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

INCOME TAX APPEAL NO.857 OF 2016

The Pr. Commissioner of Income Tax-19 .. Appellant

v/s.

Shri. Rahul J Jain .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th September, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2009-10.

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

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in upholding the order of the CIT(A) thereby giving relief to the assessee even when the Assessing Officer

has categorically recorded the defects in the Audited Books of Accounts as furnished by the assessee?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the assessee has submitted sufficient information on the basis of which the Assessing Officer could have done requisite verification, without appreciating that the Assessing Officer has indeed done requisite verification as is evident from the Assessment Order, thereby making the order of the Tribunal as perverse?

3. The respondent is engaged in the business of trading in ferrous and non-ferrous metals. The respondent filed its return of income for the subject assessment year declaring loss of Rs.18.74 lakhs. During the scrutiny proceeding, the respondent was unable to produce its physical books of accounts, evidences for sales, purchases and expenses claimed in the view of the same being destroyed due to flood on 8th July, 2009. The respondent assessee filed necessary evidence indicating the destruction of physical accounts due to heavy rains on 8th July, 2009. Besides, it also filed evidences of its sellers and buyers to support its claim of loss. However, by order dated 30th December, 2011, the Assessing Officer assessed the income of the respondent at Rs.57.95 lakhs under the head 'business' as against the loss of Rs.18.74

lakhs as shown by the respondent in its return of income.

4. Being aggrieved by the order dated 30th December, 2011 of the Assessing Officer, the respondent preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 15th July, 2013, the CIT(A) allowed the respondent's appeal *inter alia* by noting the fact that the respondent had produced various documents in support of its claims for expenses, after recording the fact that various confirmation letters from the parties who had made purchases were also filed. However, the Assessing Officer did not carry out any further verification in regard to it. The CIT(A) also recorded the fact that the return as submitted should be accepted keeping in view of the fact that there was a sharp and continuous fall in nickel prices which is the main ingredient in stainless steel. Further, the appellant has made more than 90% of the sale during the year, out of the opening stock held by it as a carried forward from the earlier year. Moreover, it also takes cognizance of the fact that the respondent's book results were also accepted by the Sales Tax and Central Excise authorities. For all the above reasons, the appeal of the respondent assessee was allowed by order dated 15th July, 2013 of the CIT(A).

5. Being aggrieved with the order dated 15th July, 2013 of the CIT(A), the Revenue filed further appeal to the Tribunal. By the impugned order dated 28th September, 2015 the Tribunal recorded the fact that in view of loss its physical books of accounts due to heavy rains. It also notes the fact that the respondent had produced various documents from its sellers / buyers and submitted the same to the Assessing Officer. The Tribunal after perusing the documents recorded that confirmations of sales and purchases by the respondent were also filed. Besides, documentary evidence to support the assessee's claim containing sufficient particulars on the basis of which requisite verification from the parties mentioned therein could have been done by the Assessing Officer, if he has any doubt in regard to the documents submitted. Further, the Tribunal notes that the documents submitted in support of their claim were not disputed by the Revenue before the Tribunal. Further, the impugned order also records fall in the prices of the steel in the global market which lead to a loss of the sales made by the respondent. In these circumstances, the appeal of the Revenue was dismissed. The Tribunal in its order observed as under :-

> *"We can very well appreciate that at times, the Assessing Officer has no choice but to make a best judgment assessment. But in our considered view, the fairness of justice demands that 'best judgment assessment' should not be made as a 'best punishment assessment'.*

6. We note that both the CIT(A) and the Tribunal on examination of the facts have come to the conclusion that there was material evidence available before the Assessing Officer for him to carry out necessary investigation to determine whether or not the loss suffered by the respondent assessee was justifiable. The best judgment assessment can certainly be resorted to by the Assessing Officer in the absence of any record, but it cannot be arbitrary. This is more particularly so when various supporting documents justifying their loss return was filed before the Assessing Officer and he had completely ignored the same. We find that this appeal essentially is in respect of question of facts.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

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

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**