

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 971 OF 2017**

Pr. Commissioner of Income Tax-20

....Appellant

V/s.

Dhananjay Mishra

...Respondent

Mr. N. C. Mohanty for Appellant

Mr. Satish Mody a/w Ms Aasifa Khan for Respondent

**CORAM : K.R. SHRIRAM &
R. I. CHAGLA JJ**

DATED : 28th SEPTEMBER 2021

P.C. :

1 This appeal is filed impugning an order dated 7th October 2016 passed by Income Tax Appellate Tribunal (ITAT) whereby, the ITAT confirmed the order passed by CIT (Appeals) dismissing the appeal of the revenue. Mr. Mohanty states he is not pressing question no.6.1 but is pressing only question no.6.2 in the appeal. We find that no question of law arises and the question as framed in the appeal is also a question of fact and cannot be called a question of law.

2 The assessee was engaged in the business of marine contract and filed return of income for the relevant A.Y. 2010-2011 declaring the total income of Rs.57,11308/-. The Assessing Officer while assessing the return of income, observed that assessee has made certain purchases from persons who were identified as Hawala Traders by Sales Tax department, State of

Maharashtra, who used to issue bogus bills without delivery of goods. The Assessing Officer, therefore, made addition of Rs.72,60,177/- under Section 69C of the Income Tax Act 1961 (the said Act) on account of unexplained expenditure under Section 69C of the Act. The assessment was completed under Section 143(3) of the Act assessing a total income of Rs.1,29,71,484/-.

3 Aggrieved by this assessment order, respondent filed an appeal before CIT (Appeals), who deleted the entire addition. The CIT (Appeals) concluded that the assessee had given valid explanation with substantiating evidence in respect of cost incurred towards purchases required in the course of his business and in support of his contention, has filed relevant bank statements, challan copies etc. In the assessment order, the primary reliance is on affidavits filed by one Vinit A Jamsandekar and Rasiklal B Shah when Sales Tax investigated the affairs of those persons who were proprietors / partners of three concerns which were allegedly doing business of issuing bogus bills. Copies of those affidavits, though it is stated in the order as annexed thereto, has not been annexed to the order or filed in this appeal and Mr. Mody for respondent states they were never provided with copies of those affidavits. In fact, the CIT (Appeals) in his order has even recorded respondent's grievance that these affidavits were not provided to respondent nor any opportunity was given to defend his position or cross-examined those people.

4 The CIT (Appeals) has also recorded that even the fact that there were

unused material included closing stock worth Rs.1,00,88,102/-, etc., was even considered in the assessment order. Even the fact that respondent had paid Rs.25,62,560/- through the Bank L.C. to one of the parties allegedly doing business of issuing bogus bills, has also not been dealt with in the assessment order.

5 The department has impugned this order of CIT (Appeals) before ITAT, which also observed that Assessing Officer has relied upon third party statement without supplying it to the assessee or considered the closing stock or considered the fact that payments were made through banking channels including by way of letters of credit. Since none of those points were discussed in the assessment order, the ITAT concluded, that the Assessing Officer having not disputed the used material or disputed the stock of the assessee, it did not find any illegality or infirmity in the order of CIT (Appeals). In our view also the assessment order could not have been passed by the Assessing Officer without granting an opportunity to respondent to defend his position or cross-examine the two persons on whose affidavits, the Assessing Officer had relied upon to conclude that respondent had made certain purchases from those persons identified as Hawala Traders. The Assessing Officer also should have investigated further or should have dealt with in his assessment order as to why he was not accepting the explanation of respondent that he had paid in excess of Rs.25,62,560/- through the Bank L.C. to one of the parties allegedly doing business of issuing bogus bills.

6 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7 The appeal is devoid of merits and it is dismissed with no order as to costs.

(R. I. CHAGLA J)

(K.R. SHRIRAM, J.)