

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 66 OF 2016

THE PRINCIPAL COMMISSIONER OF
INCOME TAX, PANAJI.,

... Appellant

V e r s u s

M/S. PARADISE INLAND SHIPPING PVT.
LTD.,

... Respondent

Ms. Susan Linhares, Junior Standing Counsel for the Appellant.

Mr. Jitendra Jain, Mr. Jitendra Supekar and Ms. Janaki Garde, Advocates for
the Respondents.

Coram :- **F. M. REIS,**
 NUTAN D. SARDESSAI, JJ.

Date : **10th April, 2017**

ORAL ORDER (Per F. M. Reis, J.)

Heard Ms. Susan Linhares, learned Counsel appearing for the
Appellant and Mr. Jain, learned Counsel appearing for the Respondents.

2. The challenge in the above Appeal is to Orders passed by the
Commissioner of Income Tax (Appeals) and confirmed by the Income Tax
Appellate Tribunal, whereby an Order passed under Section 147 of the
Income Tax Act on the ground of escaped assessment, came to be set aside.

3. Learned Counsel appearing for the Appellant has pointed out

that the main ground on which the Assessing Officer has made the assessment under Section 147 of the Income Tax Act, is that shares which were purchased are by fictitious Companies which are not existing. It is further pointed out that the Appellants-Revenue had recorded statements of two persons one from Calcutta and the other from Delhi to show that such Companies were not existing nor the addresses mentioned disclosed any existence of the Company. Learned Counsel further pointed out that the CIT Appeals has erroneously relied upon the documents produced by the Respondents overlooking the statement of the said two persons which clearly proved otherwise. It is further pointed out that the Assessing Officer is willing to subject the said two persons for cross examination and, as such, the matter be remanded to the Assessing Officer to take a fresh decision after giving the Respondents an opportunity to cross examine the said two persons. Learned Counsel has further pointed out that such findings of the Appellate Authorities are erroneous and contrary to the record, without examining that the Respondents have failed to discharge the burden to establish the existence of such Companies who had invested the shares in the Company of the Respondent. Learned Counsel as such pointed out that there are substantial questions of law which arise in the present Appeal for consideration under Section 260-A of the Income Tax Act.

4. On the other hand, Mr. Jain, learned Counsel appearing for the Respondents, initially brings to our notice the findings of the CIT Appeals at

page 44 wherein it has been clearly observed that a case can be re-opened under Section 147 of the Income Tax Act for assessing escaped assessment and not for making verification. Learned Counsel further pointed out that these observations of the CIT Appeals have not been challenged before the Income Tax Appellate Tribunal which itself would show that the very jurisdiction of the Assessing Officer to proceed to examine escaped assessment under Section 147 of the Income Tax Act itself stands vitiated and cannot be sustained. Learned Counsel further submits that it is well settled that the initial burden with regard to the existence of the investments Company would lie on the assessee which has been clearly discharged by producing voluminous documents which included the incorporation of such Companies, the Memorandum of Association, the assessment Orders for three preceding years and other materials to establish the existence of the Companies. Learned Counsel further submits that the alleged contentions of the Appellants that the Companies itself were not in existence has not been established by the Appellants by any material on record and having failed to discharge such burden, the Appellants are not entitled to now contend that the Assessing Officer was willing to present the persons for cross examination. Learned Counsel further submits that the Order is passed without giving any opportunity to the Assessee for cross examination is a nullity in law and, as such, the question of reviving such Order on the basis of such contention by the learned Counsel appearing for the Appellants, would not at all be justified. Learned Counsel further pointed out that both

the authorities be it CIT Appeals as well as ITAT on the basis of the appreciation of evidence on record, concurrently came to the conclusion that the existence of the Companies was based on documents produced from the public records. Learned Counsel further pointed out that the Appellants have not shown any perversity in such findings and, as such, according to him, there are no substantial questions of law which arise in the present Appeal for consideration. Learned Counsel in support of his submission ha relied upon the Judgment of this Court reported in **2011(15) Taxmann 183** Bombay in the case of **Commissioner of Income-tax vs. Creative World Telefilms Ltd.**, the Judgment passed in **Income Tax Appeal no. 1613/14** dated 28.03.2017 in the case of **Commissioner f Income Tax-1 vs. M/s. Gagandeep Infrastructure Pvt.Ltd.** and a Judgment dated 13.02.17 passed in **Tax Appeal No. 16/2012** in the case of **The Commissioner of Income Tax vs. Goa Sponge and Power Ltd.** Learned Counsel has also relied upon the Judgment of the Apex Court reported in **1986(1) Scale 446** in the case of **Commissioner of Income Tax, Orissa vs. Orissa Corporation Private Limited** giving emphasis to Para 13 thereof to point out that the contention of the Appellants are basically questions of facts and not substantial questions of law.

5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the

Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not. In this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus :

“The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows :

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-

Date of Registration 09/05/1995

- a) Memorandum of Association and Article of Association
- b) Certificate of Incorporation
- c) Certificate of Commencement of Business
- d) Acknowledgment of the Return of Income AY 08-09
- e) Affidavit of the Director confirming the investment
- f) Application for allotment of shares
- g) Photocopy of the share certificate
- h) Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2009.
- i) Audited account and Directors report

thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2010

j) The Bank Statement highlighting receipt of the amount by way of RTGS.

k) Banks certificate certifying the receipt of the amount through Banking channels.”

6. On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.

7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents

whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.

8. The Apex Court in the case of ***Commissioner of Income Tax, Orissa vs. Orissa Corporation Private Limited*** (supra), has observed at Para 13 thus :

“13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under S. 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the

assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”

9. This Court in the Judgments relied upon by the learned Counsel appearing for the Respondents, have come to the conclusion that once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.

10. We find no infirmity in the findings arrived at by the ITAT as well as CIT Appeals on the contentions raised by the Appellants-Revenue in the present case and, as such, the question of interference by this Court in the present proceedings under Section 260A of the Income Tax Act would not at all be justified. Apart from that, as rightly pointed out by the learned Counsel appearing for the Respondents, the CIT Appeals had also noted that proceedings under Section 147 of the Income Tax Act cannot lead to re-verification of the records. These findings of the CIT Appeals have not been assailed before the Income Tax Appellate Court.

11. In such circumstances, we find that there is no case made out by the Appellants-Revenue for any interference in the impugned Orders passed by the Courts below.

12. Hence, the Appeal stands rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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