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

INCOME TAX APPEAL NO.1103 OF 2015

The Pr. Commissioner of Income Tax-12
Mumbai

.. Appellant

v/s.

M/s. Chawla Interbild Construction Co.
Pvt. Ltd.

.. Respondent

Mr. Arvind Pinto for the appellant
Mr. Subhash Shetty for the respondent

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

DATED : 28th FEBRUARY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 11th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. Mr. Pinto, learned Counsel for the Revenue urges the only following re-framed question of law :-

(i) *Whether on the facts and circumstances of the case, the*

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Tribunal was right in justifying the deletion made by the CIT(A) whereas the mere deduction of tax and a PAN no. is not sufficient evidence regarding the identity of the parties concerned?

3. The respondent is a firm engaged in Civil Engineering and execution of the contracts. During the course of the assessment proceedings, the Assessing Officer doubted the genuineness of payments made to 13 parties and claimed as expenditure. The Notices issued to 13 parties by the Assessing Officer were returned by the postal authorities. Consequently, on the above ground, the Assessing Officer made adhoc dis-allowance of 40% on the total payment made i.e. Rs. 4.88 crores out of Rs.12.20 crores and added the same to the respondent assessee's income in assessment order dated 8th December, 2011.

4. Being aggrieved by the assessment order dated 8th December, 2011, the respondent preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)] In appeal, the respondent assessee filed details of all 13 parties with their PAN numbers, addresses, TDS deducted, date of bill, date of cheque and its nubmer, details of the bank etc. The CIT(A) after taking the additional evidence on record

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sought a remand report from the Assessing Officer. The Assessing Officer in his remand report submitted that out of 13 parties, 8 parties had appeared before him and the payments made to them stood satisfactorily explained. However, the remand report indicates that out of 13 parties, 5 parties had not appeared before him. On the basis of the remand report and the evidence before it, the CIT(A) while allowing the respondent's appeal held that the respondent assessee had done all that was possible to do by giving particulars of the parties and their PAN numbers. In these circumstances, by order dated 17th September, 2012, the CIT(A) held that the respondent assessee could not be held responsible for the parties not appearing in person and allowed the appeal. Thus, holding that the payments made to all 13 parties were genuine and the addition on account of disallowance was deleted.

5. Being aggrieved by the order dated 17th September, 2012, the Revenue carried the issue in appeal to the Tribunal.

6. In appeal, the impugned order of the Tribunal records the fact that all the details including the dates of payments, net amounts paid, cheque numbers, details of the bank branches, amount of TDS

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deducted, details of the bills, including the details of the TDS made etc. have been furnished in the tabular form before the CIT(A). Thus, the respondent discharged the initial onus cast upon him in respect of the payments made to all 13 parties. The impugned order further records that thereafter, the responsibility was cast upon the Assessing Officer if he still doubted the genuineness of the payments made to those 13 parties. In the aforesaid circumstances, the appeal of the Revenue was dismissed.

7. We find that the Assessing Officer while passing the assessment order has dis-allowed 40% of the total payments made on the basis of the payments made to 13 parties, who were not produced before him during the assessment proceedings. This on the ground that payments are not genuine. We are unable to understand on what basis the disallowance is made on the total payments, if at all it should have been restricted only to the amounts paid to the 13 persons who are not produced before the Assessing Officer. Be that as it may, we find that the respondent - assessee had done everything to produce necessary evidence, which would indicate that the payments have been made to the parties concerned. The details furnished by the respondent assessee were sufficient for the Assessing Officer to take further steps if he still

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doubted the genuineness of the payments to examine whether or not the payment was genuine. The Assessing Officer on receipt of further information did not carry out the necessary enquiries on the basis of the PAN numbers, which were available with him to find out the genuineness of the parties. The CIT(A) as well as the Tribunal have correctly held that it is not possible for the assessee to compel the appearance of the parties before the Assessing Officer.

8. In the above circumstances, the view taken by the Tribunal is a reasonable and possible view in the facts of the present case. Consequently, no substantial question of law arises for our consideration.

9. The appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.)

(M.S. SANKLECHA, J.)