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

INCOME TAX APPEAL NO.1386 OF 2015

M/s. R. Natvarlal Parekh .. Appellant.
v/s.
I.T.O.-15(1)(4), Mumbai & Anr. .. Respondents.

Mr. K.Gopal with Mr. Tanmay Phadke i/by Jitendra Singh, Advocates for Appellant.
Mr. P. C. Chhotaray, for the Appellant.

**CORAM: M.S.SANKLECHA &**
**SANDEEP K. SHINDE, JJ.**
**DATE : 11th June, 2018.**

**P.C:-**

This is an appeal under Section 260A of the Income Tax Act, 1961('Act') challenging the order of the Income Tax Appellate Tribunal ('Tribunal') dated 12.2.2015. This Appeal relates to Assessment Year 2003-04.

2 The Appellant/Assessee urges the following questions of law for our consideration:

> "A. *Whether the Appellate Tribunal is justified in law in upholding the action of Respondent No.1 in treating advance of Rs.36,26,468/- received by the Appellant from purchasers as unexplained cash credit under Section 68 of the Act which were subsequently returned ?*
>
> *B. Whether in the facts and the circumstances of the case, and in law, the order of the Tribunal is perverse as it is based on irrelevant and erroneous considerations while ignoring material*

*and relevant considerations and, as such, is liable to be quashed ?"*

3 The Assessee-firm works as commission agent for sale of yarn manufactured by M/s. Reliance Industries Ltd. It procures yarn from Reliance Industries Ltd. and sells it out to various customers on behalf of the company. During the course of the assessment proceedings, the Assessing Officer noted that there was huge variation in the closing balance in bank statement and the debit balance in its books of Accounts. Thus, the assessee was called upon to furnish bank reconciliation statement. The Assessing Officer noted that cheques were issued in March, 2003 and cleared only in September, 2003. Thus, assessee was called upon to explain nature of the above transactions entered with each of the parties where the cheques were issued in March, 2003 exceed Rs.50,000/-. The Appellant explained that the above amounts represented advances received from dealers of yarn, to whom the supply of yarn could not be made in view of objections of M/s. Reliance Industries Ltd. However, in view of the increase in price, the dealers refused to take back the amounts. Thus, the delay in clearance of the cheques. Thereafter, on 10.3.2006 the assesse filed a letter giving details of the parties from whom advances were received. However, the Assessing Officer noted that the address and PAN of parties from whom amounts were received were not

furnished. The Assessing Officer did not accept the explanation of the genuineness of these transactions and made addition of Rs.36.77 Lakhs in respect of the advances alleged to be received from 22 parties as unexplained cash credit under Section 68 of the Act.

4 Being aggrieved the assessee filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. Remand report was called by the CIT(A). Thereafter, on consideration of the remand report as well as explanation of the Appellant-Assessee, the CIT(A) confirmed the order of the Assessing Officer while dismissing the appeal.

5 On further appeal, the Tribunal noted the fact that the assessee's explanation regarding amount of Rs.36.77 Lakhs is only that parties from whom they received advances for supply of yarn, refused to take the amounts back even when no yarn was being supplied. Therefore, they were compelled to transfer the deposits before the end of March, 2003 to its sister concerns and the same were encashed by them only after further lapse of almost six months. Moreover , it is noteworthy that the Tribunal had found that these amounts which were issued to sister concerns by the Appellant were credited into the account of family members of the partners of the firm. The Tribunal noted the fact that out of two Mumbai based parties, one party appeared in response to summons and stated that this amount was against the purchase of yarn from the

assessee. It had also given the bills, cheque numbers, date of the cheques as well as the amount and bank evidence supporting the transaction being in the nature of advance. To the above extent the addition of Rs.36.77 Lakhs was reduced to 36.26 Lakhs. However, except the above, the Tribunal did not disturb the order of the CIT(A).

6 The Tribunal partially dismissed the appeal after rendering a finding of a fact that the appellant-assessee had not given details of cheque under which the amount was received by it from these Bhiwandi parties. Further , it finds there was no documentary evidence to support the claim of the assessee that this amount was received as an advance for supply of goods. There is no correspondence between the assessee and these parties regarding the amount received, repayment offered by the assessee and the alleged refusal of these parties to accept the refunds. On the above facts, the Tribunal notes that it is beyond imagination that an amount received by the assessee as an advance against supply of goods when offered to be refunded to the parties is refused even when supply is not possible. Moreover, the Tribunal also finds as a fact that the cheques were issued by the appellant not in favour of the creditors but were issued in favour of sister concerns. This again is unexplained. Further, the Tribunal finds as a fact that amount credited to sister concerns were transferred to its partners and/or family members of its partners. The

Tribunal notes that confirmations were received from some of the Bhiwandi parties were all similar in nature. It also finds as a fact that in some of the cases the acknowledgement of the return filed along with confirmation letters from the parties indicated income less than the minimum taxable income. Thus, it found on the above facts the genuineness and creditworthiness of the creditors was not proved. In these facts, the Tribunal upheld the finding of fact given by CIT(A) and dismissed the Revenue's appeal.

7 Mr. Gopal the learned counsel appearing for the Appellant states that finding of authorities is perverse in-as-much as confirmation letters were filed before the authorities and they indicate that they are not similarly worded. In these circumstances, it is submitted that the Tribunal's finding that the Appellant has been unable to explain the credit entry of Rs.36.26 Lakhs is unsustainable.

8 We find that all the three authorities have on finding of fact come to conclusion that so called advances received from the parties at Bhiwandi for supply of yarn is not acceptable. This is particularly in view of the facts as indicated hereinabove while recording its findings the Tribunal particularly found that the return of money was made not to the creditors concerned but to the sister concerns of the Appellant and thereafter the amounts were also withdrawn from the partners and family

members of the sister concern. Remand report indicating that the letter similar or identical in nature by all the parties who responded is that reason is similar i.e. the amounts were received for purchase of yarn as an Advance. Thereafter, yarn was not supplied and consequently refund was given. Thus, view taken on the remand report is not perverse.

9 Moreover, we find that view taken by the authorities under the Act is on the basis evidence before is leading to a finding of fact which is not shown to be perverse. Therefore, the question raised would not give rise to substantial question of law. Thus, not entertained.

10 Accordingly, appeal dismissed. No order as to costs.

**(SANDEEP K. SHINDE,J.)** **(M.S.SANKLECHA,J.)**