

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

INCOME TAX APPEAL NO. 1489 OF 2013

M/s R.W. Promotions P. Ltd., Mumbai

..Appellant

Vs.

Assistant Commissioner of Income Tax
9(3), Mumbai and Ors.

..Respondents

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Dr. K.Shivram, Senior Advocate a/w Rahul Hakani and Ms. Neelam
Jadhav, Advocate i/b Ajay Singh & Paras Savla for Appellant.
Mr. Arvind Pinto, Advocate for Respondent.

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**CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.**

DATED : 13 JULY 2015

P.C.:

This appeal under Section 260A of the Income Tax Act,
1961 (the 'Act') the challenge is to the order dated 16 January 2013
of the Income Tax Appellate Tribunal (the 'Tribunal'). The
Assessment Year involved is Assessment Year 2007-08.

2. Although numerous questions have been framed, at the
hearing the appellant only urged the following questions which are
admitted as substantial question of law:

“(a) Whether the Tribunal is justified in law in holding that the appellant had failed to show that it had rendered services?

(b) Whether Tribunal erred in law not providing the appellant an opportunity to cross examine the parties on basis of whose statement the reopening of assessment was done and disallowance of Rs.1,15,41,044/- was sustained?”

3. As the issues are within a narrow campus at the request of the Counsel, the appeal itself is taken up for final disposal.

4. The appellant is engaged in the business of advertisement, market research and business promotions for its clients. During the subject Assessment Year 2007-08, the appellant had engaged services of M/s Inorbit Advertising and Marketing Services P. Ltd. ('Inorbit') and M/s Nupur Management Consultancy Pvt. Ltd. ('Nupur') to enable them to carryout promotional and advertisement activities. The amounts of Rs.1.15 crores paid to them was treated as expenditure to arrive at its profit while filing its return of income. This was accepted by the Assessing Officer u/s 143(1) of the Act.

5. Thereafter on 4 February 2010, the Assessing Officer issued a notice u/s 148 of the Act seeking to reopen the assessment for the Assessment Year 2007-08. This on the ground that the expenditure claimed of Rs.1.15 crores was bogus as evidenced by statement of representatives of M/s Inorbit and M/s Nupur. The appellant objected to reopening. However the same was rejected by the Assessing Officer.

6. During the course of the assessment proceedings, the appellant called upon the Assessing Officer to make available to them the statement recorded of the representatives of M/s Inorbit and M/s Nupur which were allegedly adverse to them. Thereafter the appellant sought cross examination of the deponents of the statements made on behalf of M/s Inorbit and M/s Nupur. In spite of the above request, the Assessing Officer passed an assessment order dated 24 December 2012 under Section 143(3) r/w 147 of the Act disallowing the expenditure of Rs.1.15 crores. This without giving an opportunity to cross examine the deponents of the statements which were allegedly against them and formed the basis of the disallowance in the assessment order..

7. In appeal, the Commissioner of Income Tax (Appeals) (the 'CIT (A)') upheld the order of the Assessing Officer. In particular holding that disallowance of expenditure incurred for receiving services from M/s Inorbit and M/s Nupur called for no interference.

8. On further appeal before the Tribunal, the appellant again contended that the entire proceedings against them has commenced and also culminated by placing reliance upon the statement of representatives of M/s Inorbit and M/s Nupur who were not offered for cross examination. The Tribunal by the impugned order after accepting the fact that the cross examination sought by the parties was not given by the Assessing Officer proceeded to uphold the order of lower authorities.

Notwithstanding the above, the impugned order holds that it is a final fact finding authority and it could direct cross examination in case it felt that material relied upon by the Assessing Officer to disallow expenses was required to be subjected to the cross examination. In view of the above, the impugned order held that

denial of cross examination of the representative of M/s Inorbit and M/s Nupur has not led to breach of principle of natural justice and thus confirmed the orders of the lower authorities.

9. Dr. Shivram, the learned Senior Counsel for the appellant points out that denial of cross examination has led to breach of principles of natural justice. The statements relied upon were general in nature and also subjecting the statements to cross examine could assist in bring out the truth. In particular it was emphasized that in an identical fact situation where two parties involved herein M/s Inorbit and M/s Nupur had alleged to have rendered services to one M/s Satellite Cable TV Network, the Tribunal had set aside the order adverse to M/s Satellite Cable TV Networks for failure to made available representatives of M/s Inorbit and M/s Nupur for cross examination. The expenses claimed as payments to M/s Inorbit and M/s Nupur was disallowed by the authorities on the basis of their statements while making them unavailable for cross examination. M/s Satellite Cable Network urged before the Tribunal that it was given no opportunity

of cross examining the deponents of statement made on behalf of M/s Inorbit and M/s Nupur during the assessment proceedings. The Tribunal by its order in the case of M/s Satellite Cable TV Network rendered on 23 May 2012 in Income Tax Appeal No. 4619/Mum/2011 set aside the orders of CIT(A) and Assessing Officer and restored the issue to the Assessing Officer to pass a fresh order after providing an opportunity to the assessee therein to cross examine the representatives of M/s Inorbit and M/s Nupur who had made the statement adverse to M/s Satellite Cable TV Network Ltd. It is submitted that the facts are identical and the same test/measure as applied in case of M/s Satellite Cable TV Network Ltd should be applied in this case also.

10. Dr. Shivram submits that the appellant on coming to know of aforesaid order dated 23 May 2012 in M/s Satellite Cable TV Network of the Tribunal filed an application for rectification. However the same was dismissed by order dated 12 June 2015 of Tribunal holding that entertaining such an application would amount to review.

11. We find that there has been a breach of principles of natural justice in as much as the Assessing Officer has in his order placed reliance upon the statements of representatives of M/s Inorbit and M/s Nupur to come to the conclusion that claim for expenditure made by the appellant is not genuine. Thus the appellant was entitled to cross examine them before any reliance could be placed upon them to the extent it is adverse to the appellant. This right to cross examine is a part of the audi altrem partem principle and the same can be denied only on strong reason to be recorded and communicated. The impugned order holding that it would have directed cross examination if it felt it was necessary, is hardly a reason in support of coming to the conclusion that no cross examination was called for in the present facts. This reason itself makes the impugned order vulnerable.

12. Moreover, in the present facts, the appellant had also filed affidavit of the representatives of M/s Inorbit and M/s Nupur which indicates that they had received payment from the appellant for rendering of services to the appellant. These affidavits also have

not been taken into account by any authority including the Tribunal while upholding the disallowance of the expenditure.

13. Thus the appellant was not given an opportunity to cross examine the witnesses whose statement is relied upon by the revenue and the evidence led by the appellant has not been considered. Therefore clearly a breach of principles of natural justice. In view of the above, we set aside the order of the Tribunal and restore the issue to the Assessing Officer for fresh disposal after following the principles of natural justice and in accordance with law. It is made clear that the challenge to the issue of reopening of assessment is not pressed before us therefore that issue stands concluded.

14. The appeal is disposed of in above terms. No order as to costs.

[N.M. JAMDAR, J]

[M.S. SANKLECHA, J.]