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

INCOME TAX APPEAL NO.1688 OF 2012

Commissioner of Income Tax
(Central)-I, Mumbai ..Appellant
-*Versus*-
Suresh Kumar G. Hundia
Proprietor M/s. Hundia Exports ..Respondent

....
Mr. Charanjeet Chanderpal for the Appellant.
Mr. Deepak Tralshawala a/w Vishnu S. Hadade for the Respondent.
....

CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.
DATE :- 7th JANUARY, 2015.

P.C.:

This Appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai, in Income Tax Appeal No.2525 and 2426 of 2009. They have been decided by a common order passed on 8th February, 2012. The assessment year is 2004-05.

2] There was an Appeal by the Revenue and in which the correctness of the order of the First Appellate Authority delivered on 13th February, 2009 particularly in relation to the deletion of addition of Rs.1.57 crore was raised.

3] Mr. Chanderpal submits that the order passed by the Tribunal raises the substantial question of law. The Tribunal has allowed the Assessee to change the version. While there could not be any legal impediment in filing a revised return and in case of a search operation undertaken in this case but the basis of the addition could not have been permitted to be altered. That has been done in the instant case and, therefore, the Appeal raises the substantial question of law.

4] On the other hand, it has been pointed out by the Assessee that the addition has been deleted not by any change of version but on finding that the revised return correctly disclosed the nature of the receipt. That there was a receipt in the hands of the Assessee is not disputed. The dispute was, what was the nature of this receipt? While initially the Assessee claimed that he had received this sum as an advance from Shri Pravin Kumar B. Jain, Proprietor of M/s. Vinay Exports but in the revised return this amount was included in the capital account as gift as Shri Pravin Kumar was a brother-in-law of the Assessee. Even the source of receipt of this amount by Shri Pravin Kumar was explained and through banking channel. In these circumstances, the Tribunal rightly upheld the finding of fact of the Commissioner. The Appeal, therefore, deserves to be dismissed.

5] With the assistance of the counsel appearing for the parties, we have perused the relevant part of the Tribunal's order. In para 5, the Tribunal referred to the receipt and the person from whom the said sum was received. It also referred to the return initially filed and later on revised by the Assessee. The receipt was undisputed. The relation was also undisputed. That it was received by cheque is also not disputed. That the relationship with the Proprietor of M/s. Vinay Exports was also not in dispute. Therefore, the Tribunal held that the gift was received from the brother-in-law and even the brother-in-law has explained the source from which it came to him. The bank account of the brother-in-law has been referred and with the entries therein. From that the Tribunal comes to a conclusion that the sum was paid by a company to another company and this brother-in-law received it from that other company M/s. Cenzer Industries. Thus, the claim was genuine. The occasion for the gift was not something by which the addition could have been deleted. In such circumstances, the case as placed by the Assessee in the revised return having been concurrently accepted and after scrutiny or a verification of the relevant material that we are of the opinion that the finding of fact concurrently rendered could not be termed as perverse. It is also not vitiated by any error of law apparent on the face of the record. The Appeal is devoid of merits and it is, accordingly, dismissed. No costs.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**