THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

<u>I.T.T.A.No.17 of 2015</u>

DATED:20.03.2015

Between:
Commissioner of Income Tax-VI,
Hyderabad.

… Appellant

And

Sri Premchand Kothari,
Hyderabad.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A.No.17 of 2015

Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Tribunal dated 30.11.2006 in relation to the assessment year 1996-07 on the following suggested questions of law.

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified is giving credit of cash withdrawal made on 22.2.1996, while computing the peak credit on 22.2.1996, in the face of the circumstance that the peak credit of Rs.4,30,642/- found on 22.2.1996 represents cheques presented for collection on the preceding day ?

2. Whether the finding of the Appellate Tribunal that computation of peak credit depends upon the business activity and the nature of the business is sustainable in law?

3. Whether the finding of the Appellate Tribunal that the entries found in the bank account cannot be taken in chronological order is perverse ?

We have read the relevant portion of the judgment of the learned Tribunal and we notice that the learned Tribunal, on fact, found as follows:

> "We have to consider the business activity and the nature of business and determine the peak credit on the basis of the credits found in the bank statement. By

> taking into consideration the business of cheque discounting and the withdrawals of Rs.1,80,000/-, in our opinion, the above said withdrawals have to be reduced while determining the peak credit."

In view of the aforesaid fact finding, the learned Tribunal has modified the order slightly. No element of law has been involved for decision by us. Although, a vague ground of perversity has been raised, no particulars of perversity in any way, of appreciation of fact has been recorded by the learned Tribunal, in the absence of which, we do not find how the element of perversity can be imagined.

The appeal is accordingly dismissed.

Pending miscellaneous applications shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

20th March, 2015

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