

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

INCOME TAX APPEAL NO. 1839 OF 2013

The Commissioner of Income Tax-
Central-II, Mumbai

..Appellant

Vs.

Gurinder Singh Bawa

..Respondent

....
Mr. Ashok Kotangale a/w Ganesh Lanbade and Mrs. Padma
Divakar, Advocates for Appellant.
None for Respondent.

....
**CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 5 OCTOBER 2015**

P.C.:

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 6 November 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The Assessment Year involved is A.Y. 2005-06.

2. The following questions of law have been urged by the revenue for our consideration:

“A) Whether on the facts and in the circumstances of the case and in law, the Tribunal

was justified in deleting the addition of Rs.93,72,310/- made by the Assessing Officer and confirmed by the CIT(A) being gifts received from family members which could not be proved to be genuine by the Assessee, by holding that only income related to incriminating documents found during the search u/s 132 could be assessed u/s 153A of the Act even though the provisions of Section 153A mandate that the Assessing Officer assess or re-assess the Total Income of the Assessee searched u/s 132 of the Act?

B) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in deleting the addition made by the Assessing Officer of Rs.43,67,999/- as deemed dividend in the hands of the Assessee u/s 2(22)(e) of the Act?”

3. For the Assessment Year 2005-06, the respondent-assessee had filed his return of income declaring an income of Rs.9.61 lakhs. The return of income as filed by the respondent-assessee was processed under Section 143(1) of the Act. Admittedly, no notice under Section 143(2) of the Act has been issued. Thereafter on 5 January 2007, a search was conducted on the respondent-assessee under Section 132 of the Act. Consequent

thereto, proceedings under Section 153A of the Act were initiated. During the assessment proceedings for A.Y. 2005-06, the Assessing Officer added an amount of Rs.93.72 lakhs (declared as gifts) as being covered by Section 68 of the Act and an amount of Rs.43.67 lakhs (accumulated profits of the lender) out of Rs.1.5 crores received as loan from one K.P. Developers Pvt. Ltd. as deemed dividend under Section 2(22)(e) of the Act. Undisputedly, respondent-assessee was a shareholder in M/s K.P. Developers (P) Ltd. The aforesaid additions are reflected in an assessment order dated 31 December 2008 passed under Section 143(3) r/w 153A of the Act determining the respondent-assessee's total income at Rs.1.47 crores.

4. In appeal, the CIT(A) held that the addition of an amount of Rs.43.67 lakhs as deemed dividend has to be deleted. This on the ground that there were no accumulated profits available with M/s K.P. Developers (P) Ltd. to distribute amongst its shareholders. However, so far as the addition in respect of the unexplained gifts aggregating to Rs.93.70 lakhs is concerned, the CIT(A) did not disturb the finding of the Assessing Officer.

5. On further appeal before the Tribunal, the assessee interalia challenged the validity of the assessment made under Section 153A of the Act. This on account of the fact that no assesment in respect of the six assessmetn years were pending so as to have abated. The impugned order accepted the aforesaid submission of the respondent-assessee by interalia placing reliance upon the decision of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. rendered on 6 July 2012. The Tribunal in the impugned order further held that no incriminating material was found during the course of the search. Thus the entire proceedings under Section 153A of the Act were without jurisdiction and therefore the addition made had to be deleted on the aforesaid ground. The impugned order also thereafter considered the issues on merits and on it also held in favour of the respondent-assessee.

6. Mr. Kotangale, the learned Counsel for the revenue very fairly states that the decision of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. was a subject matter of challenge before this Court as a part of the group of appeals disposed of as

CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.¹ upholding the view of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. Consequently, once an assessment has attained finality for a particular year i.e. it is not pending then the same cannot be subject to tax in proceedings under Section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under Section 153A of the Act which are contrary to and/or not disclosed during regular assessment proceedings.

7. In view of the above, on issue of jurisdiction itself the issue stands concluded against the revenue by the decision of this Court in Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra). In the appeal before us, the revenue has made no grievance with regard to the impugned order of the Tribunal holding that in law the proceedings under Section 153A of the Act are without jurisdiction. This in view of the fact that no assessment were pending, so as to abate nor any incriminating evidence was found. The grievance of the revenue is only with regard to finding

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in the impugned order on the merits of the individual claim regarding gifts and deemed dividend. However once it is not disputed by the revenue that the decision of this Court in Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) would apply to the present facts and also that there are no assessments pending on the time of the initiation of proceedings under Section 153A of the Act. The occasion to consider the issues raised on merits in the proposed questions becomes academic.

8. In the above view, the questions as framed in the present facts being academic in nature, do not give rise to any substantial question of law. Thus not be entertained.

9. Accordingly, appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J]

[M.S. SANKLECHA, J.]

CERTIFICATE

Certified to be true and correct copy of the original signed Order.