

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

INCOME TAX APPEAL NO. 1435 OF 2007

The Commissioner of Income Tax-14
Mumbai

.. Appellant

v/s.

Shri Rakesh Ramani

..Respondent

Mr. P.C. Chhotaray for the appellant

Mr. Aditya Aajgaonkar i/b Ajay R. Singh for the respondent

**CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.**

DATED : 4th JUNE, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st October, 2005 passed by the Income Tax Appellate Tribunal (the Tribunal). The appeal relates to assessment for the block period 1st April, 1989 to 16th July, 1999.

2. The High Court Website indicated that this appeal has been admitted. However, on examination, the Registry found that the record does not contain the order supposed to have been passed by this Court on admission. Therefore, this appeal was put on board for directions to obtain from the parties copy of the order, if any, which was passed by

this Court at the stage of admission. However, both the revenue as well as the assessee are not able to assist us as they do not have a copy of any order passed by this Court in respect of admission of this appeal. Nor are they able to categorically state that this appeal was heard for admission and that an order was passed on admission. It was in the above circumstances that we kept this appeal on board for consideration for admission.

3. This appeal as filed on 7th April, 2006 by the Commissioner of Income Tax raised the following question of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal has power to review his own order as per the provisions of Section 254(2) of the Income Tax Act?

4. However, Mr. Chhotaray, learned Counsel appearing for the Revenue in support of the appeal now seeks to re-frame the questions of law. This as the question has been wrongly drafted. There is no question of review of an earlier order by the Tribunal in its impugned order dated 31st October, 2005. This indicates the most casual manner in which the appeal has been filed by the Revenue.

5. However, we permitted Mr. Chhotaray appearing for the Revenue to re-frame the question of law which would arise for our consideration. Mr. Chhotaray tenders the following questions of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) deleting the addition of Rs.36,90,153/- made by the Assessing Officer as unexplained investment in jewellery under section 69A of the Act?

(b) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse as no reasonable person, acting judicially and properly instructed in the relevant law, could arrive at such a finding on the evidence on record?

6. Briefly, the facts leading to the present appeal are that on 16th July, 1999 the respondent assessee was spotted with a suitcase under suspicious circumstances by the Police at Ernakulam, Kerala. On examination of the suitcase, the Police found it contained jewellery valued at Rs.36.90 lakhs. Thus, the respondent assessee was asked to produce documentary evidence in support of the same. According to the respondent, he gave it to the Police, while the Revenue contend that he had not. Thereafter, the Police Authorities intimated the above facts to the Income Tax Authorities at Ernakulam. Consequent thereto, the

Income Tax Authorities searched the suitcase on the same day and also recorded the statement of the respondent assessee under Section 132 of the Act.

7. Consequent thereto, the jewellery found in the suitcase was seized and the assessment proceedings for the block period commenced against the respondent assessee. During the course of the block assessment proceedings, the respondent assessee pointed out that he was a salesman working with one M/s. Pravin Jewellers, Mumbai and the seized jewellery belongs to his employer. During the course of assessment proceedings, the respondent assessee produced various evidences in support of his contention that the seized jewellery belonged to his employer M/s. Pravin Jewellers, Mumbai. However, the Assessing Officer did not accept the evidence filed by the respondent assessee on the ground that it was an after thought. Thus, by assessment order dated 8th January, 2001 concluded that the jewellery valued at Rs.36.90 lakhs should be treated as unexplained jewellery of the respondent assessee and the provisions of Section 69A of the Act was invoked.

8. Being aggrieved, the respondent filed an appeal with the

Commissioner of Income Tax (Appeals) [CIT(A)]. Before the CIT(A), the respondent placed reliance upon the following evidences to establish that the seized jewellery did not belong to him :-

“(1) Bill of Nakoda Travels and Tours dated 14.7.1999 against Pravin Jewellers, claimed by assessee as his employer, towards air ticket from Mumbai to Cochin by flight of 15th July, 1999 (page no.36 of the paper book).

