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

INOME TAX APPEAL NO.1881 OF 2013

The Commissioner of Income Tax-II Pune .. Appellant
vs
Sunil R.Agarwal .. Respondent

Mr.Ashok Kotangale a/w Mr.Amin Nagarjuna
Advocates for the Appellant.
Mr.Mihir Naniwadekar Advocate for the Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 7th DECEMBER, 2015

P.C.

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 26 June 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Block Assessment Years 1997-98 to 2003-04.

2. The Revenue urges the following questions of law for our consideration:

> *(i) Whether on the facts and in the circumstances of the case and in law the Tribunal erred in holding that assessment framed by the Assessing Officer is time- barred ?*

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in not appreciating that Income Tax Act does not differentiate between a panchanama wherein seizure is effected and a panchanama wherein no seizure is effected ?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the second panchanama was drawn to give extended time to complete assessment proceedings could not be appropriate as the Officer drawing the panchanama and the Officer completing the assessments are not the same ?"

3. The impugned order of the Tribunal is a common order passed in respect of one Mr.Anil Agarwal, one Mr.Ram Kumar B.Agarwal and the respondent-assessee.

4. The impugned order allowed the appeals of the respondent-assessee on a jurisdictional issue as the assessment orders passed in all the three cases are time-barred. This for the reason that it was passed beyond the period of two years from the end of the month in which the last of the authorization for search under Section 132 of the Act was executed in breach of Section 158

BE (b) of the Act.

5. Mr.Naniwadekar learned counsel for the respondent-assessee invites our attention to the order dated 5th December 2006 of the Commissioner of Income Tax (Appeals) clearly holding that as the assessment on substantive basis has been done in case of Mr.Ramkumar Agarwal, there is no justification for addition of the same amount in case of the respondent-assessee. We are informed that the same finding was also recorded by the Commissioner of Income Tax (Appeals) in case of Mr.Anil Agarwal. On enquiring from Mr. Kotangale learned counsel for the revenue we are informed that the Revenue has not preferred any appeal from the impugned order of the Tribunal in case of Mr.Anil Agarwal. However, no explanation for this distinction between the two cases is forthcoming from the appellants. Thus, this appeal appears to be arbitrary.

6. Be that as it may, as the assessment has been made on a substantive basis as Mr.Ram Kumar Agarwal although the same has

been set aside by the Tribunal as a question of jurisdiction. The appeal filed by the Revenue in the case of Mr.Ram Kumar Agarwal from the common impugned order being Appeal No.2164 of 2013 has been admitted for our consideration today Thus, if the Revenue finally succeeds on the jurisdictional issue, it would be open for the Revenue to recover the same from Mr.Ram Kumar Agarwal. In the above view, the appeal filed in respect of the respondent-assessee on protective basis is not justified.

7. In the above facts, the question as raised does not give rise to any substantial question of law. Accordingly, appeal is dismissed.

{G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/order.