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

INCOME TAX APPEAL NO. 1368 OF 2013

Commissioner of Income Tax-8 … Appellant

v/s

Industrial X-Ray & Allied
Radiographers (India) Pvt. Ltd. … Respondent

Mr.Arvind Pinto for the appellant.

Mr.P.J. Pardiwala, senior counsel with Atul Jasani for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 23RD JUNE, 2015

P.C.:

1 This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act), challenges the order dated 14 December 2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The assessment year involved is 2006-07.

2 The basic grievance of the revenue is that on the facts and circumstances of the case the Tribunal was not justified in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs.64.29 lacs to the appellant's income in terms of Section 28(iv) read with Section 41(1) of the Act.

3 During the assessment proceedings, the Assessing Officer noticed that an amount of Rs.64.29 lacs has been shown as sundry creditors in earlier assessment years. The Assessing Officer on examination in his assessment order noted that the limitation period is over and could not be demanded by the creditor i.e. M/s. Hi-Tech Trading Company. This resulted in adding the same income under Section 28(v) read with Section 41(1) of the Act for the subject assessment year.

4 In appeal, before the Commissioner of Income Tax (Appeals), the respondent-assessee urged that the contract with M/s.Hi-Tech Trading Company was completed in 1998-99 and payment was received through its sister concern. The amounts so received were credited towards advance instead of sales. The Commissioner of Income Tax (Appeals) called for a remand report from the Assessing Officer. The Assessing Officer in his remand report dated 12 May 2010 submitted as under :

> *"An amount of Rs.64,29,570/- out of the sundry creditors has been treated as 'Liabilities No Longer Payable' and accordingly, the same was treated as 'income of assessee' under Section 41(1) of the Income Tax Act, 1961 in the assessment order, as no details were made available. The assessee company has not filed statement of bank account of M/s.X-Ray Accessories Mfg. Company, an associate concern of assessee where a credit for inward remittance of Rs.75,01,065/- is appearing on 15.4.1999. assessee has filed Ledger Account of M/s.X-Ray Accessories Mfg. Company. From the ledger account,*

> *it is seen that an amount of Rs.65,66,686/- has been transferred to the assessee company's account on 31.3.2000 for the reason that the same was received by them on assessee's behalf from HI-TECH TRADING OMAN. The same has been shown as credit to the account of Hi-Tech Trading Company as on 31.3.2000 by assessee in its books account. This credit continued in the books of account from 2000 to 2006 as a current liability. The above fact is confirmed by HI-TECH INSPECTING SERVICES LLC, OMAN vide their letter dated 30.11.2009 certifying that the work was completed during 1996-97 or thereabout. From the Ledger Account and other documents now furnished, it is observed that the credit is appearing from2000 or thereabout. Assessee has also furnished some circumstantial evidence in support of the fact that the work was done in or around 1996-97. HI-TECH INSPECTION SERVICES LLC, OMAN has also confirmed this fact. However, the sales remained to be accounted in that year. On the basis of the evidences now submitted, it appears that the amount is not taxable in the assessment year 2006-07."*
> (emphasis supplied).

On the basis of the above remand report the Commissioner of Income Tax (Appeals) deleted the additions holding as under :

> *"AO in the report has noted that from the statement of bank account of M/s.X-Ray Accessories Manufacturing Co. an associates concern of the appellant, a sum of Rs.75,01,065/- had been credited on 15.4.1999 as inward remittance. From the ledger account of the concern, it was seen that Rs.65,66,686/- have been transferred to the appellant's account for the reason that the amount was received on appellant's behalf from M/s.Hi-Tech Trading, Oman. The same was credited to the account of M/s.Hi-Tech Trading, Oman as on 31.3.2000 in the appellant's books which had continued*

> *from 2000 to 2006 as Current Liability. This was confirmed by M/s.Hi-Tech Inspection Services LLC, Oman vide their letter dated 30.11.2009. Though the work was done in or around 1996-97, the sales remained to be accounted. However, the sum was not taxable in the relevant assessment year."*

5 The revenue carried the issue in appeal to the Tribunal. However, in view of the remand report of the Assessing Officer, the Tribunal found no reason to disturb the order of the Commissioner of Income Tax (Appeals) to the extent of deletion of Rs.64.29 lacs is concerned.

6 We find that the orders of the Commissioner of Income Tax (Appeals) as well as the impugned order of the Tribunal proceeds on the factual report of the Assessing Officer that the amount of Rs.64.29 lacs is not chargeable to tax in the Assessment Year 2006-07. This finding of the Assessing Officer has not been shown to be in any manner perverse or arbitrary. Accordingly, this appeal does not give rise to substantial question of law for our consideration.

7 Accordingly, appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***