IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

BENCH AT AURANGABAD.

TAX APPEAL NO.42 OF 2003

Smt.Sulochana Purushottam
Gindodiya, Age 59 years,
Occ.Business, R/o
Sanjay Building, Agrawal
Nagar, Dhule. ... Appellant.

Versus

1. The Income Tax Officer,
Ward No.2(8), Dhule.

2. The Commissioner of
Income Tax, Nasik. ... Respondents.

...

Mr.S.P.Shah, advocate holding for Mr.P.V.Barde, advocate for the appellant.
Mr.Alok Sharma, counsel for Respondents.

...

CORAM : S.V.GANGAPURWALA AND
A.M. DHAVALE,JJ.

Date : 03.05.2018.

PER COURT :

1. The appeal pertains to assessment year 1994-95 and 1995-96.

2. The order of the Income Tax Appellate

Tribunal is assailed. Under the said judgment the Tribunal has upheld the judgment of the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) has upheld the order of the assessing Officer.

3. Mr.Shah, learned counsel submits that provisions of Section 44(A) E has been introduced as per the Finance Act, 1994. It will apply for the financial year 1994-95 onwards i.e. assessment year 1995-96 and can not apply for the proceedings involving assessment year 1994-95. The learned counsel further submits that the authorities have also failed to consider that the agreement of lease of mini truck between the appellant and her son is a genuine transaction. The lease rent received for the mini truck from her son was to be taxed as income under the head income from other sources and the due depreciation has to be allowed as per Section 57 of the Income Tax Act. It ought to have been considered that Section 44(A) E(i) and (ii) could not have been applied when the appellant had declared the income lower than as stipulated in

the said Section. The authorities have not applied the legal provisions in its correct perspective.

4. Mr.Sharma, learned counsel submits that the amended provision would apply to the assessment year 1994-95. The same is also clarified as per Circular No.684 dated 10.6.1994. The authorities have properly appreciated the evidence.

5. The appeal can only be entertained on substantial question of law. The appellant had never raised the ground of non-applicability of Section 44(A) E before the Commissioner of Income Tax (Appeals) and/or before the Tribunal. The Circular in question clarifies that the amendment would take effect from 1.4.1994 and will accordingly apply in relation to assessment year 1994-95 and subsequent years. Moreover, the appellant has never raised this ground before any of the authorities. The authorities have considered that as per the agreement the assessee was entitled to monthly hire charges of

Rs.4,000/- and the responsibility of entire expenses was of the son. The assessee declared the truck rent for those months amounting to Rs.24,000/- (Rupees twenty thousand) and claimed depreciation and professional tax amounting to Rs.1,31,751/- (Rupees one lac thirty one thousand seven hundred fifty one). In view of the provisions of Section 44(A) E the same is disallowed by applying the principles. All the authorities are concurrent in this aspect.

6. In light of the above, no substantial question of law arises. The appeal as such is dismissed. No costs.

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

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