

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

INCOME TAX APPEAL NO. 1322 OF 2010

M/s. Laxmi Ventures (Bombay) Pvt. Ltd.]
36/40, Mahalaxmi Bridge, Arcade,]
Mahalaxmi, Mumbai – 400 034] **..Appellant**

Versus

The Deputy Commissioner of Income Tax,]
Circle 5(2), Aaykar Bhavan,]
Mumbai – 400 020.] **..Respondent**

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Mr. Murlidhar alongwith Mr. Darshan Mehta i/b M/s.
Dhruve Liladhar & Co. for the Appellant.
Mr. Arvind Pinto for the Respondent.

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**CORAM : S.J. VAZIFDAR &
M.S. SANKLECHA, JJ.**

DATED : 30th August, 2012.

JUDGMENT (PER M.S.SANKLECHA,J):

This appeal under Section 260A of the Income Tax Act, 1961 ('the Act') challenges the order dated 04.08.2009 passed by the Income Tax Appellate Tribunal ('the Tribunal') in Income Tax Appeal No. 2173/Mum/02 relating to the assessment year 1998-1999.

2 After having filed the present appeal, the appellant had on 11.01.2010 moved the Tribunal with a Miscellaneous Application under Section 254(2) of the Act seeking to rectify the order dated 04.08.2009 as according to them certain evidence and submissions had not been considered leading to miscarriage of justice. This Miscellaneous Application was dismissed by the Tribunal on 25.05.2011. The Appellant was allowed to amend the present appeal to bring on record the subsequent events i.e. Miscellaneous Application dated 11.01,2010 and the order of the Tribunal dated 25.05.2011.

3 The appellant has formulated the following questions of law for the consideration of this court.

- 1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in refusing to remand the matter back to the Respondent only on the ground that the matter was very old even though on other issues arising in the same Appeal it had remanded the matter to the Respondent?
- 2) Whether on the facts and in the

circumstances of the case, the Tribunal ought to have held that as the amounts of TDS reflected in the alleged fake TDS certificates did not stand debited in the tax deducted at source account in the balance sheet of the Appellant, there was no material on the basis of which it could be assumed that the amount of Rs.19,22,817/- represented the income of the Appellant for the year ended 31st March, 1998?

3) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that as the said two TDS certificates issued by M/s. Supreme Industries and M/s. Dalal Auto Cast were fake, the said certificates ought to be ignored in their totality and could not form the basis of making any addition to the income of the Appellant?

4) Whether on the facts and circumstances of the case and in law, the Tribunal finding is perverse and contrary to the material on record in the light of the evidence produced by the Appellant before the Tribunal?

3 Brief facts leading this appeal are as under:

a) The appellant carries on business at Bhilai, Faridabad and Mumbai. On 30.11.1998, the Appellant filed

its return of income for the assessment year 1998-1999 declaring a total income of Rs.8.06 lacs.

- b) During the assessment proceedings, the Assessing Officer found that the receipts of income on account of labour charges by Faridabad division was shown at Rs.35.67 lacs in the return of income. However, as per the Tax Deducted at Source(TDS) certificates attached to the return of income, the amount received on account of labour charges by Faridabad division was Rs.60.12lacs. Consequently, the Assessing Officer called upon the appellant to explain the discrepancy and non disclosure of Rs.21.15lacs income receipts by Faridabad branch. The appellant sought time to explain the

difference, but, failed to do so. Consequently, the Assessing Officer rejected the books of account of the appellant under Section 145(3) of the Act and proceeded to complete the assessment under Section 144 of the Act as Best Judgment Assessment. This resulted in adding an income of Rs.19.22lacs to the appellant's income for the assessment year 1998-99.

- c) In first Appeal, the Commissioner of Income Tax (Appeals) by an order dated 25.02.2002 dismissed the appellant's appeal. The Commissioner of Income Tax (Appeals) held that TDS certificates indicated that the amounts had been paid to the appellant during the assessment year 1998-1999. However, the income

reflected in some of the TDS certificates had not been disclosed by the appellant in its return of income. Nor was the appellant able to explain the discrepancy in having furnished TDS certificates to claim credit of tax paid, but having failed to show the income in its return of income.

