwriting of almost any person, so that it may be impossible for even the most acute and experienced Judge to discriminate between the false and the true" and it was further held that "it is too true that persons may be found willing for a sufficient consideration, to swear to any statement of facts." (per Grier, J), in Turner vs. Luciani 1 Bal (US) 49.

15. Keeping in mind the above observations of the various Courts, Indian and foreign, we have to consider the evidence adduced now before us. Answering to Question, in one place, the Department's expert states that A-1/1 to A-/37, Q-1, Q-11/2 and Q-11/3 were all written by one and the same person. On cross-examination, he admits that there are so many dissimilarities. This is a fact admitted which is not controverted by the other side. Thus, though the Department's expert admits that disputed writings are of Mr. K. K. Bansal, there are so many variations and differences between admitted documents and the one recovered from the residence of the assessee even according to him. The assessee's experts are not cross-examined.

16. We have seen that the assessee's experts have given detailed reasoning for forming their opinion whereas Department's expert opinion is of one line. Perusal

of the questions and answers indicates that the disputed writings are with pencil/or ball pen, ink pen. The difference of the instruments used by the writer naturally leads to differences and cannot be compared. The like only can be compared with the like and not otherwise. It is also important to note that, in the present case, the Revenue's expert has not given any reason why he came to the conclusion he reached whereas we have seen, the assessee's experts give detailed reasonings as to why they are coming to the conclusion which they arrived at. On this point, the learned Departmental Representative submissions that the matter may be sent back to CIT(A) for cross-examining the experts of the assessee or the Tribunal itself may do this onerous job, after a lapse of 14 years, cannot be accepted, as it will amount to perpetrating an injustice. Hence we decline to accept the proposition, either to send back the matter or to call the experts.

17. Now what remains to be decided is whether the Tribunal while deciding the main appeal has taken cognizance of the opinion of the experts or not. The para. 47 of the Tribunal's order reads as under : "We have touched only the important aspects of the case to show that the three sets of seized sheets are false and fabricated as these aspects amply prove the false and fabricated nature of the loose sheets. In the light of the material evidence in the form of affidavits and the averments of the Accountants in the cross-examination before the ITO and the IAC along with the probabilities of the case coupled with the incorrect entries and also the entries contrary to the principles of accountancy found in 47 sheets, which also exhibit the intention of the two accountants to show more profits, we are fully convinced that the loose sheets seized are false and fabricated. The case of the Department is based purely on presumptions, surmises and conjectures. To prove the genuineness of the seized three sets the Department failed to prove the interlacing and inter-linking between the entries found in the three sets of loose sheets seized and the entries in the regular books of account. Only on the basis of the entries found in the seized sheets the Revenue wanted to build up the case that the assessee is doing No. 2 business. The assessee has proved beyond doubt that the seized sheets are false and fabricated. Further the CIT(A) had dealt with the points raised by the IAC, the Senior Departmental Representative and ADI. effectively and given his wording. We, therefore, fully agree with the finding given by the CIT(A) that the loose sheets are false and fabricated and in deleting

the addition made clear by the ITO. It is clear from the above para that the Tribunal had not taken the cognizance of the expert's opinion. But in the preceding para, i.e., in para 46, which reads as under, the Tribunal records the fact that the assessee has produced three experts opinion whereas the Revenue could not produce any, and if the Revenue produced any opinion, it would have furthered the case of the Revenue : "46. Yet another aspects which, in our opinion, is very material to decide the genuineness or otherwise of the three set seized by the Department is that the Department failed to bring in certain material evidence which it could have brought on record with a little effort. The following are the instances of the failure of the Department to bring in evidence on record : (i) In the transaction of WCL when the assessee has repeatedly contended that payment was made to Ravi Vastra Bhandar who acted as a middleman between CISW and WCL and when Ravi Vastra Bhandar gave a confirmatory letter and also a bill in proof of it, the Department without examining either the employees of Ravi Vastra Bhandar or the books of Ravi Vastra Bhandar merely took a statement from Shri Lalchand who is a partner in Ashok Vastra Bhandar and on the basis of the statement refused to hear the contention of the assessee.

There is an omission on the part of the Revenue in not examining the employees and books of account of Ravi Vastra Bhandar.

