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

WRIT PETITION NO. 266 OF 2020

Pr. Commissioner of Income Tax-8,
Mumbai -20. ... Petitioner.

V/s.

Shree Sai Steel Industries India Pvt. Ltd., ... Respondent.

Mr. Sham Walve, Advocate a/w. Mr. Pritish Chatterjee for the Petitioner.

CORAM : UJJAL BHUYAN AND MILIND N. JADHAV,JJ.

DATE : FEBRUARY 14, 2020.

PC :

1 Heard Mr. Sham Walve, learned standing counsel Revenue for the Petitioner.

2 Principal Commissioner of Income Tax-8, Mumbai, Petitioner in this Petition filed under Article 226 of the Constitution of India, is assailing the order dated 05.07.2019 passed by the Income Tax Appellate Tribunal, “G” Bench, Mumbai (briefly, the Tribunal hereinafter), rejecting the Misc. Application filed by the Revenue.

3 Respondent is an income tax assessee. For the assessment year 2009-10, assessment order was passed on 27.02.2015 under section 143 (3) read with section 147 of the Income Tax Act, 1961 (briefly, "the Act" hereinafter).

4 In the assessment proceedings, Assessing Officer noticed certain bogus purchases and ultimately added the amount covered by the bogus purchases to the total income of the assessee. Assessee questioned such addition by filing appeal before the Commissioner of Income Tax (Appeals)-14, Mumbai, also referred to as the first appellate authority. The first appellate authority by the appellate order dated 18.05.2017, modified the assessment order by holding that the only profit derived out of the said tainted transactions should be assessed to tax. Accordingly, the profit out of such transaction was assessed at 12.5% which was treated as the suppressed profit element embedded in such purchases while directing deletion of the remaining amount.

5 Aggrieved by the said order of the first appellate authority, the assessee preferred further appeal before the Tribunal which was registered as ITA

No. 4576/Mum/2017. It appears that the Revenue also filed an appeal against the said order of the first appellate authority, limiting the addition to only the profit quotient, which was registered as ITA No. 5132/Mum/2017.

6 Though ideally both the appeals ought to have been taken up and heard together, in the instant case, the appeal of the assesee was taken up for consideration by the Tribunal. By the order dated 20.12.2017, Tribunal dismissed the appeal of the assessee by holding that Revenue is not entitled to bring the entire sale consideration to tax but only the profit attributable to the sale consideration alone. Tribunal noted that the first appellate authority after relying on various decisions restricted the dis-allowance at 12.5% of the tainted/ bogus purchases. While dismissing the appeal of the assessee, Tribunal recorded a finding that it did not find any illegality or infirmity in the order passed by the first appellate authority.

7 On the ground that Revenue's appeal was not heard by the Tribunal which remained pending, Misc. Application No. 88/Mum/ 2019 was filed on behalf of

the Revenue for recall of the order dated 20.12.2017 and for hearing both the appeals together.

8 Tribunal by the order dated 05.07.2019 took the view that such Misc. Application was beyond the scope of section 254(2) of the Act and accordingly, the Misc. Application was dismissed.

9 Hence the writ petition.

10 We have heard Shri Sham Walve, learned standing counsel Revenue for the Petitioner and perused the materials on record. We are of the considered view that when the Tribunal had dismissed the appeal of the assessee holding that there was no illegality or infirmity in the order passed by the first appellate authority which the Tribunal affirmed, by necessary implication it would mean that the appeal filed by the Revenue had become redundant inasmuch as it had challenged the same order of the first appellate authority which the Tribunal has affirmed. Therefore, not on the ground mentioned by the Tribunal in the impugned order dated 05.07.2019 but on the above ground, we feel that filing of the Misc. Application by the Revenue was wholly unwarranted.

11 Appeal filed by the Revenue stated to be pending before the Tribunal would be covered by the decision rendered by the Tribunal in the appeal of the assessee unless reversed in subsequent proceedings by the High Court.

12 Therefore, we do not find any merit in the Writ Petition.

13 Writ Petition is accordingly dismissed.

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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