- d) By an order dated 04.08.2009, the Tribunal dismissed the appellant's appeal. Before the Tribunal, the appellant contended that the TDS certificates which were attached along with the returns were fake certificates, as the companies which had issued the certificates were not traceable. It was also contended that there was some dispute between the Directors of the Company and the

matter was pending before the Company Law Board. In the above circumstances the appellant prayed that the matter be remanded to the Assessing Officer, so as to issue summons to the parties who had issued the TDS certificates. The Tribunal did not accept the submissions of the appellant and held that the TDS certificates were enclosed by the appellant along with its return of income, which were duly signed by its Directors. Consequently, the Tribunal found no infirmity in the order of the Assessing Officer and the Commissioner of Income Tax (Appeals) adding an amount of Rs.19.22 lacs to the income of the appellant.

However, in respect of the claim for depreciation amounting to Rs.16.08 lacs, the Tribunal restored the matter to the file of the Assessing Officer, to enable the appellant to produce necessary bills to support its claim with regard to purchases of assets during the assessment year 1998-1999.

- e) Being aggrieved, the appellant filed this appeal on 17.12.2009 under Section 260A of the Act. Thereafter, on 11.01.2010, the appellant filed Miscellaneous Application under Section 254(2) of the Act seeking to rectify the Order dated 04.08.2009 to bring on record various evidence and submissions made during the course of the hearing before the Tribunal at the

hearing on 29.06.2009. In the Miscellaneous Application, the appellant referred to the following evidence, which according to them was relied upon during the hearing before the Tribunal:

- a) Petition before Company Law Board;
- b) Affidavit dated 06.05.2008 of Mr. Vinay Walia;
- c) Details of T.D.S. (Faridabad branch) as per ledger;
- d) Details of T.D.S. in last 3 years.

And

- e) Copy of Account of the assessee in the books of Dalal Auto Cast for assessment year 1998-99.
- g) On 25.05.2011, the Tribunal dismissed the Miscellenous

application holding that so far as the issue of TDS certificates are concerned, nothing had been submitted before the Bench, during the course of hearing, on 29.06.2009 leading to the order dated 04.08.2009. The Tribunal also held that as the appellant had already filed an appeal against the order dated 04.08.2009 to this court and the same is pending, it would not be appropriate for them to re-adjudicate the matter.

4 So far as, questions of law at Sr. No.1 to 3 above are concerned, the same are questions of fact. All three Authorities under the Act had come to the conclusion that the appellant had sought higher deduction of tax at source by annexing TDS certificates and not reflecting the income as shown in the TDS certificates in its return of income.

The Tribunal on consideration of all facts had come to the conclusion that remanding the matter to the Assessing Officer would not serve any purpose, as the appellant had consciously claimed credit of tax deduction on the basis of the TDS certificates and even enclosed the same along with the return of income, but failed to show it, as a part of the income. This entire excess income of Rs.19.22lacs would have not come to light but for the Assessing officer verifying each TDS Certificate. The return of income was duly signed and verified by the Directors of the company. In view of the above facts, the Tribunal concluded that no useful purpose would be served by remanding the matter back to the Assessing Officer.

5 On the basis of the record these findings were, to say the least reasonable. Indeed in view of the TDS certificates and the return of income filed the conclusion of the Tribunal were justified. In

fact realising this, the appellant sought to explain the same by relying upon certain circumstances. The findings and conclusion of the Tribunal cannot be said to be perverse.

6 So far as question no.4 is concerned, there is a clear finding of the Tribunal in its order dated 25.05.2011 that the documents alleged to have been produced before the Tribunal during the course of the hearing on 29.06.2009, leading to the order dated 04.08.2009 were in fact not produced. This is a finding of fact. There is no reason for us to assume that the facts stated in the order of the Tribunal to the effect that nothing has been submitted before the Bench with regard to the TDS certificates during the course of hearing on 29.06.2009 leading to the Order dated 04.08.2009 is not correct. In the circumstance, no question of law arises.

7 In view of the above, the appeal is

dismissed on all four questions of law, as the same do not give rise to any substantial question of law.

8 The Appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

(S.J. VAZIFDAR, J.)