Sharayu Khot.

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

INCOME TAX APPEAL NO. 813 OF 2015

Pr. Commissioner of Income-Tax, 4 ...**Appellant**

Versus

M/s. Yes Power and Infrastructure P. Ltd. ...**Respondent**

Mr. Suresh Kumar, for the Appellant.

Mr. Jas Sanghavi, i/b PDS Legal, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 20 February 2018

ORDER :

1. This Appeal under Section 260-A of the Income Tax Act, 1961 ("***The Act***" for short), challenges the order dated 17 December 2014 passed by the Income Tax Appellate Tribunal ("***The Tribunal***" for short). The impugned order dated 17 December 2014 is in respect of Assessment Year 2005-06.

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

1. Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that there was no justification for rejection of books of accounts by the Assessing Officer?

2. Whether on the facts and circumstances of the case and in law, by accepting the books of accounts of the Assessee, the Tribunal was justified in deleting the addition made by the Assessing Officer, on the basis of estimation of gross profit at the rate of 2 percent of the sales?

3. The Respondent is engaged in trading of steel and other engineering items. The Assessing Officer during scrutiny proceedings for assessment year 2005-06 found that the

Respondent had sales of Rs. 52.17 Crores while gross profit was only Rs. 26.08 Lakhs. This led the Assessing Officer to call for an explanation for such low profits from the Respondent-Assessee. In response, the Assessee pointed out as follows:-

> *"Our company, is a concern mainly engaged in trading of steel & engineering products. We purchase and sale these goods on very competitive low margin but our volume are very high. We normally purchase the goods and resale them at the minimum time gap. It is a known fact that rates of steel keep fluctuating and it is a very volatile item. To avoid any risk due to market price fluctuation. We have to take the fast decision to sell out of purchase, the steel at the available rate received from the market, some time it may be sold on a low price or some times at a higher price. During the year some of the transactions are sold at lower price because of the expectation of the rate of steel going*

lower and lower. More over due to fact that we work with a very small capital and no borrowing from banks, we do not have capacity to hold stock for a longer periods. Hence, we have to take decision of sell and purchase keeping the time gap at the minimum."

4. However, the Assessing Officer did not accept the explanation for low profits and by assessment order dated 31 December 2007 rejected the books of accounts. This on the ground that the purchase price of goods was much higher than the selling price of those very items. On rejection of the books of accounts the Assessing Officer estimated the gross profit on the basis of 2 percent of the sales. This resulted in enhancement of gross profits from Rs. 26.08 Lakhs to Rs. 1.18 Crores.

5. Being aggrieved with the order dated 31 December 2007, the Respondent-Assessee filed an Appeal to the Commissioner of Income Tax (Appeals) ("***CIT(A)***" for short). By

an order dated 20 January 2009, the CIT(A) dismissed the Respondent-Assessee's Appeal. On further Appeal, the impugned order of the Tribunal allowed the Respondent-Assessee's Appeal. This *inter alia* on the ground that it found that the Respondent had along with return of income filed audited accounts along with audit report for the subject assessment year. Moreover, during the course of scrutiny, complete books of accounts with itemwise and monthwise purchase and sales in quantitative details were also furnished. It found that the Assessing Officer did not find any defect in the books of accounts nor with regard to quantity details furnished by the Respondent-Assessee. In the above circumstances, it held that merely because the Respondent-Assessee being a trader has sold goods at prices lower than the purchase price and/or the prevailing market price would not warrant rejection of the books of accounts.

6. The grievance of the Revenue with the impugned order is that the Respondent-Assessee has sold goods at price lower than its purchase price. Therefore, the books of accounts

cannot be relied upon. Thus, the rejection of the books of accounts and estimation of profits in these facts should not have been interfered with.

7. We find that it is not the case of the Revenue that the amounts reflected as sale price and/or purchase price in the books do not correctly reflect the sale and/or purchase prices. In terms of Section 145(3) of the Act, the Assessing Officer is entitled to reject the books of accounts only on any of the following condition being satisfied.

(i) Whether he is not satisfied about the correctness or completeness of accounts; or

(ii) Whether the method of accounting has not been regularly followed by the Assessee; or

(iii) The income has been determined not in accordance with notified income and disclosure standard.

8. It is not the case of the Revenue that any of the above circumstances specified in Section 145(3) of the Act are satisfied. The rejection of accounts is justified on the basis that it is not possible for the Assessee who is a trader to sell goods at the prices lower than the market price or purchase price. In fact as observed by the Apex Court ***Commissioner of Income Tax, Gujarat Vs. A. Raman & Co***.[1]. and in ***S.A. Builders Vs. Commissioner of Income Tax***[2], the law does not oblige/compel a trader to make maximize its profits.

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

10. Accordingly, Appeal dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**

1 ***(1968) Vol.67 pg. 11***
2 ***288 ITR pg.1***