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

INCOME TAX APPEAL NO.1480 OF 2016
ALONG WITH
INCOME TAX APPEAL NO.1655 OF 2016

Arvind Janardhan Pandey : Appellant.

versus

The Income Tax Officer, Central – II, : Respondent.

Mr. Vikram Nankani, Senior Counsel a/w Mr. Prithviraj Choudhari I/by Mr. Chirag Sancheti for the Appellant.

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

DATE : 05th MARCH 2019.

P.C.:

1 Both these appeals are filed by the assessee to challenge the common judgment of the Income Tax Appellate Tribunal. The question framed by the assessee would suggest that the appellant assessee is disputing the various additions made by the assessing officer in the hands of the assessee which were confirmed by the CIT (Appeals).

2 We have heard the learned Senior Counsel for the appellant assessee at considerable length. The facts that emerge from the Appeal is that the income tax authority had carried out search operation on various premises

of the assessee during which incriminating documents were impounded and seized. These documents included a diary. Statements of the assessee were also recorded. One Sonal Parag – the associate of the assessee was also subjected to search, during search a diary was found. These diaries contained entries in relation to the cash receipts and payments by the assessee. The assessee was engaged in the activity of securing admissions for students in various academic institutions upon payment of capitation fees in cash. The seized diaries contained various entries of payments allegedly made by the assessee to various educational institutions for such purpose. During search operation the assessee was confronted with the entries in the diaries. The assessee admitted several important aspects including the factum of payments made as suggested in the diary and that the assessee was not maintaining any books of account where such transactions were recorded.

3 The assessing officer during post search inquiries, sent several notices to the assessee and called for various details such as full name and address of the students on whose behalf such amount was collected and paid over to the educational institutions. In the order of assessment, the assessing officer has recorded that the assessee did not supply such information and had adopted non-co-operative approach. The assessing officer eventually carried out estimation of what would be the assessee's income out of such activity and made additions for both the assessment years which became subject matter of

the appeals before the appellate commissioner.

4 The appellate commissioner passed a detailed order. He appreciated the evidence on record and by a speaking order gave limited relief to the assessee and confirmed the rest of the additions made by the assessing officer. Thereupon the assessee filed further appeal before the Tribunal. The Tribunal by impugned order gave partial relief to the assessee. The Tribunal reduced the additions to 20% of the total cash payments by way of assessee's profit as against 25% estimated by Commissioner (Appeals) with respect to one of the years. In these appeals the assessee disputes the very foundation of the additions as well as estimation thereof.

5 Having heard the learned Senior Counsel for the appellant, we find that the entire issue is factual in nature. Two revenue authorities and the tribunal have concurrently come to the conclusion that the assessee had earned un-accounted income. Only question was of its estimation. The tribunal estimated the assessee's share of income at 20/25% of the total turn over. It may be that the Tribunal had adopted 25% commission for one year and 20% for another. However, that by itself would not have the order of the Tribunal wrong. Looking to the evidence on record, particularly the nature of investments made by the assessee in purchase of several immovable properties noted below around the same time, the fact that the assessee evaded sizable

unaccounted income from such activities cannot disputed.

6 For variety of reasons we do not find any question of law arises. Firstly the entire issue as noted is fact based. The findings of the three authorities are concurrent. We find that the additions are not based merely on the entries contained in the diaries collected from the assessee during search. The assessee during the course of recording of his statement had admitted to the relevant entries contained therein. For example, the revenue authority had confronted the assessee with the analysis of the entries in the diaries which showed that the total payments made by the assessee to the institutions or sub-brokers and agents came to Rs.2906.30 lakhs. The assesee admitted that such working out by the revenue authority was correct and that the same was made with his assistance. Thus, the assessee did not dispute the contents of that diary and in fact admitted that as shown in the diary he had made the payments to the colleges and sub-brokers to the tune of Rs.2906.30 lakhs. In a further question asking him to disclose his immovable assets, the assessee had stated that he had purchased office at Navi Mumbai in 2007, a house in Goa in April 2008, a house at Pune in 2008, two flats and a shop at Pune in 2008, two flats at Goa in 2007, a house in his mother's name at Goa in 2007, a house in his father's name at Raypur in 2007 and a plot of four and half acres at Goa in 2005.

7 When it is thus established that the assessee was engaged in the activity of ensuring admissions of students in educational institutions by paying illegal capitation fees and when it is further established that such payments made during two relevant assessment years came close to 2906.30 lakhs, the only question remains to be decided would be as to what would be the assessee's earning out of such dealings by way of his commission. In absence of the assessee bringing on record any material to enable the revenue authorities to estimate the same with any degree of accuracy, the revenue was left with no choice but to estimate the same on the basis of available material on record. What would be the calculation of percentage of amount that the assessee would have retained in himself, in such circumstances, would always be a matter of estimation. The conclusion of the Tribunal cannot be stated to be perverse. No question of law arises.

8 The Appeals are dismissed.

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