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

INCOME TAX APPEAL NO.1399 OF 2016

Pr.Commissioner of Income Tax, Central-2. … Appellant

V/s.

M/s Ambit Multitrade P. Ltd. … Respondent

Mr.Ashok Kotangle with Ms. Padma Divakar for the Appellant.
Mr.R.Murlidhar with Mr.P.C.Tripathi i/by Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 18, 2019.

P.C.:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 28th October, 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 on the facts and in circumstances of the case and in Law, the Tribunal was justified in

> setting aside the order of the CIT passed under Section 263 of th Act?”

3. The respondent-assessee is engaged in the business of share-trading. Its return of income for the subject assessment year was taken up for scrutiny and on 3rd January, 2013 an assessment order was passed under Section 143(3) of the Act determining its income at 'Nil'.

4. The Commissioner of Income Tax (CIT) in exercise of powers under Section 263 of the Act by order dated 27th February, 2015 revised the assessment order dated 3rd January, 2013. This on the ground that the Assessing Officer while passing the Assessment Order dated 3rd July, 2013 had not conducted any inquiry with respect to genuineness of the persons who had invested in the share capital bearing in mind the high premium of Rs.490/- per share having face value of Rs.10/- per share. Accordingly, the CIT by her order dated 27th February, 2015 set aside the assessment order dated 3rd January, 2013 and restored the assessment to the Assessing Officer for passing a fresh order after due application of mind.

5. Being aggrieved, the respondent filed an appeal before the Tribunal. The impugned order dated 28th October, 2015 on facts found that originally the return was processed under Section 143(1) of the Act. However, thereafter with approval of Chief Commissioner of Income Tax, the Assessing Officer had issued notices to the respondent under Section 143(2) of the Act seeking an explanation from the respondent for the high share premium charged as well as in respect of the huge closing stock. The Tribunal further records that the respondent gave complete explanation in its two letters to the Assessing Officer and the same was subjected to verification by the Assessing Officer. Thus, the Tribunal held that the CIT in her order in Revision had completely ignored the two letters written by the Assessing Officer explaining in detail about the high share premium and huge closing stock issue. This being evidence of due application of mind by the Assessing Officer rendering the order dated 27th February, 2015 of the CIT bad as the Assessment Order dated 3rd July, 2013 was not erroneous. This on application of the

decision of this Court in **CIT Vs. Gabrial (I) Ltd.**[1].

6. Mr.Kotangle, learned counsel in support of the appeal places reliance upon the order dated 27th February, 2015 of the CIT while exercising her powers of revision. It is further submitted that mere stating by the Assessing Officer in her Assessment Order dated 3rd January, 2013 that she has verified the details formulated during the assessment proceedings, does not mean that the same has been verified.

7. We find that the impugned order of the Tribunal has examined the records while come to the finding that the Assessing Officer had made necessary inquiry/ verification with regard to both the issues namely high share premium as well as the high closing stock. Moreover, as noted this inquiry was done by the Assessing Officer after having obtained the necessary approval from the Chief Commissioner of Income Tax. Infact this itself is an evidence of application of mind of the Assessing Officer, followed by notice to the respondent and verification of

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the response of the respondent. The aforesaid facts while exercising the powers of revision has been completely ignored the CIT. The impugned order of the Tribunal correctly held following the decision of this Court in **Gabrial (I) Ltd.(supra)** that the Assessment Order dated 3rd July, 2013 cannot be termed erroneous simply because he may have written the order move elaborately or taken a different view on facts (which is not perverse). Thus, as the impugned order dated 28th October, 2015 of the Tribunal applied the decision of this Court no substantial question of law as proposed arises. Thus, not entertained.

8. Accordingly, Tax Appeal is dismissed. No order as to costs.

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

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