FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL NO.10 OF 2015
(The Commissioner of Income Tax, Nagpur-1, Nagpur .vs. Shri Shivaji Education Society, Amravati)
with
INCOME TAX APPEAL NO.11 OF 2015
(The Commissioner of Income Tax, Nagpur-1, Nagpur .vs. Shri Shivaji Education Society, Amravati)
with
INCOME TAX APPEAL NO.17 OF 2015
(The Commissioner of Income Tax, Nagpur-1, Nagpur .vs. Shri Shivaji Education Society, Amravati)
with
INCOME TAX APPEAL NO.72 OF 2015
(The Commissioner of Income Tax (Exemption) Pune .vs. Shri Shivaji Education Society, Amravati)
with
INCOME TAX APPEAL NO.73 OF 2015
(The Commissioner of Income Tax (Exemption), Pune .vs. Shri Shivaji Education Society, Amravati)
with
INCOME TAX APPEAL NO.74 OF 2015
(The Commissioner of Income Tax (Exemption), Pune .vs. Shri Shivaji Education Society, Amravati)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri Anand Parchure, counsel a/w Shri Bhushan Mohata, counsel for the appellants.
Shri K.P. Dewani, counsel for the respondent.

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CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : JUNE 9, 2016.

Heard.

Since the issue involved in these appeals is identical and since they arise from two common orders of the Income Tax Appellate Tribunal, dated 12.09.2014, they are heard together and are decided by this common order.

These appeals arise from two sets of orders passed by the Income Tax Appellate Tribunal in six appeals that were filed by the Revenue before the Income Tax Appellate Tribunal and were decided along with the cross-objections that were filed by the Assessee. Though certain other issues were also involved in the income tax appeals before the Appellate Tribunal, Tribunal considered the main objection raised by the respondent-Assessee in regard to the validity of the notice issued under Section 153C of the Income Tax Act, 1961, as the finding on the said objection rendered the other questions raised in the appeals as well as the cross-objections, merely academic.

The respondent-Assessee is registered under the Societies Registration Act and the Bombay Public Trusts Act and runs several schools, colleges, hostels, etc. It is the case of the Revenue that in a seizure action conducted by the appellant-Revenue under Section 132 of the Income Tax Act, 1961, certain incriminating documents including unaccounted cash were seized. On the basis of the seized material, which according to the appellant-Revenue was incriminating, a notice was served on the respondent-Assessee under Section 153C of the Income Tax Act. Further action was initiated against the assessee and in the assessment proceedings, the assessment officer computed the total income and served the notice and challan on the respondent-Assessee. Penalty notices were also issue separately. The orders of the assessment officer were challenged by the respondent-Assessee in separate income tax appeals before the Commissioner (Appeals). The Commissioner (Appeals) *vide* separate orders partly allowed the appeals and directed the assessment officers to consider the claim for depreciation in accordance with the provisions of law. It was held by the Commissioner (Appeals) that the respondent-Assessee was entitled to the benefit of the provisions of Section 10(23C)(iiiab) of the Act. Both, the Revenue and the Assessee, were aggrieved by the orders of the Commissioner (Appeals) and the Revenue filed separate appeals before the Income Tax Appellate Tribunal for separate assessment years, though the questions raised in the appeals were identical. In the said appeals, the assessee filed the cross-objections and raised an objection to the initiation of the proceedings under Section 153C on the basis of the notice issued under the same. It was the case of the assessee that the Revenue did not have the authority to issue the notice under Section 153C of the Act, as no incriminating material relevant to the assessment years under consideration was found in the seizure proceedings in the case of Dr. Padmakar Somwanshi, the Dean of Dr.Punjabrao Deshmukh Memorial Medical College, that is run by the assessee. The Tribunal upheld the contention raised on behalf of the assessee and held that in the absence of any incriminating material, the appellant-Revenue was not entitled to serve a notice under Section 153C of the Act on the assessee. After having held so, the Tribunal held that the other questions raised by the assessee and the revenue in the Income Tax appeals, were rendered academic. The orders of the Tribunal are challenged by the Revenue in these appeals.

Shri Parchure, the learned counsel for the appellant-Revenue, submitted that the Tribunal was not justified in assuming that there was no incriminating material on record to proceed under Section 153C of the Act. It is submitted that the Tribunal has not recorded a finding that no incriminating material was found and, hence, the notice under Section 153C could not have been issued. It is submitted that there is no reference to any material by the Tribunal in the impugned orders and without recording a finding of fact in respect of the absence of incriminating material, the Tribunal has recorded a finding of fact that no material, incriminating or otherwise, was found. It is submitted that in the absence of the aforesaid finding, the orders of the Tribunal are liable to be set aside and the matters are liable to be remanded to the Tribunals for a fresh decision on the appeals and the cross-objections on merits.

