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

INCOME TAX APPEAL NO. 1035 OF 2017

Pr.Commissioner of Income Tax, Central-2. ... Appellant.
V/s.
M/s.Khushbu Industries. ... Respondent.

Mr.Ashok Kotangale with Mr.Prabhakar R. and Mrs.Indu K.
for the Appellant.

CORAM : M.S. SANKLECHA AND
NITIN JAMDAR, JJ.

DATE : 11 November 2019.

P.C. :

This appeal under section 260-A of the Income Tax Act, 1961 (Act), challenges the order dated 19 October 2016 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 19 October 2016 is in respect of assessment year 2008-09.

2. The Revenue has only urged the following question of law for our consideration:

“Whether on the facts and in circumstances of the case and in law, the Tribunal is correct in upholding the order of CIT(A) in quashing the assessment order passed in the proceedings u/s 147 read with section 143(3) of the Act”

3. The impugned order of the Tribunal upheld the view taken by the Commissioner of Income Tax (Appeals) in the order dated 12 April 2016 holding that the reopening proceedings under section 148 are bad as necessary sanction/approval had not been obtained in terms of section 151 of the Act. The impugned order of the Tribunal records that the sanction for issuing the impugned notice had been obtained from the Commissioner of Income Tax when, in terms of section 151, the sanction had to be obtained from the Joint Commissioner of Income Tax. Thus, in the absence of sanction/approval being obtained from the appropriate authority as mandated by the Act, the Tribunal held that the reopening notice itself is without jurisdiction.

4. Mr.Kotangale, learned counsel appearing in support of the appeal very fairly points out that the submission of the Revenue that the Commissioner of Income Tax is a higher authority and, therefore, the sanction obtained from him would meet the requirement of obtaining sanction from the Joint Commissioner of Income Tax in terms of section 151 of the Act will no longer survive. This in view of the decision of this Court in *Ghanshyam K. Khabrani v. Asst. CIT*¹ wherein, in identical circumstances, this Court held that where the Act provides for sanction by the Joint Commissioner of Income Tax in terms of section 151, then the sanction by the

¹ (2012) 346 ITR 443 (Bom)



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Commissioner of Income Tax would not meet the requirement of the Act and the reopening notice will be without jurisdiction.

5. In the above view, the question as proposed does not give rise to any substantial question of law as the said issue has already been concluded against the Revenue in view of the decision of this Court in *Ghanshyam K. Khabrani v. Asst. CIT* (supra). Appeal is, therefore, dismissed.

NITIN JAMDAR, J.

M.S. SANKLECHA, J.