

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

INCOME TAX APPEAL NO. 1506 OF 2014

Commissioner of Income Tax-20

.. Appellant

v/s.

Nainesh M. Nandu, HUF

.. Respondent

Ms. S.V. Bharucha for the appellant

Dr. K. Shivram, Senior Counsel a/w Mr. Rahul Hakani for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 14th MARCH, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 26th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. The Revenue urges the following reframed questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in ignoring the statements of Shri. Mukesh Ruparel (GM) and Shri. H.K. Popat (Accountant) recorded during the course of survey u/s 133A of

the I.T. Act, 1961 ruling out stocks belonging to others, being the material statements revealing actual facts at the time of survey ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in relying upon the statement of Shri Nainesh Nandu, Karta of HUF which was recorded almost after twelve days of the Survey u/s 133A of the I.T. Act, 1961, that the stock lying in the premises belongs to others?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not accepting the sale price of furniture, is to be taken at Tag Price and not the lower price by 48% as claimed by the assessee ?

3. On 17th August, 2005 a survey action under section 133A of the Act was conducted at the business premises of the respondent assessee. During the course of survey, difference was found in physical inventory and stock shown in the books of account as on the date of the survey. Besides, the valuation of stock was found to be lower in its books of account than it ought to have been on the basis of the Tag Price. During the course of the assessment proceedings, the respondent explained that the excess stock found on the date of the survey as belonging to an associated concern of the Karta of the respondent HUF. This was in

accordance with the statement made by the Karta of the respondent assessee HUF soon after the survey. It was submitted during the assessment proceedings that if the stock belonging to others i.e. the Karta of HUF, M/s. Madani Enterprises and M/s. S.M. Modular Kitchen as in its possession on the date of the search, is excluded, then the physical stock found on the date of the survey tallied with stock in its books of accounts. So far as the valuation of the closing stock having a price lower than the tag price is concerned, the respondent assessee pointed out that the valuation was done on cost price basis and, therefore, the valuation of the closing stock was lower than that of the tag price.

4. However, the Assessing Officer did not accept the explanation of the respondent assessee on both counts. Consequently, the Assessing Officer added the difference in the physical stock found and that recorded aggregating to a value of Rs.1.02 crores. Besides, the stock was taken on the tag price less 30%. Thus, determining the respondent assessee's income at Rs.90.95 lakhs.

5. Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an

order dated 31st May, 2011 the CIT(A) allowed the respondent assessee's appeal to the extent of Rs.79.91 lakhs being the stock found on the date of the survey being in excess of that recorded in the respondent assessee's books by holding that it belonged to the karta of respondent assessee HUF in his individual capacity. To the extent of balance stock of Rs.3.85 lakhs, the CIT(A) did not accept the respondent's claim that it belonged to M/s. S.M. Modular Kitchen (P) Ltd. and M/s. Madani Enterprises. So far as the valuation of the balance stock at lower than the tag price is concerned, the CIT(A) held that the same ought to be valued at tag price less 30% negating the respondent assessee's claim that the valuation of closing stock should be at tag price less actual cost price i.e. 50% of the tag price. Thus, the CIT(A) partly allowed the respondent assessee's appeal.

6. Being aggrieved, both the Revenue as well as the respondent assessee preferred appeals from the order dated 31st May, 2011 to the Tribunal. So far as deduction of excess stock found on the date of survey is concerned, the impugned order records the fact that normally recording statements in respect of physical inventory of the stock by asking the person making the statement on behalf of the party whether the stock found on the date of the survey belongs to assessee or some

other party. However, this was not done in the present facts. The Departmental representative accepted the above factual position before the Tribunal. Further, on 29th August, 2005, the Karta of the respondent assessee HUF at the first available opportunity explained that a part of the stock found with the respondent belonged to him and others. Necessary evidence was also produced, which was found acceptable by the CIT(A) to the extent it belonged to the karta of the respondent assessee HUF. Besides, the impugned order also records the fact that the stock found in excess belonging to the karta of respondent assessee in his personal capacity was factored in while determining the karta's income in his individual capacity. In the above view, the impugned order of the Tribunal upheld the findings of fact recorded by the CIT(A) in respect of the excess stock found on the date of the survey did not belong to the respondent assessee to the extent of Rs.79.91 lakhs.

7. So far as the valuation of the inventory at less than the Tag price is concerned, the impugned order upheld the finding of the CIT(A) that the furniture is usually sold not at its MRP / Tag price but at a price which is lower than the tag price by giving discounts. This it holds is particularly so as the items of furnitures have short shelf life being

subject to change of fashions. The impugned order reaches the above conclusion on noting that goods having a tag price at Rs.1.04 crores has been sold by the respondent assessee at Rs.52 lakhs, thus, evidencing the heavy discount from the tag price to its customers. The impugned order records the fact that no reasons have been given to justify the valuation of inventory at 30% less than the tag price. This acceptance of 30% less than the tag price by the CIT(A) was based on mere guess-work particularly in view of the fact that the books of accounts of the assessee were accepted by the Assessing Officer.

8. In the above facts, the impugned order holds that the valuation of stock at 30% less than the tag price was not sustainable and it should be valued 50% less than the tag price as claimed, should be accepted.

9. Ms. Bharucha, learned Counsel for the Revenue assails the impugned order by merely reiterating the order of the Assessing Officer.

10. **Regarding Question Nos. (i) & (ii) :**

(a) On the basis of the aforesaid facts, we note that both the CIT(A) as well as the Tribunal have rendered a concurrent finding of fact that the stock found on the date of survey to the extent of the value of

Rs.79.91 lakhs did not belong to the respondent assessee but to its karta in his individual capacity. Thus, to the above extent, it could not be added to its closing stock. This concurrent finding of fact has not been shown to be perverse in any manner.

(b) Thus, the proposed questions do not give rise to any substantial question of law. Thus, not entertained.

11. Regarding Question No.(iii) :-

(a) On the basis of the above facts, we find that the value of closing stock at lower than the tag price of the furniture by 50% so held by the Tribunal is a possible view.

(b) In the above view, question (iii) as proposed also does not give rise to any substantial question of law. Thus, not entertained.

12. The appeal is dismissed. No order as to costs.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)