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

INCOME TAX APPEAL NO.751 OF 2016

Principal Commissioner of Income Tax … Appellant

V/s.

M/s Mangalam Infra Development Pvt. Ltd. … Respondent

Mr.Arvind Pinto for the Appellant.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 10, 2018.

P.C.:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 22nd July, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2010-11.

2. The Revenue urges the following question of law for our consideration:

> "Whether in facts and circumstances of the case and in law was the Tribunal justified in substituting the best judgment of the CIT (A) with its own without assigning any specific reason when it

accepts the rejection of books under Section 145 of the Act?

3. The respondent is carrying on business of Civil Contractor. For the subject assessment year, the respondent filed its return of income declaring its income of Rs.36.34 lakhs. The assessment was finalized by order dated 28th February, 2013 under Section 143(3) of the Act determining the income at Rs.3.45 crores. This addition was essentially on the ground that the purchases made by the assessee in respect of seven parties were found to be not genuine. This led to rejecting the books of account and disregarding the entire purchase of Rs.3.09 croes made from the seven parties during the year by order dated 28th February, 2013 passed under Section 143(3) of the Act.

4. Being aggrieved, respondent-assessee filed appeal to the Commissioner of Income Tax (Appeal) (CIT(A)). However, by order dated 1st November, 2013 of the CIT (A) it was held that bearing in mind the gross profit/net profit percentage for the earlier years the addition can be sustained at Rs.1.23 crores and not at Rs.3.09 cores. Thus, partly allowed the appeal of the

respondent.

5. Being aggrieved by order dated 1st November, 2013, the respondent filed an appeal to the Tribunal. The impugned order dated 22nd July, 2015 of the Tribunal noted that it was the case of the respondent that all purchases were made by payment through Banks an opportunity to cross-examine sought by the respondent ought to have been given. This opportunity of cross-examination was not given only because the Assessing Officer was running short of time to complete the account. It further holds that the net profit rate of 11 % the entire purchases made during the year was applied by the CIT (A) to determine the addition. Thus, the Tribunal restricted to only 11% out of the purchases of Rs.3.09 crores made from the seven parties. This in view of the fact that consumption of goods is not denied/ disputed.

6. We find the impugned order of the Tribunal has taken a view on facts which is possible view. It cannot be said to be perverse.

7. In the above facts, the proposed question does not give rise to any substantial question of law.

8. Accordingly, the appeal dismissed. No order as to costs.

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

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