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

INCOME TAX APPEAL NO. 38 OF 2013

The Commissioner of Income Tax-3 .. Appellant.
V/s.
M/s. Videocon International Ltd. .. Respondent.

Mr. Vimal Gupta, Sr. Advocate i/b. Mr. S. V. Walve, for the Appellant.
Mr. F. V. Irani with Ms. Neeta Rajda i/b. DSR Associates, for the Respondent.

CORAM: M.S.SANKLECHA, & G.S.KULKARNI, JJ.

DATE : 13th JANUARY, 2015.

P.C:-

This appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 23rd December, 2011 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 1994-95.

2 The following question of law has been raised for our consideration:-

> *" Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs.2 Crores made by the Assessing Officer u/s. 69C of the Income Tax Act?"*

3 During the course of the assessment proceedings, the Assessing Officer placed reliance upon information received that the

Respondent-Assessee had paid a sum of Rs.2 Crores to Captain Satish Sharma, the then Minister of Petroleum and Natural Gas. This information was on the basis of a statement made by the Additional Private Secretary to Captain Satish Sharma before enquiry officer in JMM MPs Bribery's case. On the basis of the above statement, the amount of Rs.2 Crores was added to the Respondent-Assessee's income as un-explained expenditure under Section 69C of the Act by the order dated 30th March, 2006 of the Assessing Officer. This notwithstanding the Respondent-Assessee denying having made any payment to Captain Satish Sharma.

4 On Appeal by the Respondent-Revenue, the Commissioner of Income Tax (Appeals) by order dated 31st March, 2008 allowed the appeal. This after recording the fact that the copies of the statement being relied upon by the Revenue were not furnished in full to the Respondent-Assessee. The basis of allowing the appeal was on consideration of all facts and the decision of the Delhi High Court in JMM MPs Bribery, holding that the statement of additional Private Secretary to Captain Satish Sharma as well as the statement of Shri Shailendra Mahato were not reliable.

5 Being aggrieved, the Revenue preferred an appeal to the Tribunal. By the impugned order dated 23rd December, 2011, the Tribunal held that the entire basis of the addition was the statement of the Additional Private Secretary to Captain Satish Sharma and that of Shailendra Mahato were found to be un-reliable by the Delhi High Court in JMM MPs Bribery case. The impugned order also notes that in an identical issue arising in the case of Essar Oil Ltd. (ITA no.5141/MUM/2003), it was found that on cross examination, the

Additional Private Secretary of Captain Satish Sharma retracted his earlier statement. Thus, following its decision in Essar Oil Ltd. (supra), the order of CIT(A) dated 31st March, 2008 in the Respondent-Assessee's case, was upheld.

6 The grievance of Appellant-Revenue with the impugned order is that once a charge-sheet had been filed, alleging payment of Rs.2 Crores by the Respondent-Assesseee to Captain Satish Sharma, would by itself establish the expenditure. The non-explanation of the source of the above amounts results in application of Section 69C of the Act. Therefore, the addition made by the Assessing Officer ought to have been sustained.

7 We find that so far as alleged payment of Rs.2 Crores is concerned, the same on facts has been negatived by the CIT(A) and the Tribunal. The finding is not shown to be perverse as we find that the findings of the CIT(A) and the Tribunal are based on evidence and the decision of the Delhi High Court in JMM MPs Bribery (supra). The filing of charge-sheet by itself does not establish the payment of Rs.2 Crores by the Respondent-Assessee to Captain Satish Sharma and particularly when the proceedings itself resulted in acquittal of Captain Satish Sharma by the Trial Court. The State then preferred a Revision Application against the order of acquittal and the Delhi High Court in Criminal Revision Petition No. 33 of 2001 reported in P. V. Narasimha Rao v/s. State – 2002 Criminal Law Journal -2401 dismissed the State's application. Thus, there being concurrent findings of fact which are not shown to be perverse, no substantial question of law arises.

8 It may also be pointed out that we are informed that the appeal filed by the Revenue against the order of Essar Oils (supra) came

to be dismissed on account of non-removal of office objections. Revenue has not taken any steps as yet to restore that appeal.

9 Be that as it may, in the present case, there being concurrent finding of fact holding that no amount of Rs.2 Crores or any part thereof was paid by the Respondent-Assessee to Captain Satish Sharma. No occasion to invoke Section 69C of the Act can arise.

10 Accordingly, **Appeal is dismissed**. No order as to costs.

(G.S.KULKARNI,J.) **(M.S.SANKLECHA,J.)**