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

INCOME TAX APPEAL NO. 2282 OF 2013

The Commissioner of Income Tax
Central-IV, Mumbai .. Appellant

v/s.

M/s. Emgee Foils Pvt. Ltd. .. Respondent

Mr. Tejveer Singh for the appellant

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.
DATED : 12th JANUARY, 2016.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) assails the orders dated 30th April, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) relating to A.Y. 2004-05.

2. Mr. Tejveer Singh, learned Counsel for the Revenue urges only the following question of law for our consideration :-

> *(i) Whether on the facts and circumstances of the case, the Tribunal was justified in deleting the addition made u/s 68, without taking into consideration that the assessee is a beneficiary of the accommodation entries provided by M/s.*

Epsilon Industries Ltd. ?

3. The Respondent Assessee filed Return for the Assessment Year 2004-05 declaring income its at Rs.6.37 lakhs. The Assessing Officer by his order dated 30th December, 2008 added a sum of Rs.5.01 crores as cash credit under Section 68 of the Income Tax Act. This on the ground that the alleged purchases from one M/s. Epsilon Industries Ltd. was only a paper transaction as no confirmation had been obtained by M/s. Epsilon Industries Ltd. regarding the transaction.

4. On appeal, the Commissioner of Income Tax (Appeals) in his order records the fact that on 25th March, 2008, confirmation letters from M/s. Epsilon Industries Ltd. were filed with the Assessing Officer and in that regard details of purchase of goods from M/s. Epsilon Industries Ltd. and the sale from those purchases were reconciled item-wise, quantity-wise and value-wise. In the above view, the addition of Rs.5.01 crores was deleted.

5. On an appeal by the Revenue, the Tribunal by the impugned order uphold the findings of the Commissioner of Income Tax (Appeals). The impugned order holds the fact that the sales were made out of the purchases from M/s. Epsilon Industries Ltd. had been

accepted. Further, the payment has been made to M/s. Epsilon Industries Ltd. in the succeeding year by account payee cheques and lastly there was a confirmation letter from M/s. Epsilon Industries Ltd. and the same has not been disputed by the Revenue. In the above view, the Appeal of the Revenue was dismissed.

6. We have proceeded on the basis that Section 68 of the Act is applicable to the present facts as the application of the same is not subject to challenge before us. We note that both the the Commissioner of Income Tax (Appeals) as well as the Tribunal have rendered a finding of fact that the purchases from M/s. Epsilon Industries Ltd. were genuine and not paper transactions.

7. In view of the concurrent findings of fact arrived at by the Commissioner of Income Tax (Appeals) and the Tribunal which are not shown to be perverse, no substantial question of law arises for our consideration.

8. Accordingly, the Appeal is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**