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

INCOME TAX APPEAL NO. 1749 OF 2013
WITH
INCOME TAX APPEAL NO. 1766 OF 2013
WITH
INCOME TAX APPEAL NO. 2046 OF 2013
WITH
INCOME TAX APPEAL NO. 2048 OF 2013
WITH
INCOME TAX APPEAL NO. 2070 OF 2013
WITH
INCOME TAX APPEAL NO. 2170 OF 2013

Commissioner of Income Tax-19, Mumbai ..Appellant

Vs.

Sudhir S. Jhunjhunwala ..Respondent

....

Mrs. S.V. Bharucha, Advocate for Appellant.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 14 SEPTEMBER 2015

P.C.:

These six appeals by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges a common order dated 29 January 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal') in respect of Assessment Years 2002-03 to 2007-08.

2. The common question of law raised in all the six appeals for our consideration reads as under:

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal has ignored the legal provisions of Rule 46A of the I.T. Rules, by upholding legally untenable action of CIT(A) of admitting additional evidence in clear disregard of the provision of Rule 46A?"

3. A search was conducted on the respondent-assessee's premises on 13 March 2008. Consequent thereto, assessment orders dated 15 December 2009 were passed under Section 144 r/w 153A of the Act.

4. Being aggrieved by the orders dated 15 December 2009, the respondent-assessee filed appeals to the Commissioner of Income Tax (Appeals) (the 'CIT(A)'). Before the CIT(A), the respondent-assessee sought to produce additional evidence interalia on the ground that the same could not be filed before the Assessing Officer. The CIT(A) forwarded all the additional evidences sought to be led by the respondent-assessee to the Assessing Officer to

obtain his comments on the admissibility of such additional evidence. On 26 May 2010, the Assessing Officer through a proper channel submitted his response in respect of additional evidence sought to be produced by the respondent-assessee. The report dated 26 May 2010 of the Assessing Officer offered his comments on the additional evidence sought to be provided as under:

> "Regarding admissibility of additional evidences filed by the assessee, the undersigned is the opinion that, the assessee had failed to furnish particulars during the course of assessment proceedings even though sufficient opportunity was given before passing the ex-parte assessment order u/s 144. However, in the interests of natural justice, the additional evidences may be admitted as the assessee could not file these evidences during the course of the assessment proceedings.
>
> The additional evidences filed by the assessee were examined by calling further explanation from the assessee."

5. On the basis of the above report dated 26 May 2010, CIT(A) considered the additional evidence led by the respondent-

assessee before him. On consideration of all the material before him, the CIT(A) by a common order dated 18 June 2010 partly allowed the appeals of the respondent-assessee for A.Y. 2002-03 to 2007-08.

6. The revenue being aggrieved by the order dated 18 June 2010 of the CIT(A) particularly allowing the additional evidence in breach of Rule 46A of the Income Tax Rules, 1962 (the 'Rules') filed appeal to the Tribunal. The Tribunal on examination of the material facts available as well as order of the CIT(A) came to the conclusion that the respondent-assessee was prevented from sufficient cause from leading evidence before the Assessing Officer and the Assessing Officer had himself submitted that additional evidence should be admitted in the interest of justice and made comments on the merits of the additional evidence. Thus, the Tribunal held that Rule 46A of the Income Tax Rules, 1962 has not been transgressed and dismissed the revenue's appeal.

7. Ms. Bharucha, the learned Counsel for the revenue submits that the respondent-assessee had not appeared before the

Assessing Officer in respect of various notices issued to him before passing of the assessment order. In the above view, the additional evidence ought not to have been admitted and considered by the appellate authorities.

8. We find that no fault can be found with the orders of the CIT(A) as well as the Tribunal. This is for the reason that the Assessing Officer had himself in response to the CIT(A) for his comments on admissibility on such additional evidence has in his report had submitted that the additional evidence filed by the assessee has to be admitted in the interest of natural justice as the respondent-assessee could not file this evidence during the course of the original proceedings before him. In view of the remand report clearly indicating that there was sufficient ground to admit and consider additional evidence, no fault can be found with the order of the CIT(A) as upheld by the Tribunal in admitting and considering the additional evidence in terms of Rule 46A of the Rules. Further the question of failure to produce the necessary evidence before the original authority and the reasons for that

failure are all questions of appreciation of facts and in the absence of the findings been shown to be perverse and/or arbitrary, no question of law arises for our consideration.

9. Accordingly, all the six appeals are dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Order.