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

INCOME TAX APPEAL NO.521 OF 2015

Commissioner of Income Tax,
Central-2, Mumbai-400 020. .... Appellant
Vs.
Smt. Pratima H Mehta .... Respondent

Mr. Ashok Kotangle with Ms Padma Divakar &
Mr. Prabhakar Ranshur for the Appellant.

Mr. Pankaj A. Toprani for the Respondent.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : SEPTEMBER 26, 2017

P.C:

1. This is a Revenue's appeal challenging an order passed on 5-9-2014 for the Assessment Year 1993-94.

2. Mr. Kotangle would submit that an opportunity be given to re-frame the question proposed as substantial question of law.

3. Here as well, the Tribunal, on both aspects of the same question, found that the assessee and the Revenue both were in appeals. As far as the assessee is concerned, he raised six grounds. Ground No.3 was not pressed. Ground No.1 was found general in nature. Hence, it required no separate adjudication.

4. As far as ground No.2 is concerned, The Tribunal heard both sides and held that the correctness of the Books of Account with supporting evidence have to be gone into. That is because even if in the first round of litigation the Tribunal had admitted the Books of Account as an additional evidence, the Department was not in appeal against the said order and once this course is adopted, the Commissioner was obliged to go into the same. It is only when the Books of Account have been rejected, which is not the case here, then, there is a justification for not looking at the admitted Books of Account.

5. It is in these circumstances that the matter was remanded.

6. The ground No.4 in the assessee's appeal was relating to confirmation of the enhancement of income in principal, as proposed by the Assessing Officer.

7. The Tribunal found that the difference in the opening balance was to the tune of Rs.33,90,593/-. There is a difference of a very meagre sum and the Tribunal found that there are undisputed facts and this also is a matter which requires remand. That is for the limited purpose of verification of reconciliation of the difference between the opening balances and the closing balances relating to brokerage and lease rent. The Assessing Officer was directed to verify the details on this limited issue. Then the Tribunal restored some of the other grounds in the assessee's appeal for the Assessing Officer to redetermine.

8. As far as the Revenue's appeal is concerned, the first grievance was that there is no justification for deleting the addition of Rs.3,31,20,180/- made on account of profit on sale of shares.

9. It is in relation to this ground of the Revenue before the Tribunal that the present appeal is filed and Mr. Kotangle would submit that he be allowed to re-frame the question. The re-framing would result in the matter being restored to the Assessing Officer on par with the findings in relation to the Assessment Year 1992-93.

10. We see no reason to allow such a course for the Tribunal found that the order of the First Appellate Authority in the case of Hitesh Mehta was dated 29-3-2012 and that was for the Assessment Year 1993-94. The entire addition has been made by the Assessing Officer on the basis of information gathered from different sources. The Assessing Officer merely picked a figure from one annexure and arrived at the figure of addition without making any inquiry or bringing any evidence on record. If such additions made by the Assessing Officer were deleted in the case of Hitesh Mehta and the Revenue filed an appeal being Income Tax Appeal No.5138 of 2003, but without raising any such ground, then, there is no justification or reason

for interference with the findings of the Commissioner of Income Tax (Appeals).

11. We do not think that we should allow Mr. Kotangle to raise any additional ground. How the matter was approached by the Commissioner can be seen from para 20 of the Tribunal's order impugned in this case. It is apparent that information was obtained during the assessment proceedings from the Reserve Bank of India, Custodian, Bombay Stock Exchange companies and third parties about the share holding of the assessee. The data was analysed and the holding in the shares of the assessee was determined as on 31-3-1992. That was taken as the opening stock for the year under consideration. Mr. Kotangle would submit if that is how the matter is determined and decided by the Tribunal, then the closing stock for the past year would become the opening stock for the fresh accounting year. That is to be considered while adjudicating the correctness of the entries in the Books of Account. If for that purpose an opportunity is given, then, the correctness of these entries can be verified from the sources referred above.

12. We are unable to agree with him for the simple reason that the closing stock of the assessee was determined for the year under consideration – Assessment Year 1993-94, and on comparing the opening and closing stocks, whenever there was a difference and the opening stock was higher than the closing stock, it was treated as sale and wherever the closing stock was higher than the opening stock, the difference was treated as unexplained purchase. The Assessing Officer went about in this manner and made the additions. The Commissioner was of the opinion that the information relied upon by the Assessing Officer was either given to the assessee during the proceedings of the Assessment Year 1992-93 or during the proceedings for the Assessment Year 1993-94. The Assessing Officer has computed the holding of shares from the information collected from different sources. The argument before the Commissioner was that the working of opening stock is borrowed from the working given in the Assessment Year 1992-93, without any break-up and without any basis. That is how the Commissioner faulted the exercise of the Assessing Officer. He held that how the

figures of sales and purchases were derived by him has not been explained by the Assessing Officer. The Assessing Officer in the remand proceedings submitted a report, details of which are referred in para 9.8 of the Commissioner's order dated 30-3-2012 impugned before the Tribunal by the Revenue. It is clear that the Commissioner followed the findings in the case of Mr. Hitesh Mehta for the Assessment Year 1993-94 and deleted the addition.

13. To our mind, therefore, the Tribunal committed no error in refusing to interfere with the Commissioner's order. On facts, the Commissioner was justified in making the observations and reaching the above conclusion. To our mind, such an exercise being upheld by the Tribunal does not raise any substantial question of law.

14. None of the questions which are proposed in this appeal as well, therefore, can be termed as substantial question of law.

15. We have taken this view all the more because we find that same questions proposed by the Revenue in the case of Hitesh Mehta and in Income Tax Appeal No.2490 of 2013 were not entertained by this Court as substantial questions of law. The order dated 7-6-2016 has, therefore, been relied upon by Mr. Toprani and rightly.

16. The appeal is devoid of merits and is dismissed.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)