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

INCOME TAX APPEAL NO. 480 OF 2017

The Principal Commissioner of Income Tax-18. … Appellant.
V/s.
Shri Nikhil Arunkumar Jhaveri. … Respondent.

Mr.P.C.Chhotaray for the appellant.
Mr.Sameer Dalal for the respondent.

CORAM : AKIL KURESHI AND S.J.KATHAWALLA, JJ.

DATE : 1st July 2019.

P.C.:

This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). The following questions are presented for our consideration:

"A. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not upholding the order passed by the Assessing Officer making an addition of Rs.1,63,15,869/- in respect of the purported purchases shown in the name of alleged bogus biller/ accommodation entry provider M/s.Shree Enterprises?

B. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not upholding the addition made by the Assessing Officer under section 69C of the Act and holding that the source of expenditure in purchasing the goods was explained?

C. Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse as no

> reasonable person acting judicially and properly instructed in the relevant law, could arrive at such a finding on the evidence on record?"

2. The respondent- assessee is engaged in the business of trade of gold and silver jewellery. In relation to the assessment of return of income for the assessment year 2009-10, the Assessing Officer made certain additions of sum of Rs.1.63 crore (rounded off) under section 69C of the Income Tax Act, 1961 ("Act" for short). The Commissioner of Income Tax (Appeals) and the Tribunal deleted the additions. Hence, this appeal.

3. The Tribunal in the impugned judgment while confirming the judgment of the Commissioner (Appeals) made the following observations:

> "5. We have heard the rival submissions and perused the material before us. We find that undisputed facts of the case are that the Sales tax department had declared SE a defaulter under MVAT Act, that the assessee had claimed that he had sold gold jewellery to PSJ that was purchased from SE, that the AO had made addition u/s. 69C of the Act, that the FAA had allowed the appeal of the assessee. In our opinion, the AO was not justified in invoking the provisions of section 69C of the Act just because SE was declared defaulter by the Sales tax department. We hold that default by a person under MVAT Act cannot be a base for making addition under Income tax Act in case of another person until and unless documentary evidence is not brought on record in the income tax proceedings proving the transaction was non-genuine. SE did not deposit tax in the treasury of State Government and later on the assessee had paid the required sum, as he had

> taken credit under MVAT Act. Section 69C of the Act is an independent section and can be invoked if certain conditions are fulfilled. The AO had ignored the documentary and corroborative evidences produce by the assessee in form of bank statements, declaration made under MVAT Act, TIN No., stock registering containing quantitative details. Except referring to the information received from the sales tax department the AO had not carried out any independent inquiry. If the evidences produced by the assessee are weighed against the information of the Sales tax department, it becomes clear that piece of the information was too light. Maxium it was a starting point for further investigation. But, the AO stopped at the beginning and made an addition though the assessee had produced reliable evidence in his favour. Secondly, in our opinion the FAA had rightly opined that without purchases there cannot be any sale. Considering the facts and circumstances of the case, we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity. So, confirming his order, we decide the effective ground of appeal against the AO."

4. The Tribunal was, therefore, of the opinion that the addition could not have been made with the aid of section 69C of the Act relying merely on the proceedings in connection with another party carried by the Value Added Tax Department of the State. The Commissioner (Appeals) in his detailed independent Judgment while deleting additions made by the Assessing Officer, made following observations:

> "5.5 I have carefully considered the observations of the A.O. in assessment order as well as in remand report; the submissions of the appellant along with cross-objection against the remand report and the case laws referred to and relied upon by the appellant. The only issue in all the grounds of appeal is the disallowance of purchase amounting to Rs.1,63,15,869/- u/s. 69C of the Income Tax Act, 1961 as

unexplained expenditure.

That the appellant has furnished the copy of Tax Invoice prepared under MVAT Act, 2002 with full details and signature. When the sale is made by the person registered under MVAT Act, 2002 then he is duty bound to issue his tax invoice with date, Name and Address of Purchase party, particulars of goods, calculation of MVAT with rate as applicable declaration under MVAT Act, 2002 and accordingly the three invoice produced by the appellant from the supplier M/s.Shree Enterprise reflects Date, Name of the Purchaser with Address, TIN Number, PAN and declaration under MVAT Act, 2002, the said Tax Invoices were duly signed. The appellant has also filed photocopy of three invoices with quantitative Tally with A.O. and since the tax invoices contained signature the same do not suffer from any defect.

It is a fact that the purchases have been made through Account Payee cheque only and the same are duly reflected in the bank statement of the appellant. The jewellery purchases have been sold and the considerations were received during the year. The appellant has made payment to the supplier out of the said considerations and hence the source of acquisition is explained. The appellant ;maintains books of accounts including Stock Register and the same are audited by the auditor. The A.O. has at no stage countered the evidence produced by the appellant ;and no mistakes have been noticed/ found from the quantitative tally co-relating inward and outward of the Jewellery. The purchase was co-related property with the sales. The A.O. has also not rejected the books of accounts u/s 145 of the Act to disapprove the Trading and P & L Account or conducted any independent enquiry to establish his contentions that the said purchases were bogus as if there were no purchases at all. The appellant established his claims by furnishing relevant Tax Invoice, Bank statements. Since the appellant has offered to taxation sales to M/s.Pransukhlal & Sons Jewellers, he is entitled to deduction of consequent purchases from Shri Enterprise resulting in tax payment on the profit margin only. Otherwise, the

> disallowance of purchases from Shree Enterprise of Rs.46,01,040/-, Rs.65,05,236/- and Rs.52,09,593/- will result in double taxation. There cannot be sales without corresponding purchases and both the things cannot be taxed simultaneously resulting in taxing of Turnover instead of income. Since, there is no evidence of the appellant receiving any money back in respect of the purchases, in question, the purchases could not be held to be bogus. The A.O. has made additions merely on the basis of observations made by the Sales Tax Department, for which he has not conducted ;any independent enquiries where as the appellant has discharged its primary onus by producing books of accounts with Stock Register, payment which was made by way of Account Payees cheque, Tax Invoices and bank statements during the assessment proceedings. Hence, such addition could not be sustained. In the case of INCOME TAX OFFICER vs. PERMANAND (2007) 107 TTJ (Jd) 395 it was held that, "AO could not make addition in the hands of the assessee merely on the basis of observations made by the Sales-tax Department that the purchases made by the assessee from certain parties were bogus, without conducting independent enquiries ITO v. Vinod Chand, Prop. Vinod Brothers (ITA No.623/Jd/2005, dt. 17th Dec. 2005) followed; Kishan Chand Chella Ram vs. CIT (1980) 19 CTR (SC) 360: (1980) 125 ITR 713 (SC) applied.""

5. It can, thus, be seen that the Commissioner (Appeals) and the Tribunal concurrently came to the factual finding that the Department has no independent material to come to the conclusion that the purchases made by the assessee of gold and silver were either non-genuine or that the same were made out of assessee's known source. As noted by the Commissioner (Appeals), the purchases were made through banking channel. The Assessing Officer had not rejected the books of accounts of the assessee.

6. Being a pure question of fact, no question of law arises. The learned counsel for the Revenue, however, attempted strenuously to contend that the findings are perverse relying on several decisions in this respect. We are, however, of the opinion that the Commissioner (Appeals) and the Tribunal have taken into consideration the entire material on record to come the factual finding. No question of law, therefore, arises. The income tax appeal is dismissed.

(S.J.KATHAWALLA, J.) (AKIL KURESHI, J.)