IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL NO.09 OF 2020

The Pr. Commissioner of Income Tax -1, Nagpur
-vs-
Pankaj Chokhani, Nagpur, 544, Opp. D. N. College, Congress Nagar, Nagpur 440012

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri Anand Parchure, Advocate for Appellant.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.
DATE : September 18, 2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard Shri A. Parchure, learned counsel for the Revenue.

3. The Assessment Officer by his order dated 28/10/2016 with regard to assessment year 2009-2010 found that the respondent-assessee had failed to disclose correct and true information regarding short term capital loss on shares in his Income Tax Return. Amount of Rs.13,46,212/- was claimed as loss which was adjusted against business income. This according to the Assessment Officer was not permissible. He therefore initiated re-assessment proceedings under Section 148 of the Income Tax Act, 1961 (for short, the said Act). The assessee challenged that order by filing an appeal before the Commissioner of Income Tax (Appeals). In the appeal it was found that in the assessment proceedings under Section 143(3)

of the said Act the share transactions had been verified. Merely on the basis of the Auditor's report raising objections, notice under Section 148 of the said Act came to be issued. On finding that except the Audit Objection there was no other material before the Assessment Officer which could form the basis of "valid reason to believe", the re-opening of the proceedings was not justified. It was also observed that actual share transactions took place only on 13 days and for about 140 days the assessee was trading in Derivatives. In view thereof it was found that the initiation of proceedings by the Assessment Officer was not permissible. The Revenue then approached the Income Tax Appellate Tribunal which by the impugned order maintained the order passed by the Commissioner of Income Tax (Appeals). Hence this appeal.

4. It is urged by the learned counsel for the Revenue that re-assessment proceedings were not initiated merely because there was a change of opinion by the Assessment Officer. There was no reason to come to the conclusion that the exercise undertaken by the Assessment Officer was merely on the basis of Audit objections and hence not justified.

5. On hearing the learned counsel for the Revenue we find that the Commissioner of Income Tax (Appeals) has rightly found that except the Audit Objection there was no other material to show that the assessee had withheld any material information. The Assessment Officer has failed to refer to any such material which could be said to form the basis of a valid reason to believe that the income of the assessee had escaped

assessment. It is in this backdrop that even the Tribunal has found that the re-opening of the assessment was based merely on change of opinion and this was not permissible. Reference to CBDT Circular No.06/2016 in these facts was also justified.

In the light of the aforesaid reasons which are borne from the record we find that the order passed by the Assessment Officer has been rightly set aside. No substantial question of law arises for adjudication.

The Appeal is accordingly dismissed.

JUDGE **JUDGE**

Asmita