

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

INCOME TAX APPEAL	NO.1242	OF	2008
INCOME TAX APPEAL	NO.1250	OF	2008
INCOME TAX APPEAL	(L)NO.3494	OF	2008
INCOME TAX APPEAL	(L)NO.3495	OF	2008
INCOME TAX APPEAL	(L)NO.3496	OF	2008
INCOME TAX APPEAL	(L)NO.3497	OF	2008
INCOME TAX APPEAL	(L)NO.3498	OF	2008
INCOME TAX APPEAL	(L)NO.3499	OF	2008
INCOME TAX APPEAL	(L)NO.3500	OF	2008
INCOME TAX APPEAL	(L)NO.3502	OF	2008
INCOME TAX APPEAL	(L)NO.3503	OF	2008
INCOME TAX APPEAL	(L)NO.3504	OF	2008
INCOME TAX APPEAL	(L)NO.3506	OF	2008
INCOME TAX APPEAL	(L)NO.3507	OF	2008
INCOME TAX APPEAL	(L)NO.3508	OF	2008
INCOME TAX APPEAL	(L)NO.3514	OF	2008
INCOME TAX APPEAL	(L)NO.3515	OF	2008
INCOME TAX APPEAL	(L)NO.3516	OF	2008
INCOME TAX APPEAL	(L)NO.3517	OF	2008
INCOME TAX APPEAL	(L)NO.3518	OF	2008
INCOME TAX APPEAL	(L)NO.3519	OF	2008
INCOME TAX APPEAL	(L)NO.3520	OF	2008
INCOME TAX APPEAL	(L)NO.3521	OF	2008
INCOME TAX APPEAL	(L)NO.3522	OF	2008
INCOME TAX APPEAL	(L)NO.3523	OF	2008
INCOME TAX APPEAL	(L)NO.3531	OF	2008
INCOME TAX APPEAL	(L)NO.3532	OF	2008
INCOME TAX APPEAL	(L)NO.3544	OF	2008
INCOME TAX APPEAL	(L)NO.3546	OF	2008
INCOME TAX APPEAL	(L)NO.3547	OF	2008
INCOME TAX APPEAL	(L)NO.3548	OF	2008
INCOME TAX APPEAL	(L)NO.3549	OF	2008
INCOME TAX APPEAL	(L)NO.3550	OF	2008
INCOME TAX APPEAL	(L)NO.3552	OF	2008
INCOME TAX APPEAL	(L)NO.3553	OF	2008
INCOME TAX APPEAL	(L)NO.3554	OF	2008
INCOME TAX APPEAL	(L)NO.3555	OF	2008
INCOME TAX APPEAL	(L)NO.3556	OF	2008

The Commissioner of Income Tax Central -II,
Mumbai.Appellant.

Vs.

Shri.Omprakash K.Jain Surat and ors.Respondents.

Mr.Y.P.Patki with Mr.B.M.Chatterji and P.S.Sahadevan for
the Appellant.

Mr.S.N. Inamdar with A.K. Jasani, S.S.Shetty,
Mr.P.C.Tripathi for the Respondents.

CORAM : F.I. REBELLO & R.S. MOHITE, JJ.
DATE : 12th January, 2009.

PC :

1. All these appeals are being disposed off by this common order.

2. Income Tax Appeal (L) Nos .3494 of 2008 to 3500 of 2008 are in respect of one Sanjay S.Jain. In respect of this assessee, the Tribunal was pleased to reverse the judgment of CIT (A). The A.O. and CIT (A) had rejected the contention of the assessee that the statements recorded were under duress or coercion and as such, could not be accepted. The Tribunal considering the facts and circumstances was of the view that the addition was made only based on the admission of the assessee at the time of search which had been retracted and that the A.O. as well as CIT(A) had ignored the contention of the assessee that the addition made by the Assessing Officer was incorrect. It then went to observe that the assessee did actually furnish all particulars which had not examined by the A.O. The Tribunal further observed that the documentary evidence was produced by the assessee before the A.O. however, no attempt was made to verify the claim of the assessee by the A.O. and then proceeded to observe and concluded that the assessee had established the statement given at the time of survey or search or search was incorrect.

