IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1085 OF 2013

Commissioner of Income Tax 25 } Appellant
versus
M/s. Synthetic Hydrocarbons } Respondent

Mr. Arvind Pinto for the Appellant.

Mr. Jitendra Singh with Ms. Neha Paranjape for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- MARCH 18, 2015

P.C. :-

This Appeal is directed against the order passed by the Income Tax Appellate Tribunal, Mumbai Bench, Mumbai dated 12th September, 2012.

2) Mr. Pinto appearing for the Revenue would submit that the concurrent findings of fact cannot be said to be binding, as the Assessing Officer established that it is the Assessee who has paid the sum and in cash for purchase of a shop. The details of purchase were found by way of certain incriminating papers. The persons concerned were examined and allowed to be cross examined, which revealed the transaction and the true consideration. In such circumstances, both, the

Commissioner and the Tribunal erred in law in relying upon a Judgment of the Hon'ble Supreme Court in the case of *Central Bureau of Investigation (CBI) vs. V. C. Shukla and Ors*. reported in **(1998) 3 SCC 410**. Mr. Pinto would submit that the Appeal raises a substantial question of law and as formulated at page 7 of the Appeal paper book. Hence, it be admitted.

3) On the other hand, Mr. Jitendra Singh appearing for the Assessee would submit that there are concurrent findings of fact and which are not perverse. The reference to the Judgment of the Hon'ble Supreme Court does not mean that the Commissioner and the Tribunal based their conclusions only on the observations in the Hon'ble Supreme Court Judgment. Having found that the Assessing Officer did not take into consideration the cross examination of one Kantilal Patel, which revealed that the only consideration received for sale of the shop and to the extent of 454.50 square feet to the Assessee is Rs.43,60,000/-. The cash component is stated to be received from sale of all the shops. As far as the Assessee's transaction is concerned, the cash component and payment thereof is not proved. In the circumstances, there are pure findings of fact and which cannot re-appreciated and re-appraised in our limited jurisdiction. Therefore, the Appeal be dismissed.

4) After hearing both sides, we are in agreement with Mr.Singh that the findings of fact recorded by the Commissioner and the Tribunal do not raise any substantial question of law. If the actual area purchased by the Assessee is 454.50 square feet and the Assessing Officer accepts this transaction, then, consideration in respect thereof ought to have been accepted and the sum paid by way of cheque is the only component in the transaction. The cash payment of 52,26,000/- is not relatable to the sale in favour of the Assessee nor to any specific shop. Going by the cross examination of Kantilal Patel and the specific answer to a question by him it is evident that it is not established that the Assessee actually paid Rs.52,26,000/- over and above the purchase consideration paid by cheque. In the circumstances, we do not think that the Appeal raises any substantial question of law. It is accordingly dismissed. No costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**