IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 456 OF 2018

Pr. Commissioner of Income Tax-33, Mumbai — Appellant

Versus

Vishal P. Mehta — Respondent

Mr. Akhileshwar Sharma, for Appellant.

Mr. Sameer G. Dalal with Ms. Rashmi Vyas, for Respondent.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

Dated : 30th SEPTEMBER 2022.

PER:- (VALMIKI SA MENEZES, J).

1. This is an appeal under section 260 (A) of the Income Tax Act, 1961 at the behest of the revenue, impugning order dated 5th October 2016 of the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT'), Mumbai Bench 'F' passed in ITA No. 5313/M/2013, on the following substantial question of law proposed by the revenue, which is reproduced as under:

> "4.a) Whether on the facts & in the circumstances of the case and in Law, the Hon'ble ITAT was justified in upholding the order of the CIT(A) deleting the addition of Rs.3,75,87,293/- made by the Assessing Officer treating the purchases amounting to Rs.3,75,87,293/- as unexplained expenditure under Section 69 C of the IT Act,1961."

2. The ITAT, by the impugned order dated 5th October 2016 confirms the order dated 9th May 2013 passed by the Commissioner of Income Tax (Appeals), in Appeal No. CIT (A)-35/DCIT-25(3)/ITA.164/2012-2013, which order disallows additions made by the Assessment Officer in order passed under Section 143(3) of the Income Tax Act, 1961 dated 28th December 2012. By the said order dated 28th December 2012, the Assessment Officer in a scrutiny case completed the assessment under the Provisions of Section 143 (3) of the Act making additions under Section 69 C of the Act, treating certain alleged purchases made by the assessee-respondent herein, aggregating to Rs.3,75,87,293/- and treated the same as unexplained expenditure for the assessment year 2010-2011, and consequently assessing the same to tax.

3. From the substantial question of law proposed by the revenue, the issue for our consideration is 'whether the additions

made by the Assessing Officer to the income of the assessee, invoking the Provision of section 69 C of the Act, as unexplained expenditures were sustainable at law'.

From a perusal of the assessment order, it appears that during the assessment proceedings, the assessee was asked to furnish a list of the persons from whom purchases had been made by him; further, it appears that he furnished his stock book and various other documents to the Assessing Officer. According to the assessment order, the official website of the Sales Tax Department, Government Of Maharashtra published names of five parties from whom the assessee is alleged to have made purchases the said five parties being termed as suspicious dealers, who indulge in issuing bills without any goods or materials being actual sold, for a commission charge by them. Based upon this information, the assessee was asked to show cause why the alleged purchases from the said five suspicious parties, aggregating to Rs. 3,75,87,293/- should not be treated as his unexplained expenditure and charge to Tax.

4. From the order of the Assessing Officer, it further transpired that the respondent participated in the assessment

proceedings and filed his reply to the show cause notice, wherein he has specifically taken a defence, that all the payments to the five parties referred to in the show cause notice, from whom he had made purchases, were made by account payee Cheques/RTGS only, through genuine banking channels. The assessee, who deal in sale of Iron and Steel Sheets, as the proprietor of M/s Ispat Steel Supplies, further filed a chart before the Assessing Officer reflecting all the payments made by him through banking channels, specifying the details of the dates of cheques or RTGS transactions, the amount of each transaction and the transaction number; he has also submitted Stock Register maintained by him which reflected the purchases of the goods from the said parties and the subsequent sales made by the assessee to third parties.

5. After considering the reply of the assessee and the material placed by him on record in answer to the show cause notice, the Assessing Officer passed assessment order dated 28th December 2012 rejecting the contention of the assessee and concluded that the transactions are not supported in the form of lorry receipts or delivery challans. He further concluded that the affidavit produced by the five suspicious dealers were not sufficiently

rebutted by the assessee and consequently passed an assessment order under section 143 (3) of the Act making additions to the income of the assessee in terms of section 69 C of the Act for the amount of Rs.3,75,87,293/- as additional income, levying tax thereon and consequent penalties.

6. The respondent had challenged the Assessing Officer's order in appeal before the Commissioner of Income Tax, Mumbai, who, by its order dated 9th May 2013 has considered all the material placed by the assessee along with his reply, before the Assessing Officer and has come to a specific finding of fact, to the effect that the transactions by which the assessee had produced the goods were genuine, supported by proof of payment made through proper banking channels; Commissioner of Income Tax has also considered the fact that the reliance on the affidavits of the suspicious suppliers was misplaced and does not constitute evidence, more so in the light of the fact that assessee was not given any opportunity to cross-examine the affiants / witnesses. In such, no reliance could be placed on such material which does not constitute evidence under the Indian Evidence Act. The Commissioner of Income Tax has further concluded that assessee had also produced on record to

prove the genuineness of his case, the stock register maintained by him, clearly reflecting the purchases of goods from the parties and subsequent sales made in the course of his business. The Commissioner of Income Tax has held that merely because the assessee has not been able to produce the relevant parties, the amount spent on purchases from the said parties cannot be disallowed. Consequently the Commissioner of Income Tax allowed the appeal, after arrived at the specific finding that the assessee has established the genuineness of these purchases. It is a fact on record that the Assessing Officer has not doubted the sales effected by the assessee and accordingly set aside the order passed by the Assessing Officer to the extent of the additions made by him.

