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

INCOME TAX APPEAL NO. 1246 OF 2011

M/s. Monika India .. Appellant.
V/s.
The Income Tax Officer-Ward 12(2)(1) .. Respondent.

Mr. S. P. Goyal, Partner of Appellant appearing-in-person.
Mr. P. C. Chhotrary, for the Respondent.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 31st AUGUST, 2015.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 26th March, 2010 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Year 1996-97.

2 The Appellant is represented-in-person i.e. by partner of the Appellant-firm. Although numerous questions of law are proposed by the Appellant for our consideration the basic issue which has been raised is as under:-

> *" Whether the Tribunal after upholding the contention of the Appellant that the orders of the Assessing Officer & Commissioner of Income Tax (Appeals)[CIT(A)] were passed in breach of the natural justice in the absence of the cross examination, is correct in sustaining the orders on the basis of other circumstances?"*

3 The Appellant is a partnership firm, engaged in trading in items like raw wool, synthetic waste and acrylic fiber. For the subject

Assessment Year, the Respondent-Assessee filed its return of income, declaring a loss of Rs.58.81 lakhs. During the course of the assessment proceedings, the Assessing Officer observed that the Respondent-Assessee had claimed a loss of Rs.43.45 lakhs in respect of goods purchased for Rs.2.02 Crores. The Assessing Officer observed that raw wool was purchased at the rate of Rs.210, Rs.230 to 251/- per k.g. and sold at the rate of Rs.127 to 137 or 165/- per k.g. An explanation was sought for by the Assessing Officer. The Respondent-Assessee explained that price of raw wool crashed, which led to the sale at a loss. However, enquiry from individual buyers was not possible as the Assessing Officer found that most of the sales by the Respondent-Assessee was in cash for consideration of less than Rs.10,000/-. In the result, the Assessing Officer felt it necessary to issue a commission to the Commissionerate at Ludhiana to examine the persons who had admittedly sold raw wool to the Respondent-Assessee to find out whether or not there was a crash in the price of raw wool leading to fall in price. The three persons examined on Commission indicated that there was in fact no fall in price of raw wool during the period relevant to the subject Assessment Year.

4 In addition, the Assessing Officer also observed and recorded the fact that the most of the sales were in cash. Hence, no enquiry could be made as the person to whom the sales were made as they were not traceable. The explanation offered by the Respondent-Assessee that raw wool was purchased at pre-fixed prices from M/s. Suvidha Wools Mills, was found not believable. In these circumstances, he relied upon various surrounding circumstances such as sales made by a sister concern of the Respondent-Assessee - Canon Steels Pvt. Ltd. to conclude that there was

no crash in the market, warranting a loss. The Assessing Officer also noted the fact that it was the Assessee's case that it was in the business of selling raw wool in retail. This would requires workers to make small lots of 60 to 70 kg of raw wool. However, this was also not found believable as no amount on account of salary to employees and labour charges etc was debited to the Profit & Loss Account.

5 The Assessing Officer, thus concluded not only on the basis of the statements made by the three individuals to whom the Commission was issued but also on the basis of examination of other evidence that the loss claimed was not genuine.

6 In appeal, the CIT(A) confirmed the order of the Assessing Officer after having recorded the fact that the persons who gave statements before the Commissionerate at Ludhiana could not be produced for cross examination. However, on examination of other circumstances, the CIT(A) concluded against the Respondent-Assessee as under:-

(a) No agreement either written or oral with M/s. Suvidha Woolen Mills to supply raw wool at a future date at an agreed rate;

(b) Assessee was booking losses year after year merely to set off the same against interest income. This is not normal business conduct;

(c) Most sales in cash and at a price of less than Rs.10,000/- each for lots of Raw Cotton of 60 to 70 kgs. without evidencing any expenditure on employees/ workers to make saleable lots in retail; and

(d) Not established the purchase price in March 1996 was Rs. 210/- per kg.

In view of all the aforesaid circumstances, the disallowance of loss by the Assessing Officer was upheld by the CIT(A).

7 On further appeal, the Tribunal by the impugned order accepted the Respondent's appeal before it to the extent the order of the Assessing Officer and the CIT(A) placed reliance upon the statements of the three persons made to the Commissionerate at Ludhiana without being available for cross examination. This was not permissible as being in breach of natural justice. However, after holding the above, the impugned order proceeds to consider the other evidence on record to examine whether or not the disallowance of loss by the lower authority could be sustained even after ignoring the statements of persons who were not offered for the cross examination. The impugned order found that both the Assessing Officer and the CIT(A) had on the basis of other evidences and surrounding circumstances as set out above, concluded that loss claimed, was not genuine. The impugned order also relied upon the dictum set out by the Apex Court in ***CIT v/s. Durga Prasad More 82 ITR 540*** and ***Sumati Dayal v/s. CIT 214 ITR 801*** that taxing authorities are entitled to look at the surrounding circumstances to find out the reality of the affairs on the test of human probabilities (de hors the evidence recorded on commission). This is so, as observed by the Apex Court "apparent being not real." In the circumstances, it concluded that the loss was not genuine.

8 The finding of fact recorded by the impugned order is not shown to be perverse and/or arbitrary. It is a possible view in the context

of facts arising in this case for consideration. Thus, the question as proposed for our consideration does not give rise to any substantial question of law. Accordingly, we see no reason to entertain the present Appeal.

9 **Appeal dismissed.** No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**