sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1030 OF 2013

The Commissioner of Income Tax
(Central)-1, Mumbai ..Appellant.
V/s.
M/s. Capetown Mercantile Co. Pvt. Ltd. ..Respondent.

Mr.P.C. Chhotaray for the appellant.

Dr.K.Shivram, Senior Advocate with Mr.Rahul Hakani for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 17TH MARCH, 2015

P.C. :-

1. This is an appeal by the revenue challenging the order passed by the Income Tax Appellate Tribunal, Mumbai in two appeals, one by the assesee-respondent and another by the revenue.

2. The assessment year is 2008-09. An order was passed by the Commissioner of Income Tax (Appeals) on 10th June, 2011. That was on an appeal by the assessee. The assessee was aggrieved by the order of the assessing officer.

The Commissioner allowed the appeal of the assessee and set aside the assessing officer's order partially. Against grant of only partial relief, the assessee approached the Tribunal, whereas the revenue challenged the order of the Commissioner against the partial relief granted to the assessee.

3. These two appeals had been disposed of by a common order. The assessee is a company incorporated and registered under the Indian Companies Act, 1956. A private limited company, the revenue itself states that it is in the business of trading of goods. A search / survey operation under section 132(1) and 133A of the Income Tax Act, 1961 was conducted in the cases of Pravin Kumar Jain group and persons / entities connected with him on 31st March, 2008. The assessee was an associate concern of Pravin Kumar Jain group. The Directors of this company are Pravin Kumar Jain and Pankaj Kumar Jain. E-return of income was filed on 30th September, 2009 by the assessee declaring the total income of Rs.Nil. However, the assessment was computed at ₹62,85,950/- by an assessment order dated 31st December, 2010. This order of the assessing officer was partially set

aside by the Commissioner of Income Tax (Appeals).

4. The assessee had claimed that disallowance of ₹40,42,634/- is erroneous. However, the Tribunal in the impugned order found that the Assessee's representative had not been able to demonstrate as to how the business expenditure at Rs.40,42,634/- is allowable. Therefore, this additional ground raised by the assessee deserves to be rejected.

5. Thus, both the appeals were confined to the rejection of books' results under section 145(3) of the I.T. Act pertaining to the sustainence of addition. Thereafter, estimation done by the assessing officer was not sustained in its entirety by the Commissioner.

6. Mr.Chhotaray submits that the entire exercise undertaken by the Commissioner appears to be apparently factual. However, what is essentially brought on record by the Tribunal is that the assessee is part of Pravin Kumar Jain group. The documents produced by the assessee including cheque book were found after a search and survey operations.

If Pravin Kumar Jain admits that he and his group are involved in preparing and issuing accommodation bills, then, the assessee before us cannot be claimed to be an independent unit. It is a part of the group. It is engaged in the same activities. It is in these circumstances that the books of account were rejected and it was found that the estimation of income by the assessing officer needs to be done and that could not have been termed as arbitrary. Once the assessing officer has recorded his satisfaction in terms of sub-section (3) of section 145 of the I.T. Act, then, his order should have been upheld by the Commissioner. The revenue cannot be expected to bring anything more than what has been brought on record. In such circumstances, this appeal raises substantial question of law.

7. On the other hand, Dr.Shivram, learned senior counsel appearing for the assessee invited our attention to the order passed by the Commissioner. Dr.Shivram submits that once there was an audit of the books of account, then, the assessing officer was not entitled to reject the same and his estimation was completely arbitrary. There was no reason then for the Commissioner to sustain certain additions and

even partially. That is how the Tribunal interfered with the Commissioner's order and rightly. The appeal does not raise any substantial question of law as the matter is clearly factual. Therefore, this appeal should be dismissed.

8. We have with the assistance of both sides perused the order passed by the Commissioner as also the Tribunal. The Tribunal has found that though the present assessee is a limited company, but it is associated with Pravin Kumar Jain group. Pravin Kumar Jain and his brother Pankaj Kumar Jain were Directors in the assessee company. However, the assessee was engaged in the business of trading of goods. The books of account of the assessee were audited. No defect or discrepancy was found. In these circumstances and when there was no material other than the statement of Pravin Kumar Jain, then, the books of account of the assessee could not have been rejected only by relying on the same. There is no specific defect which was pointed out by the assessing officer in the books of account. In the circumstances, the Commissioner's order, sustaining the estimation of the turnover by the assessing officer partially, was rightly set aside by the Tribunal. The Tribunal also relied upon its own

order which has been passed in the case of two other assessees. The details thereof are found in paragraph 10 page 48 of the impugned order. Thereafter, the Tribunal has applied its decision in the case of M/s.Easy Mercantile Pvt. Ltd. which is also a group company of Pravin Kumar Jain and deleted the addition by the assessing officer in its entirety.

9. We are not in agreement with Mr.Chhotaray that rejection of the books of account of the present assessee by recourse to section 145(3) of the I.T. Act was justified. That was because cogent and satisfactory reasons are assigned by the Tribunal. The view taken by the Tribunal is a possible one. We cannot entertain this appeal merely because another view is possible. Once the Tribunal's view is in accord with its earlier factual conclusion, then, this is nothing but an attempt by the revenue to seek re-appreciation and re-appraisal of the same. In the absence of any perversity that is not permissible in law.

10. As a result of the above discussion, the present appeal fails. It is dismissed with no order as to costs.

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