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

INCOME TAX APPEAL NO. 182 OF 2014

Shilpa Granites Pvt. Ltd. .. Appellant

v/s.

Dy. Commissioner of Income Tax,
Central Circle-33, Mumbai .. Respondent

Mr. Pradeep Parikh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 11th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 26th July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 1997-98.

2. The appellant raises the following substantial questions of law for our consideration :-

> *"(a) Whether there can be a valid reassessment proceedings u/s 147 of the Act for the assessment year forming part of block period amenable to block assessment proceedings under special*

provisions for assessment of search cases contained under Chapter XIV-B of the Act?

(b) Whether initiation of reassesssment proceedings under the facts and circumstances of the case is not bad in law on account of the absence of requisite "reasons to believe that any income chargeable to tax has escaped assessment" in terms of Section 147 of the Act?

(c) Whether under the provisions of Section 254(1) of the Act, it is permissible to the Income Tax Appellate Tribunal to remand the matter to the file of the Commissioner of Income Tax (Appeals) for afresh adjudication without pointing out any defects in the appealed order ?"

3. This appeal from the impugned order dated 26th July, 2013 of the Tribunal disposed of two appeals by the Revenue from the orders of the CIT(A). One appeal emanated from proceedings for block assessment, consequent to search under Section 132 of the Act and the other from a reopening notice under Section 148 of the Act. The impugned order of the Tribunal dismissed the Revenue's appeal from the order of the CIT(A) setting aside the block assessment for the period 01.04.1988 to 15.09.1988. This on the ground that the assessment was framed on the basis of the materials not found during the course of the search. So far

as the Revenue's appeal from the order of the CIT(A) in respect of reopening notice for the A.Y. 1997-98 is concerned, the impugned order allowed it by way of remand to CIT(A) for fresh consideration.

4. The appellant has not annexed copies of the order of the Assessing Officer and the CIT(A) in respect of the block period assessment. On being asked for copies of the same, Mr. Parikh, learned Counsel appearing for the appellant states that it is not available.

5. On the aforesaid facts, we shall consider each of the questions raised for our consideration : -

6. <u>Regarding Question (a) :-</u>

The impugned order of the Tribunal while upholding the order of the CIT(A) to the extent it held that no assessment under Section 158BC of the Act could be made in respect of the materials not found during the course of search under Section 132 of the Act. The proceedings for reopening an assessment under Sections 147 / 148 of the Act are not constrained by any such restriction. Therefore, the reassessment proceedings under Section 147 of the Act is not in respect of materials which could be subject to block assessment. This is self evident. Thus, question (a) as proposed does not give rise to any substantial question of law. Hence, not entertained.

7. **<u>Regarding question (b) :-</u>**

The impugned order of the Tribunal has restored the issue of the validity of the reopening notice under Sections 147/148 of the Act to the CIT(A). It is before the CIT(A) that the appellant can urge the question framed herein that the Assessing Officer had no reason to believe that any income chargeable to tax has escaped assessment. In the above view, question (b) as proposed at this stage does not give rise to any substantial question of law. Hence, not entertained.

8. **<u>Regarding question (c) :-</u>**

In the facts of the present case, the impugned order of the Tribunal found that CIT(A) has not dealt with the merits of the order passed by the Assessing Officer on the reopening under Section 148 of the Act. Thus, the impugned order of the Tribunal has restored the entire issue to the CIT(A) for fresh decision after giving an opportunity of hearing to the appellant assessee. Therefore, the reason for restoring the issue to CIT(A) is evident from the impugned order of the Tribunal.

Therefore, question (c) also does not give rise to any substantial question of law. Hence, not entertained.

9. Accordingly, the Appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**