IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 39 OF 2015

Makhija Chandrakumar Hariram
Died through legal heirs
1A Hema W/o Chandrakumar Makhija
and others .. Appellants
Versus
The Income Tax Officer Ahmednagar .. Respondent

WITH
INCOME TAX APPEAL NO. 40 OF 2015

Makhija Chandrakumar Hariram
Died through legal heirs
1A Hema W/o Chandrakumar Makhija
and others .. Appellants
Versus
The Income Tax Officer Ahmednagar .. Respondent

WITH
INCOME TAX APPEAL NO. 41 OF 2015

Shaikh Rashid Mohammed Bagban .. Appellant
Versus
The Income Tax Officer Ahmednagar .. Respondent

Mrs. C. S. Deshmukh, Advocate for the Appellant in all matters.
Shri Alok Sharma, Advocate for the Respondent in all matters.

CORAM : S. V. GANGAPURWALA AND
ARUN M. DHAVALE, JJ.
DATE : 16TH JANUARY, 2018.

FINAL ORDER :

. The Tribunal has remitted the matters back to the Commissioner Appeals. Aggrieved by the said order the assessee has filed present appeals.

2. Mrs. Deshmukh, the learned advocate for appellants submits that, simply on the basis of chit found in the premises of M/s. Tulsi Lottery Agency, the liability is sought to be fastened on the appellants. The Commissioner Appeals has considered that, there was no substantial evidence to fasten the liability on the present appellants and the Commissioner Appeals came to the conclusion that the addition made by the Assessing Officer cannot be sustained on the basis of the account extract of the appellants in the books of accounts of M/s. Tulsi Lottery Agency. The enquiy in case of M/s Tulsi Lottery Agency was made for assessment years 1999-2000. The learned advocate submits that, the Tribunal as a matter of course has remitted the matters back without considering the books of accounts of M/s Tulsi Lottery Agency in proper manner. According to the learned counsel, it was erroneous on the part of the Tribunal to hold that the onus would lie on the appellants to disprove the correctness of said document i. e. chit found in the premises of Tulsi Lottery Agency. The same would not be in consonance with the provisions of Evidence Act.

3. Mr. Sharma, the learned counsel for respondents supports the judgment of the Tribunal.

4. We have perused the judgment delivered by the Commissioner Appeals and Income Tax Tribunal. The Commissioner Appeals has observed that, even the appellants did not maintain proper books of accounts and could not convince on many subsidiary issues. However, on adhoc basis assessed the liability of payment of tax. The Tribunal has observed that, the remand report was called by the Commissioner. The Commissioner did not take into account the remand report.

5. It was further observed by the Tribunal that the Commissioner has determined the tax liability on adhoc basis without considering the remand report and was convinced about non maintenance of books of accounts by this appellant and also had held that the explanation on subsidiary issues were not satisfactory.

6. In view of that, the Tribunal was justified in remitting the matters back to the Commissioner Appeals to determine afresh correct income of assessee after careful study of comparable cases in this line of business. The first appellate authority is directed to examine all the material gathered from the revenue department and thereupon determine the correct turnover of the

assessee.

7. We do not see any error in the judgment of the Tribunal. No substantial question of law arises. As such, appeals stand dismissed. No costs.

[ARUN M. DHAVALE, J.] [S. V. GANGAPURWALA, J.]

bsb/Jan. 17