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

INCOME TAX APPEAL NO.1308 OF 2016

The Pr. Commissioner of Income Tax-7 .. Appellant
v/s.
M/s. Lagu Bandhu Motiwale Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Mihir Naniwadekar for the respondent

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

DATED : 30th JANUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). The following questions are presented for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the surrender of unaccounted income was based on estimation and consequent retraction of the assessee without appreciating that discrepancies arrived during the course of survey was on the actual physical verification and not on mere estimation ?*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the statement given during the course of survey has no evidentiary value on account of undervaluation of closing stock without appreciating the director own admission of unaccounted excess stock ?*

2. The respondent assessee is a private limited company. The issue relates to Assessment Year 2008-09. The Assessing Officer made certain additions in the taxable income of the assessee on the basis of discrepancies in the physical stock as compared to the register maintained by the assessee which was detected during the survey. The Commissioner of Income Tax (Appeals) [CIT(A)] and the Tribunal however, deleted the additions concurrently holding that the assessee had reconciled the differences and extended the possible inconsistency. The Tribunal by the impugned judgment observed that during the survey action, no difference in quantity was noticed and the admission made by the assessee was based only on account of method of calculation. The assessee had also tried to reconcile this difference pointing out that the calculation on the date of survey was based on approximation and not based on scientific calculation basis. The Tribunal noted that at the time of survey the assessee may not be in a position to give full explanation and if post survey explanation is offered which furnished necessary reconciliation, the same would be acceptable. The Tribunal approved the view of the CIT(A) on such reconciliation. It was also recorded that the statement of the representative of the assessee recorded in survey would not have evidential value so as to make the additions purely on such statement.

3. The issue thus based on appreciation of material on record, the CIT(A) and the Tribunal concurrently held that there was sufficient reconciliation offered by the assessee through acceptable explanation. No question of law arises.

4. The tax appeal is dismissed.

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