7. In an appeal filed by the revenue before the ITAT, the Tribunal, after reassessing all the material on record before the Assessing Officer has arrived at concurrent findings to those arrived at by the Commissioner of Income Tax, and specifically held that without causing any further enquires in respect of the said purchases, the Assessing Officer cannot make the addition under section 69 C of the Act by merely relying on information obtained from the Sales Tax Department. The ITAT has further concurrently

held on fact that the statement/affidavit of a third party, wherein the assessee was not named or afforded opportunity of cross examination of the affiant, was inadmissible as evidence against the assessee; it further held that mere reliance by the Assessing Officer on information obtained from the sales tax department or statement of a third party before the sales tax department, without affording the assessee adequate opportunity to cross-examine that person would not suffice, to treat the purchases as bogus and make addition under section 69 C of the Act.

Thus, we find that there are concurrent findings of fact in issues by the Commissioner of Income Tax and the ITAT.

8. We have heard learned counsel, Mr. Sharma for the appellant and Mr. Dalal for the respondent. We consider the submission made before us in the appeal.

9. For easy reference the provisions of Section 69 C of the Act are extracted hereunder:

> "69 C : Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by expenditure or part thereof, as the case may be, may be deemed to be the income

of the assessee for such financial year:

Provided that, notwithstanding anything contained in any other provisions of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

10. The above provisions contain a deeming provisions whereby if the assessee increase any expenditure in the relevant previous year, but does not offer any explanation about a source of such expenditure, such expenditure is deemed to be his income and shall not be allowed as a deduction under that head.

11. Learned counsel for the appellant argues before us that the findings of fact arrived at by the Commissioner of Income Tax which are concurrently upheld by the ITAT as perverse and without considering the material placed by the assessee before the Assessing Officer in the right perspective. He further argues that the burden was on the assessee to produce lorry receipts or delivery challans of material supplied and purchased by the assess from the suspicious vendors and in the absence of the assessee placing before the Assessing Officer such material, the conclusions, on fact arrived at by the Assessing Officer are well within the provisions of section 69C of the Act.

12. Per contra, the learned counsel for the respondent supports the concurrent findings of fact arrived at by the Commissioner of Income Tax and ITAT, which he submits, were correctly arrived at on the basis of documentary evidence produced by the assessee. Learned counsel for the respondent cited before us a judgment of Division Bench of this Court in the case of ***Principal Commissioner of Income Tax vs. Vaman International (P) Ltd***[1] to support his contention that in light of the concurrent findings of fact arrived at by two authorities below, after considering the material evidence to show that the purchases made by the assessee were genuine, this Court ought not to exercise jurisdiction vested in it under the Provisions of section 260 A of the Income Tax Act.

13. We have considered the rival submissions made by the counsel for the parties and gone through the records before us.

14. This Court in the case of **Principal Commissioner of Income Tax** (Supra) considering the provisions of section 69 C of the Act, which reads as follows:-

> "16. The first appellate authority while deleting the addition made by the AO under s. 69 C held that AO did not doubt the sales and stock records

1 (2020) 422 ITR 520 (Bom)

maintained by the assessee. By submitting confirmation letters, copies of invoices, bank statement, payment order, payment by account payee cheques etc. assessee had proved that sale and purchases had taken place. By highlighting the fact that all the payments against the purchases were made through banking channel by way of account payee cheques, the first appellate authority held that source of expenditure was fully established by the assessee beyond any doubt. He has further recorded that during appellate proceedings the assessee had furnished complete quantitative details of the items of goods purchased during the year under consideration and their corresponding sales."

Thereafter, on considering the order passed by the Tribunal and noting that the Tribunal has arrived at concurrent findings with ones arrived at by the Commissioner of Income Tax, to the effect that the purchases made by the assesse could not be doubted on the basis of production of purchase bills as well as invoices, challan-cum tax invoices in respect of purchases and extracts of stock ledgers showing entry/exit of materials has concluded in paras 18 and 19, as under :

"18. We are in agreement with the view expressed by

> the Tribunal. In fact, Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities.
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> 19. This Court in the case of CIT Vs. *Nijunj Eximp Enterprises (P) Ltd. (2015) 372 ITR 619 (Bom);* wherein an identical fact situation arose did not interfere with the order passed by the Tribunal and held that no substantial question of law arose from such order. It was held that merely because the suppliers had not appeared before the AO, no conclusion could be arrived at that the purchases were not made by the assessee."

15. In our opinion, the CIT as well as ITAT have concurrently concluded, on a matter of fact that the transactions entered into by the assessee were genuine, supported by material such as stock entries and payments made through cheques through proper banking channels. Both these authorities have concurrently concluded that the assessee had made purchases materials and reflected the same materials to various authorities in a Stock Register. We see no reason to conclude otherwise and accordingly find no infirmity with findings and conclusions arrived at by the CIT or with the concurrent view taken by the Tribunal on this matter. The judgment rendered in *Principal Commissioner of Income Tax* (supra) applies in all vigor to the facts of the present case. No

substantial question of law as envisaged under section 260 (A) of the Act arises in the present matter. Accordingly, we dismiss the appeal.

16. Appeal is dismissed with no order as to costs.

(VALMIKI SA MENEZES, J) **(DHIRAJ SINGH THAKUR, J)**