IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Tax Appeal No. 20 of 2006

M/s. Burhani Trading
Company, a registered
partnership firm through its
Partner Shri Shabbir s/o.
Abbasbhai Merchant,
Age : 51 years,
R/o. Burhani Complex,
Datta Mandir Chowk,
Deopur, Dhule. .. Appellant.

versus

The Income Tax Officer,
2(8) Ward, Dhule, at Dhule. .. Respondent.

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Mr. A.P. Kolte, Advocate, holding for
Mr. J.R. Shah, Advocate, for the appellant.

Mr. Alok Sharma, Standing Counsel, for the respondent.

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CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.

DATE : 12TH JUNE 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. A.P. Kolte h/f. Adv. Mr. J.R. Shah for the

appellant, and Standing Counsel Counsel, Mr. Alok Sharma, for the respondent.

2. When the appeal was admitted, following substantial question of law was framed :-

> " Whether shortage / excess in stock, as found on given date of survey / inspection by the authorities during the relevant assessment year, can be taken as basis for adding to the income chargeable for tax as concealed income for that assessment year ? "

3. The facts leading to this litigation can be briefly enlisted as under :-

For the assessment year 1992-93, return of income was filed by the appellant - Firm on 30th December 1992, declaring total income of Rs. 1,84,000/-. A revised return showing income of Rs. 2,51,000/- was filed on 8-9-1994. The appellant - Firm is dealing in *Kirana* (grocery) items. In the financial year under consideration, a survey under Section 133A of the Income Tax Act was conducted in the premises of the appellant on 12th December 1991. In this survey, some accounts / documents stock register, as required to be maintained, were found and impounded. Certain amount in cash was also found. At the time of survey, the stock as per account books assessed after preparing tentative trading accounts of articles dealt by the assessee was found to be Rs. 10,98,875/- and the stock as per the inventory was valued at Rs. 7,28,690/-. Thus, there occurred a difference in stock to the tune of Rs. 3,70,165/-. Similarly, on the day of survey, certain stock was found in excess, value of which was to the tune of Rs. 70,000/-. In this appeal, we are concerned with this aspect of the case.

4. The Assessing Officer considered the value of excess stock as unexplained investment as per Section 69 of the Income Tax Act, and added the sum to the income declared by the assessee. The Assessing Officer imposed various other penalties to which we are not concerned at the moment.

5. The appellant went in appeal before the Commissioner of Income Tax (Appeals), Nashik. The appellate authority, in respect of the excess stock, held that the value of stock found in excess must have been reconciled with the value of the stock which was found missing. About this finding, the Revenue went in appeal before the Income Tax Appellate Tribunal, Pune Bench "A", Pune **[For short, "Tribunal"].** The Tribunal took a view that stock which was found in excess has no relation with which the stock which was found missing. It was also pointed out in the order, that the shortage of items was not overall shortage but was shortage in certain types of items. On the other hand, the goods found in excess were of different type. Therefore, the Tribunal held that the claim of set off was based merely on theory and not based on evidence. The Tribunal also held that since the appellant was found in actual possession of excess stock of some items, that excess has to be added to the value of closing stock. The Tribunal held that the Commissioner had committed error in deleting the addition of Rs. 70,000/-. As stated above, when this appeal was admitted, above quoted substantial question of law was framed.

6. With the help of the learned Counsel for the parties, we went through the record and we found that the appellant did not actually ironed out the discrepancies that were found at the time of survey in December 1991. He simply stated in his return, that in addition to the income as per books of account, he would add more income on ad hoc basis to get rid of the discrepancies found in the stock. So, the submission that the income tax return were filed subsequently with the discrepancies removed totally, is not acceptable to us. The discrepancies, thus, on the day of assessment, still remained. If one considers such discrepancies still hanging on the head of the appellant - assessee, one would expect the tax authorities to take into account such discrepancies at the time of assessment. This case went through three stages so far. At the first stage, the Assessment Officer considers both these discrepancies and held against the appellant - assessee. As stated above, the Commissioner (Appeals) allowed the appeal taking a view and giving set off. The question is, whether such set off is possible. In our view, such set off is not possible in this case. As mentioned above, both the discrepancies found in the stock incurred a tax liability. On one hand, the goods that were not found in the godown of the assessee, though the books of account show then to be present, the presumption would be that the appellant - assessee had sold the goods but did not mention in his account book the sale proceeds and the profits made. In that view, the income was derived can be said to have been concealed.

7. As regards the stocks which were found in excess, the view is already taken and such view is possible in view of Section 69 of the

Income Tax Act, which directly deals with a situation of this kind. Somehow, the appellant - assessee has not been taxed for the stocks which were not found in the godown. This aspect of the matter is not to be considered by this Court, at this stage. Therefore, we are not able to discuss as to whether the exemption given to the appellant - assessee is correct or otherwise. The only question that is required to be considered is, whether the appellant was entitled to any concession on the basis of set off theory explained above. The answer has to be negative. The stock which was found to be in excess, was bound to be considered as unexplained investment. The entire amount should be considered as income. We find no error in doing so. In such situation, we do not find it necessary to interfere in the view taken by the Tribunal.

8. The appeal should, therefore, fail and the same is dismissed.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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