(2) Issue voucher of Pravin Jewellers in favour of assessee in respect of gold jewellery (page no.38 and 39 of the paper book)

(3) Authority letter issued by Pravin Jewellers to assessee for carrying jewellery on behalf of Pravin Jewellers (page no.40 of the paper book)

(4) Letter dated 13.8.1999 addressed by Intelligence Officer, Department of Commercial Taxes, to the Deputy Director of Investigation of Income-tax Department, confirming that assessee had explained that the gold jewellery in his possession was covered by issue voucher nos.118 and 119 dated 15.7.1999 issued by Pravin Jewellers, Mumbai (page no.30 of the paper book)

(5) Copies of income-tax returns filed by the assessee declaring income from salary received from Pravin Jewellers and interest received from Pravin Jewellers and others (page no.71 to 76 of the paper book)

(6) Copy of stock register of Pravin Jewellers for the period from 01.12.1997 to 24.07.1999 in which on 15.7.1999 there are two entries to the effect that quantity of 9683.33 grams of jewellery was issued to assessee for travelling to Cochin. (page no.54 to 65 of

the paper book)”

Taking into account the aforesaid evidences, the CIT(A) recorded the fact that various evidences which was produced during the course of the assessment proceedings, have been dis-believed by the Assessing Officer without investigating into the same on the ground that it is merely make believe version. This for the reason that no evidence was produced when jewellery was seized on 16th July, 1999. In particular, reliance is placed upon the issue of vouchers and the letter written dated 29th July, 1999 to the Dy. Director of Investigation of Income-Tax Department, where the return of income filed by the respondent assessee as well as by his employer M/s. Pravin Jewellers, Mumbai and copy of the stock book of his employer was enclosed. Thus, the addition made under Section 69A of the Act was deleted by order dated 11th October, 2001 of the CIT(A).

9. Being aggrieved with the order dated 11th October, 2011 of the CIT(A), the Revenue filed an appeal to the Tribunal. On examination of the evidence, the Tribunal came to the conclusion that the Assessing Officer had made the addition merely on suspicion and on having ignored the factual evidence on record. Therefore, not sustainable.

Thus, the impugned order dated 31st October, 2005 dismissed the Revenue's appeal.

10. Mr. Chhotaray the learned Counsel for the Revenue in support of the appeal, submits that the deletion of the addition of Rs.36.90 lakhs done by the Assessing Officer under Section 69A of the Act, by the CIT(A) as well as the Tribunal is perverse. This essentially on the basis that the statement made by the respondent under Section 132 of the Act on 16th July, 1999 did not clearly indicate that the jewellery belong to his employer. Besides, the impugned order has also referred to some newspaper report of the seizure of the jewellery from the respondent's possession. This the impugned order is perverse. Mr. Chhotaray places reliance upon the decision of the Apex Court in the case of *Commissioner of Income Tax Vs. S.P. Jain, (1973) ITR 370* to submit that this Court should exercise its appellate jurisdiction and entertain the appeal as the impugned order is perverse on facts.

11. There can be no dispute that an appeal on questions of fact would be entertained by us if the same is perverse. However, where on the finding of fact, the authorities have taken a possible view then it would not give rise to any question of law. In the present case, the

entire grievance of the appellant that the impugned order is perverse stands nullified by the fact that the first ground of appeal taken by the appellant is that “it is doubtful whether the jewellery belongs to assessee or assessee's employer”. Thus, even the Revenue is not certain about the ownership of the seized jewellery. Besides, the entire basis of the Revenue's case is the statement made on the date of the seizure. The voluminous evidence filed by the respondent during the course of the assessment proceedings has been completely ignored on the ground that the same was not produced when the seizure was made. There is no requirement in law that evidence in support of its case must be produced only at the time when the seizure has been made and not during the assessment proceedings. Besides, the reference to the newspaper report in the impugned order was not the basis of the decision, it was referred to as it corroborated the respondent's claim that documents given to the Police at the time of seizure of the jewellery indicated that they belonged to his employer in Mumbai. However, the basis of the decision was the evidence led by the respondent during the assessment proceedings which established that the jewellery belonged to his employer M/s. Pravin Jewellers, Mumbai. Therefore, the view taken by the two Authorities namely the CIT(A) as well as the Tribunal is a possible view on the facts as existing.

Therefore, the question as proposed does not give rise to any substantial question of law.

12. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE J.)

(M.S. SANKLECHA, J.)