IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1193 OF 2014

COMMISSIONER OF INCOME TAX)
CENTRAL – II)...APPELLANT

V/s.

SMT.JYOTI H. MEHTA)...RESPONDENT

WITH

INCOME TAX APPEAL NO.1173 OF 2014

COMMISSIONER OF INCOME TAX)
CENTRAL – II)...APPELLANT

V/s.

SHRI HITESH S. MEHTA)...RESPONDENT

Mr.Ashok Kotangle a/w. Mr.A.D.Nagarjun, Mrs.Padma Divakar, Mr.Jayan Gaikwad and Mr.Pradip Badgude, Advocate for the Appellant in ITXA No.1193 of 2014.

Mr.A.R.Malhotra a/w. Mr.N.A.Kazi and Mrs.Padma Divakar, Advocate for the Appellant in ITXA No.1173 of 2014.

Mr.Pankaj Toprani a/w. Ms.Krupa Toprani i/b. PRH Juris Consults, Advocate for the Respondent in both the Appeals.

CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 26th JULY 2017

P.C. :

1 These appeals are with regard to Assessment Year 1991-92. Both the appeals involve common question.

2 Mr.Malhotra, the learned counsel for the appellant submits that Commissioner of Income Tax (Appeals) had rightly rejected production of additional evidence in the shape of books of accounts after the said books of accounts were produced after ten years. The source of the entries is also not known. The remand notice was called by the Commissioner. The Tribunal ought not to have interfered with the order of Commissioner. According to the learned counsel, the test as laid down in Rule 43 of the Income Tax Rules is also not being satisfied. Moreover, for the Assessment year 1992-93 when the Assessing Officer had rejected the books of accounts and the Tribunal had directed to compute as per the books of accounts, this court had admitted the appeal filed by the Department. The learned counsel submits that if after ten years, the assessee is allowed to produce the books of accounts, it will lead to chaotic situation.

3 Mr.Kotangle, the learned counsel for the appellant adopts the arguments of Mr.Malhotra.

4 Mr.Toprani, the learned counsel for respondent, submits that in respect of different assessees of the same group, the Tribunal had directed the Assessing Officer to consider the books of accounts and the said orders have become final. The Revenue has accepted the said orders. The appeals are filed only in respect of eight cases. The similar orders were passed in respect of more than 90 assessees of the same group. The learned counsel submits that even the Assistant Commissioner in one of the group assessees' appeal, had directed the Assessing Officer to rework the assessment by taking into account the evidence of books of accounts. The said order is passed in Civil Appeal No.6326 of 2010 on 2nd May 2017.

5 We have considered the submissions. The production of additional evidence has to be within the parameters as set out in Rule 46A of the Income Tax Rules. The Tribunal has found that

the assessee was prevented by a reasonable cause for not being able to file the books of accounts earlier. The reasons given for production of additional evidence, it appears, are plausible, and would be within the purview of Rule 46 of the Income Tax Rules. The discretion has been exercised by the Tribunal. However, it is found that the Tribunal has exceeded and gone beyond the scope of Rule 46. The Tribunal could not have directed the Assessing Officer to compute the income only on the basis of books of accounts. It will have to be left to the Assessing Officer to test the genuineness and authenticity of the entries in the books of accounts and thereafter pass fresh assessment order.

6 All other issues framed herein appear to be germane to the directions of the Tribunal directing the Assessing Officer to accept the books of accounts.

7 We are inclined to adopt the same course as by the Apex Court in Civil Appeal No.6326 of 2010 in case of Jyoti Mehta vs. The Custodian and Ors.

8 In light of above, we pass the following order :

i) The order of the Tribunal to the extent of allowing the production of additional evidence, that is, books of accounts, is maintained. However, we clarify that it will be open for the Assessing Officer to test the genuineness and authenticity of the entries in the books of accounts and thereafter pass assessment order afresh.

ii) The directions of the Tribunal with regard to determination of unaccounted investments, disallowance of deduction on account of interest expenditure, disallowance of deduction on account of other expenditure, to hold the sale of shares as capital gains and allow deduction under Section 48 of the Income Tax Act, will all depend upon the decision of the Assessing Officer with regard to the books of accounts and its decision upon the genuineness of the entries therein.

iii) The Assessing Officer will be entitled to take decision afresh in all aspects of the matter.

iv) It is also made clear that the Assessing Officer will provide the material relied by it to the assessee before passing any order.

v) The appeals, as such, are disposed of with aforesaid observations and directions.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA, J.)**