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

INCOME TAX APPEAL NO.664 OF 2014

The Commissioner of Income Tax-V ... Appellant
Versus
Shri Bhiva Shankar Rane ... Respondent

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Mr. Tejveer Singh for the Appellant.

…..

CORAM : M.S. SANKLECHA &
S.C.GUPTE, JJ

DATE : 17 OCTOBER 2016

P.C. :

. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 27 September 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2009-10.

2 The Revenue urges the following question of law for our consideration :

> *"Whether on the facts and circumstances of the case and in the law the Tribunal was correct in upholding the order of the CIT (A) wherein correctness of a claim and emanating from the assessment record or the assessment order was accepted as an additional ground without granting an opportunity to the AO ?"*

3 The impugned order of the Tribunal dismissed the Revenue's appeal

by upholding the findings of the Commissioner of Income Tax (Appeals) [CIT(A)] to the effect that the amount of Rs.62.19 lacs on which the tax is being sought to be recovered, has already been subjected to tax in the Assessment Year 2007-08.

4 The grievance of the Revenue before us is that the aforesaid claim of having paid the tax on the aforesaid amount of Rs.62.19 lacs in the earlier Assessment Year, was not the claim made during the assessment proceedings, but was raised as additional ground at the hearing before the CIT (A).

5 On the last occasion i.e. on 3 October 2016, this appeal was adjourned to enable the Revenue to ascertain whether this amount of Rs.62.19 lacs (incorrectly typed therein as Rs.29.17 lacs) has been subjected to tax in the earlier assessment year.

6 Mr. Tejveer Singh, learned Counsel appearing for the Revenue today states across the bar that this amount of Rs.62.19 lacs was not subjected to tax in the earlier Assessment Year. This is not supported by any documentary evidence nor any affidavit of Assessing Officer. Mr. Tejveer Singh states that it is not possible for the Assessing Officer to ascertain whether the tax has been paid in the earlier Assessment Year as claimed by the Respondent-assessee. On expressing our astonishment at the above submission, he insisted that this is the manner in which the department functions. This is beyond our comprehension.

7 The only ground urged by the Revenue before the Tribunal was that this claim was allowed by the CIT (A), on an additional ground raised before the CIT (A). It was not claimed in the return of income as filed. The appeal does not specifically urge that the verification done by CIT(A) to reach the conclusion the amount now sought to be taxed, was already subjected for tax in the preceding Assessment Year is not correct. It is to be noted that the appeal memo filed before the Tribunal by the Revenue, refers to figures relating to another assessment year. This reveals the casual approach of the authorities in preferring appeals under the Act before the Tribunal.

8 We find that both the CIT (A) as well as Tribunal have concurrently reached a finding of fact that the amount of Rs.62.19 lacs now sought to be taxed in the subject Assessment Year, was already subjected tax in the earlier Assessment Year 2007-08. The Revenue has not been able to point out how and why this finding of fact by authorities, is in any manner perverse.

9 It is to be noted in the memo of appeal filed before the Tribunal or even in one filed before us it is not urged that the amount of Rs.62.19 lacs was not offered to tax in the earlier Assessment Year. Therefore, the entire grievance of the Revenue that the order is passed without giving an opportunity to the Assessing Officer to rebut the contention of the Respondent-assessee would be academic.

10. Accordingly, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

11 Appeal dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**