

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

INCOME TAX APPEAL NO. 159 OF 2013

Commissioner of Income Tax-25	}	Appellant
		versus
Shri. Ratansingh M. Rathod	}	Respondent

Mr. Arvind Pinto for the Appellant.

Mr. Firoze B. Andhyarujina-Senior Advocate
with Mr. Maneck F. Andhyarujina i/b.
Mr. Sameer G. Dalal for the Respondent.

**CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.
DATED :- JANUARY 9, 2015**

P.C. :-

The Revenue has preferred this Appeal to challenge the order passed by the Income Tax Appellate Tribunal, Mumbai Bench in batch of Appeals. By the order delivered on 13th July, 2012, the Tribunal decided two Appeals, one by the Assessee being Income Tax Appeal No. 3719/Mum/2010, other by the Revenue being Income Tax Appeal No. 5110/Mum/2010 and Cross Objection of the Assessee in the Appeal of the Revenue. Assessment year is 2007-08.

2) Mr. Pinto appearing for the Revenue would submit that the present Appeal raises substantial question of law. He submits that the substantial question of law is because the Tribunal was not right in

accepting the estimation of income without any substantial basis. The Tribunal rendered an inconsistent and contradictory finding, inasmuch as it rejected the books of accounts. They were held to be not reliable and equally the purchases were held as not supported by proper evidence. Once such was the conclusion reached and on facts, the Tribunal should not have confirmed the estimation of 8% of turnover as the income of the Assessee, which was the exercise carried out by the Commissioner of Income Tax (Appeals). This approach of the Tribunal also was not sound, because the estimation of the Commissioner was not put to the Assessing Officer nor his comments with regard thereto were invited. For all these reasons, he submits that the Appeal be admitted.

3) Upon careful reading of the order passed by the Tribunal and that of the Commissioner, we are unable to agree with Mr. Pinto. In this case, on the own saying of the Revenue, the Assessee is a contractor and undertaking works for public body, namely the Municipal Corporation. A return of income for the assessment year 2007-08 was filed by him on 31st October, 2007, declaring a net taxable income of Rs.1,39,64,580/-. The Assessee represents a share of profit from a partnership firm of M/s. Rameshwar Enterprises in addition to his generating income from the proprietary concern, namely M/s.

Ratansingh and Brothers. He is stated to be a civil contractor. During the course of the assessment proceedings, the Assessing Officer made inquiries into the loans taken, the purchases made, the genuineness of some sub-contracts awarded by the Assessee and the penalty paid by him.

4) The Assessing Officer found that the loans were not confirmed. They were not taken from persons having proper addresses and PAN numbers. Therefore, the sum of Rs.24,50,000/- was treated as cash credit. Then, another set of transactions of Rs.30,00,000/- came to be investigated and as their credit worthiness was not proved, that was treated as income. With regard to the gross purchases made to the tune of Rs.2,87,57,709/- from three parties, the Assessing Officer found that even these could not be termed as genuine and bonafide. If the documents are scrutinised, they would reveal that the dates, on which the stamp papers were purchased, are subsequent to that of the sub-contracts. In these circumstances, he disallowed the purchases to the tune of Rs.2,87,57,709/-. Then some payments made to firms were scrutinised and the Assessing Officer held that these payments were created only to reduce the taxable profit and these payments were also disallowed. The payments made to sub-contractors also came to be rejected with more or less identical findings. Rather the findings in

relation to the bogus stamp papers is in relation to these nine sub-contractors.

5) In these circumstances, the Assessing Officer treated the aforementioned sums as incomes of the Assessee.

6) The matter was carried, by the Assessee, in Appeal to the Commissioner. Before the Commissioner, the Assessee was unable to furnish proper addresses of the lenders, but then subsequently filed some documents. The Commissioner of Income Tax (Appeals) worked out a peak credit of Rs.44,40,000/-. With regard to the addition made on account of purchase of material and deductions claimed on account of sub-contract charges paid, the Commissioner took cognizance of the grievance of the Revenue that there were several irregularities in the accounts. However, he estimated the income of the Assessee at 8% of the turnover at Rs.1,69,17,830/-. The Assessee admitted the net profit at Rs. 1,38,49,505/-. Accordingly, a sum of Rs.30,68,325/- being the difference between the estimation of 8% and the net profit as declared was upheld, while the balance was deleted.

7) Cross Appeals were filed by the parties aggrieved by such an order of the Commissioner passed on 24th March, 2010. In noting the rival contentions and in dealing with them, the Tribunal held that

there is no substance in the complaint of the Assessee about the finding recorded by the Assessing Officer and the Commissioner with regard to the purchases, loans and the sub-contracts. The exercise undertaken by both of them was upheld. The Assessee's grievance that the estimation by the Commissioner should have been at best at 6.5% was rejected and the Commissioner's estimation came to be maintained. That is how the Assessee's Appeal was dealt with and dismissed. In paras 5.13 and 5.14 of the order under challenge, there are reasons assigned as to why the Tribunal does not accept the case of the Revenue either. In these circumstances and by referring to comparable cases, the Tribunal concluded that the net profit rate had varied from 2.93% to 9.96%. These are big concerns, who maintain proper accounts and also maintain quality standards. In case of the Assessee, as held earlier, accounts are not reliable and hence, the estimation of net profit rate of 8% is justified.

8) We do not find any reason to entertain this Appeal, when pure findings of fact are being assailed by the Revenue. This Court cannot reappreciate and reappraise the said findings of fact. The Tribunal's exercise in upholding the order of the Commissioner and his estimation cannot be interfered with by us at the behest of the Revenue without any perversity being demonstrated. The Revenue's estimation

on the higher side and based on the Assessing Officer's order was rightly termed as abnormal and unreasonable. In these circumstances, this Appeal does not raise any substantial question of law. It is accordingly dismissed. No costs.

(S.P.DESHMUKH, J.)

(S.C.DHARMADHIKARI, J.)