IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 1708 of 2016

The Principal Commissioner of Income Tax-28 ..Appellant.

Vs

Shashikiran Giriraj Singh ..Respondent.

Mr. N.C. Mohanty, for the appellant.
Ms. Aasifa Khan for the Respondent.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 12TH FEBRUARY, 2019.

P.C. :

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

> "1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in concluding that there is no violation of Rule 46A of Income Tax Rules by the Commissioner of Income Tax (Appeals)"
>
> 2. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in confirming the order of CIT (A) in deleting the addition of rs.3,60,02,632/- under Section 40 (a) (ia) made by the Assessing Officer?"

2. The respondent-assessee is an individual and is engaged in transportation business in the name of M/s Mateshwari Transport, Flat No.A-62, Mahavir Market, Navi Mumbai. The Assessing Officer disallowed expenditure of Rs.3,60 Crores under Section 40 (a) (ia) of the Income-tax Act, 1961 on the ground that while making the payment to the truck owners for transportation charges tax at source was not deducted by the assessee. The assessee carried the matter in appeal and raised two contentions. Firstly, that he was not required to deduct the tax at source at all because the assessee was not subject to statutory audit under Section 44AB of the Act. His second contention was that none of the persons from whom he had hired trucks for transportation activity owned more than two trucks. He pointed out that necessary declarations from such persons in prescribed form were produced before the Income-tax Officer (TDS). The learned Commissioner (Appeals), the Assessing Officer personally verified the details submitted by the assessee including declarations in Form No. 151. The revenue carried the matter in appeal before the Tribunal. By the impugned judgment, the Tribunal dismissed revenue's appeal making the following observations:-

> “8. We have considered the submissions of the parties and perused the material available on record. As far as the allegation of the Department that learned Commissioner (Appeals) has

admitted additional evidence in violation of section 46A, we are of the view that the same is totally misconceived. On a perusal of the impugned order of the learned Commissioner (Appeals), it is patent and obvious that the Assessing Officer was given full opportunity to verify the evidence produced by the assessee and before deciding the issue, learned Commissioner (Appeals) also heard the opinion of the Assessing Officer on the additional evidences. Therefore, allegation of the Department and Assessing Officer was not given opportunity, in our view, cannot be accepted. We therefore, reject the grounds raised by the assessee violation of rule 46A. As far as merits of the addition are concerned, it is clear from the discussion made by the learned Commissioner (Appeals) that during the assessment proceedings, assessee's case was misrepresented by the learned Counsel for assessee and he did not furnish correct facts and information before the Assessing Officer. This is proved from the documentary evidences submitted before the first appellate authority, to show that not only the parties to whom payments were made are different but also the fact that entire payment made to the persons concerned are against declarations made in form No.151, requesting for non-deduction of tax. It is also a fact on record that assessee has furnished the declaration in form No.151 before the Income Tax Officer (TDS). In fact, the Assessing Officer, while appearing in person before the learned Commissioner (Appeals) has himself verified not only the details of payments made to the truck owners along with the declarations in form No.151, but also verified the same with reference to assessee's ledger account and bank statements and found the claim of the assessee to be correct. Therefore, when the claim of the assessee was found to be factually correct in the light of documentary evidences submitted, we do not see any reason why the addition made by the Assessing Officer should have been upheld. When the assessee as a deductor receives declaration in form No.151 from the payees, he is duty bound not to deduct tax at source. If the payees have made false declaration, it is for the Department to proceed against them, but assessee cannot be made liable for non-deduction of tax at source on such payments. Moreover, as could be seen, the assessee has discharged its obligation by furnishing the declarations received in form No. 151, before the Income Tax Officer (TDS). In that view of the matter, assessee had no obligation to deduct tax under the TDS provisions on the transport charges paid, consequently no disallowance under section 40 (a) (ia) of the Act can be made. In view of the aforesaid, we uphold the order of the learned Commissioner (Appeals) by dismissing the ground raised by the department".

3. Perusal of the documents on record with the assistance of learned counsel for the parties would show that the entire issue is based on appreciation of materials on record. The CIT (Appeals) held that since the truck owners whose services were hired for the transportation did not own more than two trucks and necessary declaration in this respect was also issued by them requesting the assessee not to deduct tax at source, disallowance under Section 40 (a)(ia) of the Act could have been made. No perversity is pointed out in the order impugned. In such factual findings, no question of law arises. The appeal is dismissed.

(B.P. COLABAWALLA, J.) **(AKIL KURESHI, J)**