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

INCOME TAX APPEAL NO.258 OF 2015

Commissioner of Income Tax, Central-II,
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. Not on board. With the consent of the parties, taken up for hearing on admission.

2. By this appeal, the Revenue has challenged order dated 30-6-2014 of the Income Tax Appellate Tribunal, Bench at Mumbai.

3. The argument of Mr. Kotangle is that the assessee is a notified person and of the Harshad Mehta Group. That was notified under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (“the Act” for short). The individual person's assets, including Bank Accounts were attached and stood vested in the hands of the Custodian appointed under the Act. The assessee was held to be a benamidaar of Harshad S. Mehta by the Special Court. In the circumstances, when the search and seizure operations were conducted at various premises of the assessee before the Assessment Year 1992-93, no Books of Account were found. For the year that is under consideration, namely, Assessment Year 1992-93, no return of income was filed by the assessee. The details of the transactions made by her were maintained only on computers. The data available on computer was copied and seized. The information was also collected from various sources, including the Custodian, clients/brokers and companies connected with the share transactions carried out by the assessee. In the absence of the Books of Account,

non-cooperation from the assessee and failure to comply with the Notice under Section 142(1), the original assessment was completed under Section 144 of the Income Tax Act, 1961 determining the total income at Rs.36,75,72,411/-. The Commissioner of Income Tax (Appeals) partly confirmed the additions made by the Assessing Officer but the Income Tax Appellate Tribunal, on 31-8-2005, passed the order setting aside the order of the Assessing Officer and that of the Commissioner of Income Tax (Appeals) and restored the matter to the file of the Assessing Officer for *de novo* consideration.

4. During such proceedings, the assessee by letter dated 27-8-2006 submitted copies of the print-outs stated to be Books of Account. Thus, they were produced for the first time on 23-8-2006. There was no audit and the Books were written on day-to-day basis, no Cash Book was maintained, all the E-Bank Accounts were not taken into consideration, and the entries made were not real. It is in these circumstances, the Assessing Officer concluded that the Books of Account suffered from serious defects and were highly unreliable. The Assessing

Officer rejected this so called Books of Account under Section 145(2) and proceeded to compute the income of the assessee using the net accretion method.

5. It is apparent from this, according to Mr. Kotangle, that the assessee could not have approached the Appellate Authority again. However, she approached and against the assessment order dated 22-12-2006 on a total income of Rs.5,37,15,976/-.

6. The assessee attempted to produce certain Books before the Commissioner and thereafter found that she could not substantiate her bringing the same after this considerable delay. Still the assessee's appeal was partly allowed by the Commissioner on 29-2-2012.

7. Thereafter, the matter was carried to the Tribunal and in the impugned order the Tribunal has, without any adjudication of the issues raised, straightaway proceeded to set aside the impugned order and restored the entire issue to the

file of the Assessing Officer for *de novo* assessment. While doing it, the Tribunal relied upon the orders passed in the case of Smt. Rasila S. Mehta, Smt. Jyoti H. Mehta and the very assessee before the Tribunal and before us, Smt. Pratima H. Mehta, and importantly Hitesh S. Mehta. The Tribunal found that the facts are identical to the case of Hitesh Mehta. On fact, therefore, it passed the very same order of remand.

8. Mr. Kotangle would submit that the Tribunal has not applied its mind but mechanically passed an order of remand relying on its earlier orders. That is an approach not supportable in law. Mr. Kotangle would submit that he be allowed to point out from the record that the remand was not warranted at all. There is a perversity on the part of the Tribunal when it allowed a remand for the asking. It is in these circumstances that he would submit that this appeal be entertained as it raises substantial questions of law.

9. On the other hand, Mr. Toprani, appearing for the respondent/assessee, would submit that when the facts and

circumstances were identical to the case of Hitesh Mehta, and in the case of Hitesh Mehta the Revenue did not challenge the order passed by the Tribunal before this Court but accepted it, then, a different approach now taken by the Revenue should not result in any substantial questions of law being framed by this Court. In other words, he would submit that the appeal does not deserve admission.

10. Having perused the paper-book and in its entirety, we find that the Tribunal had before it an order of the Commissioner. There were on the issues and grounds raised as many as 13 objections by the appellant/assessee. He pointed out that the Commissioner could not have departed from his earlier views. More so, when in the earlier matters the Revenue has not questioned the approach of the Tribunal. There was an additional ground raised in the sense that the assessee contended before the Tribunal that the Commissioner ought to have appreciated that as per the decision of the Special Court, dated 30-4-2010, in Miscellaneous Petition No.41 of 1999 (by the Special Court for Trial of Offences relating to Securities), the

assessment under consideration and consequentially the income belongs to Harshad Mehta. Hence, the income sustained by the Assessing Officer ought to have been taxed in the hands of Harshad Mehta and the assessee before the Tribunal. That is how the commonality to the case of Hitesh Mehta and others was attempted to be established. The Special Counsel, appearing for the Revenue, would submit before the Tribunal that since similar issues are involved in the appeal of Smt. Pratima Mehta, the assessee before us, when the Tribunal has remanded the matter back to the Assessing Officer for passing a *de novo* assessment order after giving reasonable opportunity of hearing to the assessee, then, he would have no objection to this course. The argument was that no useful purpose will be served by remanding the matter as the Books of Account were not audited.

11. The Tribunal has found that all these arguments were common and to the earlier cases. On facts, it found no justification for taking a different view.

12. We do not think such an order of the Tribunal raises

any substantial questions of law.

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

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