(ii) Similarly, in the transaction of the assessee with SAE Ltd. when the assessee came forward with the stand that the material was purchased from Shri Arora Enterprises Ltd., the abbreviation of its is SAE Ltd. and it is by the mistake of the accountant that the name of SAE(I) Ltd. in place of SAE Ltd. was mentioned in the accounts and in proof of the transaction with SAE Ltd. the assessee has produced before the Department copies of the bills issued by SAE Ltd. and copy of the account of CISW as appearing in the books of SAE Ltd. The Department failed to summon the proprietor of Shri Arora Enterprises Ltd. and examine him and also failed to examine the books of the concern SAE Ltd. (iii) When the ITO has given a definite finding that the writing contained at pp. 3, 40, 45 and 47 of 47 loose sheets, pp. 17, 18 of 105 sheets and pp. 81, 82, 88, 93 and 113 and 116 of 178 sheets are in the handwriting of K. K. Bansal, the Revenue being in possession of the seized original material could have sent the handwriting to the handwriting

expert to find out whether they are really in the handwriting of K. K. Bansal. Even before us, the learned Departmental Representative has taken two adjournments on the ground that the handwriting has been referred to the handwriting experts and wanted us to adjourn the hearing till the opinion of the handwriting expert is received. It is surprising that even in the absence of such a material evidence, the learned Departmental Representative proceeded with the hearing of the case. On the other hand, the assessee has obtained the opinion of the handwriting experts from Calcutta as well as from Nagpur.

The copies of which are found at pp. 154 to 182 of the assessee's paper-book No. 2, wherein the experts clearly opined that it is not in the handwriting of K. K. Bansal though the disputed handwriting referred to the handwriting expert's is a photostat copy. Had the Department obtained the opinion of the handwriting expert that would have probably helped the Revenue prosecuting the case.

In other words, the finding given by the Tribunal is not based on the evidence in the form of the Department's expert's opinion. The Tribunal comments on the lack of keenness on the part of the Revenue in getting the expert's opinion.

18. Coming to the argument of the learned Departmental Representative that the AO was influenced by the opinion of the expert, even though it is true, it has nothing to do with the Tribunal's decision before us.

It is the case of the Revenue that in some of the connected matter of the same group of the assessees, the CIT(A) is influenced by the decision of the Tribunal. It is simple to say that it may be true in that case and the CIT(A) may have come to a conclusion which may not stand to scrutiny. In the instant case, we have seen, from the observation reproduced from the decision of the Tribunal, that it has not been influenced by the assessee's expert's opinion. Coming to the argument of the learned Departmental Representative that merely because, at the initial time of forming opinion, the questioned documents examiner has not given any reason it will not vitiate his opinion even if accepted for the arguments sake, it will not further the Revenue's case. The Revenue's expert has been cross-examined and he admits the possibility of mistake. None of the assessee's experts who gave their opinion has been cross-examined. They give their reasonings for their

conclusions. The assessee sent to the expert two sets of documents; one was of Mr. K. K. Bansal which is admitted documents and the other seized documents, whereas the Revenue sent only seized documents to the expert. The assessee also sent the affidavits of S/Shri Lalson and Rajan and studying this, the assessee's expert formed an opinion that the writing on the seized material is in fact writing of S/Shri Lalson and Rajan whereas the Revenue has not sent these for comparative study to the expert. Coming to the argument of the learned Departmental Representative that Shri N. B. Lalson and Shri Rajan are interested witnesses, we accept the assessee's explanation that they are kept in services because the assessee is afraid of making them hostile under the given circumstances.

19. Considering the facts, rival submissions and going through the evidence produced before us, we are of the view that the application filed by the Revenue under r. 29 of ITAT Rules is without merit. The learned Departmental Representative's submission that the matter may be sent back to the file of the learned CIT(A) so as to give the Revenue a fresh innings by way of cross-examination of the assessee's experts, cannot be accepted in view of the long years that have been elapsed for some reason or other. Under these circumstances, we are not inclined to accept the Revenue's stand and the same is rejected. The Departmental appeal which was dismissed vide our order dt. 28th June, 1985 shall continue to stand dismissed.

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