IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 04 OF 2018

Sachin Naginchand Chordiya .. Appellant

Versus

The Commissioner of Income Tax - 2,
Nashik .. Respondent

Shri Subhodh P. Shah, Advocate for the Appellant.
Shri Alok Sharma, Advocate for the Respondent/sole.

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

FINAL ORDER :

. Mr. Shah, the learned advocate for the appellant submits that, the assessing officer calculated gross profit at 5% and addition was made. Thereafter assessment order U/Sec. 143(3) of the Income Tax Act was passed. The Commissioner suo-motu invoked its revisional powers U/Sec. 263 of the Income Tax Act. According to the learned counsel, the Commissioner could not have invoked his revisional powers and more particularly no appeal was filed before the Commissioner by the department. There were two views possible. The Assessing Officer assessed it on the basis of gross profit, as such it was not open for the Commissioner to direct that provisions of Sec. 40-A of the Income

Tax At are not considered. Even if, provisions of 40-A of the Income Tax Act are invoked, the appellant would be entitled for the protection under Rule 6-DD of the Income Tax Rules. The learned advocate relies on the judgment of the Apex Court in a case of **Commissioner Income Tax (Central) Ludhiana Vs. Max India Limited** reported in ***(2007) 15 SCC 401*** to contend that, if two courses are available and the assessing officer adopts one course permissible in law, then it will not be open to invoke revisional jurisdiction.

2. Mr. Sharma, the learned advocate for the respondent supports the order.

3. It is not disputed that, after the Commissioner remitted the matter to the Assessing Officer, the Assessing Officer passed assessment order afresh. The same was assailed by the present appellant before the Commissioner Appeals. The Commissioner Appeals allowed the appeal filed by the appellant and it is stated that, the Department has challenged the said decision before the Tribunal and the said appeal is subjudice before the Tribunal.

4. The order of Commissioner remanding matter back to the Assessing Officer has already taken effect and further assessment order was passed. The Commissioner Appeals found favour with the arguments of present appellant and has allowed

the appeal of the present appellant.

5. The grounds agitated here, naturally, are to be considered by the authority, where the appeal is pending after the assessing officer has passed the order. The order remitting the matter back and re-opening assessment has already taken effect and further order pursuant to it are also passed. It appears that, fair opportunity is given to the party by the Commissioner by remitting the matter back.

6. In view of the aforesaid circumstance, we are not inclined to invoke our jurisdiction. The appellant is entitled to raise all the contentions raised herein in the appeal. The income tax appeal accordingly is disposed of. No costs.

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

bsb/Jan. 17