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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 86 OF 2013
WITH
INCOME TAX APPEAL NO. 87 OF 2013
WITH
INCOME TAX APPEAL NO. 88 OF 2013
WITH
INCOME TAX APPEAL NO. 156 OF 2013

Commissioner of Income Tax 19, Mumbai … Appellant

Versus

Mrs. Madhu S.Jhunjhunwala … Respondent

Mr. Arvind Pinto, A.P.P. for Appellant-Revenue.

None for the respondent.

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

P.C.

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (Act) challenges the common order dated 15th June, 2012 of the Income Tax Appellate Tribunal (tribunal). The relevant assessment years are 2002-03, 2006-07, 2007-08 and 2008-09.

2. The appellant has raised following common questions of law in all four appeals for our consideration :

"(a) Whether on the facts and in the circumstances of the case, the tribunal was right in ignoring the provision of Rule

46A which disentitles an appellant from producing evidence before the Appellate Authority that was not produced before the A.O.?

(b) Whether on the facts and in the circumstances of the case, the tribunal was justified in ignoring the fact that the appellate authority had not recorded his reasons for admission of this additional evidence as required under sub Rule 46A(2)?

(c) Whether on the facts and circumstances of the case, the tribunal was right in justifying the action of the CIT(A) in admitting additional evidence, when the Respondent did not have sufficient reasons for not providing the evidence in the first place?"

3. The tribunal by the impugned order dismissed the Revenue's appeal from the order of Commissioner of Income Tax (Appeals) allowing the additional evidence to be produced by the Assessee before him in view of Rule 46A of the Income Tax Rules, 1962 (Rules). The impugned order records that Rule 46A of the Rules were duly satisfied and thus refused to interfere with the order dated 17th June, 2010 passed by the Commissioner of Income Tax (Appeals).

4. The grievance of the Revenue with regard to the impugned order dated 15th June, 2012 is that in terms of Rule 46A of Income Tax Rules, 1962 (Rules), the Commissioner of Income Tax (Appeals) could not have entertained the additional evidence filed by the assessee in the absence of :

(a) the Commissioner recording his satisfaction as to what prevented the assessee from filing the evidence before the Assessing Officer; and

(b) this satisfaction has to be recorded before calling upon the Assessing Officer for his view with regard to whether or not the issue of additional evidence sought to be led by the assessee should be allowed.

5. In the facts of the present case, we find that the Commissioner of Income Tax (Appeals) considered and disposed of the issue of additional evidence in the following manner :

> "3.3.1. During the course of appellate proceedings, Ld. AR explained the circumstances and reasons for which the additional evidences could not be filed before the Assessing Officer. Such reasons and circumstances were communicated to the Assessing Officer vide this office letter dated 19/3/2010. In his reply vide letter No. ACIT/CC-11/Remand Rep./2010-11 dated 26/5/2010 the Assessing Officer has reported that "However, in the interest of natural justice, the additional evidences may be admitted as the assessee could not file these evidences during the course of the assessment proceedings............"

6. From the above, it is evident that the additional evidence was produced by the assessee before the Commissioner of Income Tax (Appeals). The same was communicated to the Assessing Officer for his response before deciding to admit the additional evidence. The Assessing Officer responded to the above query by submitting that the additional evidence may be admitted as the assessee could not file the additional evidence earlier. After considering the above, Commissioner of Income Tax (Appeals) records that having regard to the issues involved and the report of the Assessing Officer and no objection from the Additional Commissioner of Income Tax, the additional evidence is admitted for fair adjudication of the

appeal. We find that the requirement of Rule 46A of the Rules have been satisfied by the Commissioner of Income Tax (Appeals) as held by the tribunal in the impugned order.

7. The submission of the Revenue that Commissioner of Income Tax (Appeals) must first satisfy himself with regard to the non production of the additional evidence before the Assessing Officer before he could call for report from the Assessing Officer, is misconceived. This is for the reason that it is only the Assessing Officer who would be in a position to confirm or dispute the correctness of the contentions of the appellant before the Commissioner of Income Tax (Appeals) that certain evidence could not be produced before the Assessing Officer for the reasons as pointed out by them. It is only on receiving the information/response from the Assessing Officer that the occasion for the Commissioner of Income Tax (Appeals) to record his satisfaction can arise.

8. In this case, Revenue itself has not objected to the admission of the additional evidence and the Commissioner of Income Tax (Appeals) does record this fact and after considering the issues on hand, admitted the additional evidence for further consideration. In the present facts, there has been no breach of rule 46A of the Rules warranting interference in these appeals. Accordingly appeals are dismissed. No order as to costs.

(G.S. KULKARNI,J.) **(M.S. SANKLECHA, J.)**