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

INCOME TAX APPEAL NO. 1740 OF 2017

Principal Commissioner of Income Tax-31,
Bandra, Mumbai -51 ... Appellant.

V/s.

Mr. Rakesh Kumar Agarwal ...Respondent.

Mr. Arvind Pinto, Advocate for the Appellant.

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

DATE : JANUARY 22, 2020.

PC :

1 Heard Mr. Arvind Pinto, learned standing counsel Revenue for the Appellant.

2 This Appeal has been preferred by the Revenue under section 260-A of the Income Tax Act, 1961, assailing the legality and correctness of the order of the Income Tax Appellate Tribunal, Mumbai Bench “D”, Mumbai (Tribunal) dated 18.05.2016 passed in Income Tax Appeal No.2881/M/2015 for the assessment year 2010-11.

3 Short point for consideration in this Appeal is whether the Commissioner of Income Tax was justified in invoking his revisional jurisdiction under section 263 of the Income Tax Act, 1961 (briefly, “the Act” hereinafter). Tribunal held the same to be not justified and restored the initial assessment order of the Assessing Officer. Hence, this Appeal.

4 The Appeal has been preferred on the following three questions of law; stated to be substantial questions of law :

> (A) Whether in law and on the facts of the instant case, was the Tribunal justified in coming to a finding that the CIT was prevented from assuming jurisdiction under Section 263 of the Act, when the CIT in paragraph 4 of the order has held that the AO has failed to conduct a proper enquiry; as per Explanation 2 to Section 263 ?.
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> (B) Whether in law and on the facts of the instant case, the Tribunal was in error in coming to the finding that the issue relating to the sale price of land was not validly raised by the CIT; whereas the examination of the said issue, by the

directions of the CIT was to be done by the AO; in the context of the sale to a sister concern ?.

(C) Whether in law and on the facts of the instant case, was the Tribunal justified in concluding that the directions of the CIT to the AO to treat the amount of Rs. 6.85 lakhs was erroneous; since unexplained money is assessed under Section 69A and not as income from other sources ?.

5 Respondent is an assessee under the Act and subject to assessment jurisdiction of the Assessing Officer. Respondent is a builder and sells plots of land on short term as well as on long term basis. For the assessment year under consideration, Respondent filed return of income showing total income of Rs.7,47,25,768.00. During the assessment proceeding under section 143 (3) of the Act, the Assessing Officer inquired into the accounts of the assessee and analyzed the various claims made by the assessee. By the order dated 08.03.2013 the assessment proceedings were concluded by determining the total assessed income of the Respondent at Rs. 7,66,68,582.00.

6 However, Commissioner of Income Tax invoked jurisdiction under section 263 of the Act and in his order dated 16.03.2015 he recorded that the following discrepancies were noted from the assessment record and the assessment order :

> (i) The AO did not verify the reasons for sales of land at low rates during the A.Y. 2011-12 as compared to the A.Y. 2010-11. The rate during the A.Y.2020-11 is shown at Rs.3000/- per sq. mtr. While the same is shown at Rs.2000/- per sq.mtr. and Rs. 1674.39 per square meter for the A. Y. 2011-12. Hence, there was apparent possibility that sale rates were contrived. No enquiry was done on this issue.
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> (ii) The AO did not bring to tax unaccounted cash of Rs.6,85,000/- found during survey.
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> (iii) The AO also failed to verify the applicability of section 45(2).

7 Taking the view that the assessment order was erroneous inasmuch as it was prejudicial to the interest of revenue, Commissioner of Income Tax set

aside the assessment order under section 263 of the Act and directed the Assessing Officer to pass fresh order in the light of the discussions made in the order passed under section 263.

8 Aggrieved by the above, Respondent preferred appeal before the Tribunal, which was registered as I.T.A. No. 2881/M/2015. By the order dated 18.05.2016 Tribunal took the view that the Commissioner of Income Tax was not justified in invoking jurisdiction under section 263 of the Act and set aside the said order, allowing the appeal of the Respondent.

9 Out of three issues, the Tribunal held that the first issue did not result in any revenue loss and therefore, assumption of jurisdiction under section 263 of the Act was not justified.

10 On the second issue relating to non-disclosure of unaccounted cash of Rs. 6,85,000/-, Tribunal held in paragraph 10 as under :

> "10. Regarding the CIT's allegation regarding non-disclosure of additional income of Rs. 6,85,000/- the case of the assessee is that the said amount was already disclosed

in the return of income filed by the assessee. Bringing our attention to 7-11 of the paper book, which constitutes letter dated for 4/12/2012 by the assessee is to the Assessing Officer [JCIT 24 (1)], Mumbai, Ld. Counsel for the assessee mentioned that the said letter was furnished during assessment proceedings for the assessment year 2010-11 on 4.12.2012. Bringing our attention to item 1 of the said letter, Ld. Counsel submitted that there is a reference to the amount of Rs. 6.85 lakhs, the excess cash found during the survey action. Further, reading from the contents on page 42 (statement of total taxable income), Ld. Counsel submitted that same figure of Rs. 6.85 lakhs can be seen mentioned against ‘miscellaneous income’. The said sum of Rs. 6.85 lakhs is part of the gross total amount of Rs. 7,83,17,777/-. At the end of the assessment, the said amount was taxed by the Assessing Officer under head ‘income from other sources’. The same is evident on page 43 of the PB, where the amount of Rs. 6.85 is included in the gross total amount of Rs. 22,41,062.12. After hearing both the parties on this issue and on perusal of the said documents placed before us in light of written submissions made by the parties in the dispute, we are of the opinion that the CIT invalidly assumed jurisdiction under section 263 of the Act on this issue. Accordingly, the order of the AO cannot be considered erroneous insofar as prejudicial to the interest of the

> revenue. Therefore, findings of the CIT in this regard stand reversed.”.

10.1. From the above, it is seen that the assessee had disclosed in his return of income the aforesaid amount of Rs. 6.85 lakhs. At the end of the assessment, the said amount was taxed by the Assessing Officer under the head of “income from other sources”. Therefore, it was held by the Tribunal that the Commissioner of the Income Tax was not justified in treating the said amount as part of undisclosed income and assuming jurisdiction under section 263 when it was disclosed and assessed.

11 On the third issue, as regards applicability of section 45 (2), Tribunal noticed that Commissioner of Income Tax had accepted applicability of the said provision and therefore, it was held that there is no error in the order of the Assessing Officer.

12 Tribunal further held that inquiry was made by the Assessing Officer into disclosures made during the course of the assessment proceedings by the assessee. When the issue was enquired into by the Assessing Officer, the Commissioner ought not to have invoked jurisdiction under section 263 of the Act.

13 On a thorough consideration of the matter and considering the provisions of section 263 of the Act, we are of the view that the impugned order passed by the Tribunal does not suffer from any error or infirmity to warrant interference. No question of law, muchless any substantial question of law, arises from the said order.

14 There is no merit in this Appeal. Appeal is accordingly, dismissed. No cost.

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

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