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

INCOME TAX APPEAL NO.1972 OF 2018

Pooja Paper Trading Co. Pvt. Ltd. : Appellant
versus
Income Tax Officer-4(3)(1), Mumbai : Respondent.

WITH
NOTICE OF MOTION NO.948 OF 2018

Pooja Paper Trading Co. Pvt. Ltd. : Applicant.

In the matter between

Pooja Paper Trading Co. Pvt. Ltd. : Appellant
versus
Income Tax Officer-4(3)(1), Mumbai : Respondent.

ALONG WITH
INCOME TAX APPEAL NO.1932 OF 2018
Pooja Paper Trading Co. Pvt. Ltd. : Appellant
versus
Income Tax Officer-4(3)(1), Mumbai : Respondent.

WITH
NOTICE OF MOTION NO.949 OF 2018

Pooja Paper Trading Co. Pvt. Ltd. : Applicant.

In the matter between

Pooja Paper Trading Co. Pvt. Ltd. : Appellant
versus
Income Tax Officer-4(3)(1), Mumbai : Respondent.

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Mr. Jayan Gaikwad a/w Mr. Rakesh P Saroj for the Appellant/Applicant.
Mr. Suresh Kumar for the Respondent.

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

DATE : FEBRUARY 25, 2019.

P.C.:

1 These two Appeals are take up out of turn for admission as the Appellant Assessee had taken out Motions seeking a stay of the order dated 26th October 2017 of the Income Tax Appellate Tribunal. This as a revenue is adopting coercive proceedings for recovery.

2 These Appeals under Section 260A of the Income Tax Act, 1961 (for short "Act") challenge the common order dated 26th October 2017 of the Income Tax Appellate Tribunal (for short "Tribunal") partly allowing the Appeals filed by the Revenue. The common impugned order relates to Assessment Years 2010-2011 and 2011-2012. Hence the two Appeals filed by the Appellant against the impugned order.

3 Although numerous questions are raised in the Appeal Memos, the Appellant urges only the following basic identical re-framed questions of law for our consideration :-

> "Whether on the facts and circumstance of the case and in law, was the Appellate Tribunal justified in disallowing 12.5% of the bogus purchases for the subject Assessment Years?"

4 It is an admitted position between the parties that the facts and law as applicable in both the Appeals are identical. Therefore for the purpose of considering the aforesaid question, which is common in both the Appeals, we are taking the facts as set out in Income Tax Appeal No.1932 of 2018 which is relating to Assessment Year 2011-2012.

5 The Respondent Company is engaged in the business of trading in paper and paper products. For the Assessment Year 2011-2012 the Respondent declared the income of Rs.5.81,692/-. The return was processed under Section 143 (1) of the Act. Thereafter the Assessing Officer on re-opening of assessment found that the Respondent made bogus purchases to the tune of Rs.4.17 crores during the subject assessment year. This was on a finding that the Respondent had made purchases from various parties which were Hawala parties who were indulging in hawala business without actual transacting in any goods. The basis of the re-opening of the assessment was the information received from the Sale Tax Authorities. In the aforesaid circumstances, the Assessing Officer disallowed the purchases to the extent of Rs.4.17,57,005/- and added the same as unexplained expenditure under Section 69C of the Act in the order dated 24th March, 2014 passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act.

6 Being aggrieved, the Respondent filed an Appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 7th October, 2015 the CIT (A) found that

even if the purchase transactions are not verifiable what is taxable is only the income component and not the entire purchase. Therefore on finding that the gross profit ratio for the subject Assessment Year was much less than the average gross profit of earlier three assessment years it adopted the average gross profit for the earlier these assessments years at 3.67%. Thus, the CIT(A) sustained the addition of Rs.5,69,087/- being the profit/income element and deleted the remaining amount of Rs.4,11,87,918. Thus partly allowing the Appeals of the Respondent.

7 Being aggrieved by the order dated 7th October, 2015 of the CIT (A), the Revenue has filed Appeals before the Tribunal. The impugned order dated 26th October 2017 the Tribunal while partly allowing the Appeals of the Revenue held that in matters of bogus purchases the profit element has to be estimated. It upheld the view of CIT (A) that the dis-allowance could only be of the income/profit attributable to the bogus purchases. The Tribunal found fault with the CIT (A) blindly applying the gross profit ratio declared by the assessee for the earlier assessment years, ignoring the factual aspect in the subject Assessment Year, where it is found that the Respondent was involved in hawala transactions. This fact of the Respondent being engaged in hawala transaction was also supported by the statement on oath made by one Shri Paras Gandhi, the director of the companies, who were declared as bogus billers and on which the Assessing Officer has placed reliance. The Tribunal recorded a finding that the Appellant – Assessee had not produced any evidence to show that the purchases made by them were genuine. Thus considering the overall facts, the impugned order of the

Tribunal enhanced the disallowance from 3.67% to 12.5% of the bogus purchases and directed the Assessing Officer to calculate the income of the Respondent-Assessee accordingly.

8 Mr. Jayant Gaikwad, the learned counsel appearing for the Appellant herein submits that the impugned order of the Appellate Tribunal is bad in law as it did not consider various evidences produced by the Appellant-Assessee and relied upon third party information to hold that the Appellant-Assessee's purchases were bogus. This is without having been given any opportunity to the Appellant-Assessee to cross examine the person on whose statement the Revenue was relying upon.

9 We find that all the authorities under the Act have come to a finding of fact that substantial purchases made by the Appellant – Assessee were bogus in nature. Only issue on which there is a divergence of views between the authorities is in respect of extent of disallowance. This conclusion of the purchases being bogus by Authorities under the Act is on the basis of appreciation of entire evidence on record. It is important to bear in mind that the Appelllant Assessee had not filed any Appeal from the order of the CIT (A), holding that disallowance on account of bogus purchases has to be 3.67%. The Appellant accepted the findings of facts by the CIT (A) that there was bogus purchases. Therefore the grievance now raised of no cross examination being offered to the Appellant-Assesssee, when the order of CIT(A) is not challenged before the Tribunal, could not have been raised by the Appellant Assessee. Moreover, there is no

mention of this grievance by the Appellant-Assessee or even with regard to non-consideration of various documents such as Sales Ledger, Purchase Ledger etc. by the Assessing Officer in the order of sthe Tribunal. The submission of Mr. Jayant Gaikwad on behalf of the Appellant-Assessee that the same was urged before the Appellate Tribunal, but was not considered, cannot be accepted. This is particularly so if the Tribunal had failed to make a note of the submission of a party in its order, then the appropriate remedy for the party was to move the Tribunal for rectification of the order ensuring it that the submissions made by it are recorded in the order. However, given the factual matrix that the Appellant had not challenge the finding of bogus purchases, the above issue could not have been raised by it before the Tribunal.

10 In the above circumstances, we are of the view that extent of disallowance in the present facts do not give rise to any substantial question of law. The view taken by the Tribunal is a plausible view and does not require any interference at the hands of this Court. Therefore the question as proposed does not give any rise to the substantial question of law. Thus not entertained.

11 The reasons indicated herein to dismiss the Appeal No.1932 Of 2018 would equally apply to Income Tax Appeal No.1972 of 2018.

12 For the aforesaid reasons, the question that is proposed does not give rise to any substantial question of law. The above Appeals are accordingly dismissed.

13 In view of the dismissal of the above Appeals, Notice of Motion Nos.948 of 2018 and 949 of 2018 taken out by the Appellant-Assessee for stay of the impugned order dated 26th October 2017 do not survive and the same to accordingly stand disposed of as such.

[M.S.SANKLECHA,J.] **[AKIL KURESHI, J]**