In these circumstances, directed that the additions made in the case of the assessee for the assessment year 2001-02 to 2004-05 would stand deleted.

3. In so far as other appeals are concerned, the learned Tribunal in Para-32 issued the following directions.

(a) If the details like statement of purchase and sales, quantitative details of turnover, ledger account of the parties with whom business was conducted on account of purchase and sales, bank statement indicating payments for respective purchase and sales and confirmation of parties from whom purchases and with whom sales were made, their sales tax returns etc. had already been filed by the Assessee before the A.O. then for the reasons stated in the case of Mr. Sanjay Jain, the additions made in the case of the assessee in all these assessment years would stand deleted.

(b) If no such details were filed by the Assessee before the A.O. earlier, then the Assessee would file the same in the set aside proceedings and the A.O. will examine the same and decide the issue in accordance with law.

4. At the time of hearing of these appeals in case of Sanjay S. Jain on behalf of the revenue, the learned counsel submits that apart from the statement which was retracted on 21.1.2004, there was a subsequent statement which was made by the assessee on 25.3.2004. Therefore, even if, by subsequent affidavit of June, 2004 the earlier statement was retracted, the statement of 25.3.2004 could not have been ignored. It is also pointed out that on prima facie consideration of the documentary evidence, the tribunal could not have accepted the evidence without examining the genuineness of the documents and the entries made therein. It is submitted that this exercise has not been done by the Tribunal.

In so far as other appeals are concerned, it is submitted that the order sending the matter back to the A.O., has left the A.O. with no discretion but to proceed to dispose of the matter in terms of the said directions. Also it is submitted that no directions could have been given to permit the assess to lead fresh evidence without assessing making out a case.

5. On behalf of the assessee, the learned counsel submits that when there was documentary evidence available, it was open to the learned Tribunal to come to the conclusion that the statement of the assessee which was retracted were given under duress or coercion.

It is further submitted that in the case of Sanjay Jain, the Tribunal proceeded on the footing that the documents were produced and in these circumstances, deleted the additions. No fault can be found with this approach of the Tribunal.

In so far as other assesses are concerned, it is pointed out that the documentary evidence was available before the A.O. but the A.O. and C.I.T.(A) have not considered the same and the matter has been remanded back for reconsideration.

6. After hearing the learned counsel, we are of the opinion that the order of the Tribunal cannot be sustained. In the first instance apart from the retracted statement of 21.1.2004, subsequent statement made on 25.3.2004 has not been considered. Secondly, there was documentary evidence on record. The A.O. while considering whether the retraction was under duress or coercion had also to consider the genuineness of the documents which were produced as this is documentary evidence. The test of evidentiary value of the oral evidence and the documentary evidence has to be borne in mind. The A.O. will have to comply with the settled principle of law. Documentary evidence if genuine must prevail over the oral statement. We however, do not propose to go into these issue as they have not been considered or answered. We propose to

remand the matters for fresh consideration of the A.O.

on all these aspects.

7. We may also point out that in so far as directions given in appeals other than of Sanjay S. Jain, the tribunal has left no discretion in the A.O. in terms of the directions given. We are therefore, of the opinion that such directions have to be set aside and the matter must be left open to the A.O. in terms of what is stated hereinabove to pass an appropriate order.

. In so far as the direction B in Para-32, such a general direction could not have been given. If any assessee has not filed the documents or seeks to produce additional documents then it is open to the said assessee to apply to the A.O. for permission to produce such documents and it is for the A.O. to consider the same according to law.

8. For the aforesaid reasons, we allow the appeals by setting aside the order of the Tribunal and CIT(A) and remand the matters back to the file of A.O. for consideration of the issues stated hereinabove. Appeals accordingly disposed off.

(R.S. MOHITE, J.)

(F.I.REBELLO, J.)