

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

INCOME TAX APPEAL NO. 1550 OF 2016

The Pr. Commissioner of Income Tax
Central-1 .. Appellant.
v/s.
Hassan Ali Khan .. Respondent.

Mr. Suresh Kumar, for the Appellant.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 18th FEBRUARY, 2019.**

P.C:-

The Revenue is in Appeal against the Judgment of the Income Tax Appellate Tribunal (in short “the Tribunal”), raising the following questions for our consideration:-

“(a) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting addition of Rs.8,57,00,000/- on account of unexplained income appearing in the name of Pan Asian Distribution Ltd by not appreciating the document containing the details was seized during the course of search and therefore the presumptions envisaged in the provisions of Section 132(4A) as well as provision of Section 292C are squarely applicable in the case of the assessee and consequently the AO was justified in treating the said amount as the assessee's unexplained income?

(b) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in restricting the addition on account of unexplained expenditure in lifestyle related expenses

from Rs.28.50 lacs as admitted by the assessee in his statement recorded on oath u/s. 132(4) of the Act to Rs.7.50 lacs, without appreciating the fact that the assessee had failed to furnish any evidence to the contrary either before the Assessing Officer or the CIT(A) or before the Tribunal itself?”

2 The Respondent-Assessee is an individual. Appeal relates to Assessment Year 2000-01. During the search operation at the residence of one Kashinath Tapuriah, three bank drafts of Union Bank of Switzerland were found and seized. One bank draft was for payment of 2 Million US\$ drawn in favour of one -Pan Asian Distribution Ltd, payable at Singapore. Another draft was for a sum of Rs.2 Million US\$ drawn in favour of the the Respondent-Assessee, payable in India. The Assessing Officer added Indian Rupees, equivalent of such sums in the hands of the Assessee. The issue eventually reached to the Tribunal. The Tribunal by the impugned judgment, confirmed the addition in relation to bank draft in the name of the Assessee, whereas addition in connection with the bank draft in favour of the Pan Asian Distribution Ltd., was deleted.

3 Having heard the learned Counsel for the parties and having perused the documents on record, we notice that, the search was not conducted at the premises of the Assessee but at the residence of the third party from where, the bank drafts were recovered. The draft in question did not contain name of the Assessee as payee but of Pan Asian Distribution Ltd. It was in this back-ground that, the Tribunal refused to accept the Revenue's contention that, the Assessee was beneficiary of this payment. The Tribunal noted that, there was no material on record to suggest that, such a company did not exist nor there was any evidence of any link between the said Company and the Assessee. The Tribunal,

therefore, observed that the presumption as referred to in Section 292C of the Income Tax Act, 1961 (in short “the Act”) in such a case would not arise. Entire issue is thus factual.

4 Counsel for the Revenue, however, vehemently contended that, during the search operation, Revenue Authorities had found a document in the nature of letter from the bank, pointing out that, the last date for presentation of the draft in question had expired and that the Assessee should get the draft re-validated. He submitted that, no such letter would have been written by the bank, unless the assessee was the beneficiary of the payments.

5 In our opinion, mere letter from the bank would not established a relation between the payable amount and the assessee, particularly when the draft was in favour of a limited Company. As recorded, documents were not seized from the possession of the Assessee but during the raid from a third party. No question of law, therefore arises.

6 Question 2 relates to addition of the amount of the Assessee's un-explained expenditure. The Tribunal considered the material on record and reduced these additions made by the Assessing Officer under this head. The entire issue is factual.

7 In the result, **Appeal dismissed.**

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)