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

INCOME TAX APPEAL NO.1296 OF 2012

The Commissioner of Income Tax-9,
Mumbai .. Appellant.
Vs.
Teletronics Dealing Systems P.Ltd. .. Respondent.

Mr. Tejveer Singh for the Appellant.

CORAM : S.C. DHARMADHIKARI AND
A.K. MENON, JJ.

DATED : 25TH SEPTEMBER, 2014.

P.C. :

1. We have heard Mr.Tejveer Singh appearing for the revenue in support of this appeal. He challenges the order of the tribunal dated 21st March, 2012 in Income Tax Appeal No.2588/Mum/2011 and 3440/Mum/2011.

2. Mr.Tejveer Singh submits that there are five substantial questions of law and which emerge from this order.

3. In relation to question (d) and which is covered by the judgment of this Court in the case of ***M/s.Godrej and Boyce Manufacturing Co. Ltd. 234 CTR 1*** Mr.Tejveer Singh would submit that disallowance made and restricted to 5% of the

http://www.itatonline.org

::: Downloaded on - 06/11/2014 23:41:18 :::

Bombay High Court

dividend received was improper. This Court in the Division Bench's judgment, namely, M/s. Godrej and Boyce Manufacturing Co. vs. Deputy Commissioner of Income Tax held that disallowance should be reasonable estimation of the expenditure. In such circumstances assumption by the tribunal is improper.

4. Paragraph 13 and 14 of the tribunal's order refers to issue to disallowance under section 14A of the Income Tax Act, 1961. That was in relation to expenditure incurred in earning dividend income. A dividend income of Rs.11,68,431/- was earned and the exemption under section 10(34) of the Income Tax Act was claimed. The assessing officer worked out the disallowance of Rs.1,05,670/- applying Rule 8D of the Income Tax Rules. The argument of assessee was that there was no expenditure in earning this exempted income. The Commissioner of Income Tax (Appeals) confirmed this addition. The tribunal has found that there was interest applicable on the dividend earned and only administrative expenditure was incurred and that was estimated at 5% of the dividend earned. It was found to be reasonable in the given facts and circumstances that we are of the opinion that the judgment of this Court has been followed and correctly applied. The question (d) is not substantial question of law.

http://www.itatonline.org

::: Downloaded on - 06/11/2014 23:41:18 :::

5. In relation to three other questions, the argument is common. It is that by section 145 of the Income Tax Act, 1961, the Assessing Officer has to record satisfaction about correctness or completeness of the Account of assessee or where the method of accounting provided in sub-section (1) of section 145 or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, then, the assessing officer may make an assessment as provided in section 144. Mr.Tejveer Singh submits that when the assessee was not coming forward, not giving any explanation then the assessing officer cannot be faulted for recording that he is not satisfied about correctness or completeness of account of the assessee. Such finding should not have been reversed by the tribunal. More so, when it was upheld by the Commissioner of Income Tax (Appeals). In relation to these questions what we find is that the assessing officer has been faulted for not following section 145(3) of the Act. The tribunal has held that before the assessing officer records satisfaction about the correctness or completeness of the accounts of the assessee, he ought to have given proper opportunity to the assessee. The books of account could not have been rejected casually. The tribunal in paragraph 5 has held that rejection of books of account was not itself correct. It was not done by giving proper opportunity to the assessee. The rejection is high handed. There was an affidavit filed even before the Commissioner of

http://www.itatonline.org

::: Downloaded on - 06/11/2014 23:41:18 :::

Income Tax (Appeals) and the revenue did not controvert the contents thereof. However, the assessing officer made addition of gross profit and that was a matter clarified by the assessee in this Affidavit. The Commissioner of Income Tax has not uphold this gross profit addition. The comparison by the assessing officer and by looking at the very document, namely, the profit and loss account was improper. The merits of addition have been gone into in paragraphs 5 and 6 of the impugned order. The tribunal has termed the approach of assessing officer as unfortunate. It is termed as arbitrary, high handed and cannot be sustained. Without examining the basic parameters for rejection of the books of accounts the revenue goes in appeal before the tribunal, this is what is faulted by the tribunal. To our mind, the complaint of the assessee before the tribunal was wholly justified. Not only did the assessing officer fail to record the requisite satisfaction in terms of section 145(3) but proceeded to make addition and that was estimate which was also not sound. In such circumstances the other questions are also not substantial questions of law enabling us to interfere in our appellate jurisdiction. The appeal is devoid of merits. It is dismissed.

(A.K. MENON,J.) **(S.C. DHARMADHIKARI,J.)**

http://www.itatonline.org

::: Downloaded on - 06/11/2014 23:41:18 :::

Bombay High Court