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

INCOME TAX APPEAL NO.1669 OF 2016

Pr.Commissioner of Income Tax-9 ... Appellant

V/s.

M/s Family Investment Private Limited ... Respondent

Mr.Tejveer Singh for the Appellant.
Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
SANDEEP K.SHINDE, JJ.
DATE : JANUARY 28, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal dated 2nd December, 2015, raising following questions for our consideration:

> "I. Whether in the facts and circumstances of the case and in law, the mere calling for details in respect of a claim, without requiring the assessee to justify the legality of such claim which prima facie the AO ought to have examined, would be sufficient to take the consequential assessment order outside the revisionary jurisdiction of the Commissioner u/s 263 of the Act?
> II. Whether in the facts and circumstances of the case and in law, the ratio of decision in the case of Apollo Tyres does not apply to a case whether the

> certification of the accounts by the auditor is prima facie, perverse in as much as in the case under consideration not only has the debit to the P & L A/c of donation made has been certified as correct but also of such donation which has not been paid in the relevant year and no material has been brought on record to show that it has been paid in any subsequent year?”

3. Respondent-assessee is a limited company. In the return of the income filed for the assessment year 2010-11, the assessee had claimed benefit of donation of Rs.12.75 crores. The Assessing Officer after examining the claim granted the benefit in the order of assessment passed. To take such order in revision, the Commissioner of Income Tax issued notice on the ground that a sum of Rs.2.50 crores out of the total amount of donation, was not paid by the assessee. The assessee was covered under Minimum Alternative Tax Scheme and therefore, was assessed under MAT provisions. CIT (Appeals) passed the order of revision disallowing the claim of Rs.2.50 crores of donation. The assessee carried the matter in appeal before the Tribunal. Tribunal by the impugned judgment allowed the appeal and set aside the order of the Commissioner.

4. Perusal of the documents on record with the assistance of the learned counsel for the parties would show that the Tribunal proceeded to allow the appeal principally on two grounds. Firstly, that by virtue of the judgment of Supreme Court in case of **Apollo Tyres Ltd. Vs. Commissioner of Income-Tax**[1]**,** while computing the assessee's book profit under the MAT provision, the Assessing Officer cannot tinker with books of accounts duly audited. Secondly, that the Assessing Officer having carried out inquiries with respect to the genuineness of the donation, the Commissioner could not have exercised revisional powers. Quite apart from these observations of the Tribunal, independently we find that during the year under consideration the assessee had committed to a total donation of Rs.12.75 crores, out of which Rs.10.25 cores was actually donated during the period relevant to the assessment year in question. Out of the remaining Rs.2.50 crores Rs.2 crores was donated in the next year, but even before the date of closing of the account of the present year and remaining Rs.50 lakhs was donated shortly after that. In view of such facts, we do not see any reasons to interfere. We are

1 255 ITR 273

conscious that the decision of the Supreme Court in case of Apollo Tyres (supra) is referred to larger bench, however, this view has been followed consistently by this Court and we do not propose to depart from the same.

5. In the result, appeal is dismissed.

(SANDEEP K.SHINDE, J.) **(AKIL KURESHI,J.)**

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