Shri Dewani, the learned counsel for the respondent-Assessee, submitted that no material whatsoever was seized by the Revenue during the search in the case of Dr.Somwanshi, the Dean of the Medical College on 02.08.2007 and since nothing was seized during the search, the Tribunal has rightly arrived at a finding that there was no incriminating material for initiation of the proceedings under Section 153C of the Act. It is submitted that in any case, since this Court has held in Income Tax Appeal No.20 of 2016 that the receipts of the respondent-Assessee cannot be liable to be taxed in view of the provisions of Section 10(23C)(iiiab) of the Act, the remand of the matter to the Tribunal would be an empty formality as any income of the assessee, even assuming it is based on any material that was seized, would not be liable to be taxed. It is stated that as it is held in Income Tax Appeal No.20 of 2016 in respect of the respondent-Assessee that 'any income' received by the respondent-Assessee would not be assessable to tax in view of Section 10(23C)(iiiab) of the Act, the remand of the matter to the Tribunal would be an empty formality.

On hearing the learned counsel for the parties and on a perusal of the order of the Assessing Officer and the Tribunal, it appears that the following substantial question of law arises for determination in this Income Tax Appeal.

> *"Whether the Tribunal was justified in assuming that there was absence of incriminating material on record and holding that the Revenue wrongly assumed jurisdiction under Section 153C of the Income Tax Act without recording a finding that no material was discovered.?*

To answer the aforesaid substantial question of law, it would be necessary to peruse the impugned orders of the Income Tax Appellate Tribunal. We have perused the impugned orders minutely. An objection was raised by the respondent-Assessee to the validity of the notice under Section 153C of the Act on the ground that there was absence of incriminating material on the basis of which the revenue could have proceeded to issue the notice under Section 153C of the Act during the relevant years. It was canvassed on behalf of the Assessee before the Tribunal that no material was found during the search for the relevant assessment years, whereas it was the case of the revenue that incriminating material in respect to the relevant assessment years was discovered and hence the proceedings under Section 153C of the Act were initiated. After having recorded so, the Tribunal proceeded to consider the decisions rendered by the Pune and Kolkatta Benches of the Income Tax Appellate Tribunal to hold that the proceedings under Section 153C of the Act could not have been initiated in the absence of any incriminating material. The Tribunal discussed the facts involved in the cases that were decided by the Kolkatta and Pune Benches of the Income Tax Appellate Tribunal. The facts involved in the decided cases and the documents discovered in the said cases were narrated in detail, though the Tribunal failed to discuss the material that was found in the cases that fell for consideration before the Tribunal. If there was no material discovered during the seizure proceeding in the case of Dr.Padmakar Somwanshi, the Dean of Dr.Punjabrao Deshmukh Memorial Medical College, the Tribunal ought to have recorded a clear finding of fact that no material whatsoever was found. If some material was found during the seizure proceeding, it was necessary for the Tribunal to have referred to the said material and then held, whether the said material was incriminating or not. However, in the impugned orders, the Tribunal has neither recorded a finding that no material whatsoever was found in the seizure proceeding and/or if some material was found that the material was not incriminating material. It is stated on behalf of the Assessee that, in fact, no material whatsoever for three assessment years was actually found during the seizure proceedings. That may be so, however, it was necessary for the Tribunal to have recorded that no material was seized during the seizure proceeding for particular assessment years and if at all there was some material for some other assessment years, the Tribunal ought to have recorded, whether the material was incriminating or not. Though there is a great deal of discussion by the Tribunal about the facts and the material that was seized in the cases that were decided by the Pune Bench and the Kolkatta Bench of the Income Tax Appellate Tribual, the Tribunal failed to advert its mind to the material that was seized in the cases in hand and/or to record a finding that no material ever seized. The learned counsel for the appellant-Revenue is justified in submitting that in the absence of any finding of fact to the effect that no material was seized or found and/or that the material found was not incriminating material, the Tribunal was not justified in holding that the Revenue erroneously assumed jurisdiction under the provisions of Section 153C of the Act. Since the Income Tax Appellate Tribunal is the final fact finding authority, it was necessary for the Tribunal to have recorded a clear finding of fact, whether there was any material seized for the relevant assessment years and if it was seized, whether the said material was incriminating and was enough for the initiation of the proceedings under Section 153C of the Act. Though we find much force in the submission made on behalf of the Assessee that since this court has held in Income Tax Appeal No.20/2016 that the respondent-assessee would be entitled to the benefit of the provisions of Section 10(23C)(iiiab) of the Act, no income of the assessment would be liable for tax, we leave the said question for a decision by the Tribunal. We answer the substantial question of law in favour of the Revenue and remand the matters to the Income Tax Appellate Tribunal for a fresh decision on merits.

Hence, for the reasons aforesaid, the Income Tax Appeals are partly allowed. The impugned orders of the Income Tax Appellate Tribunal are quashed and set aside. The matters are remanded to the Income Tax Appellate Tribunal for a fresh decision on the appeals filed by the Revenue and the cross-objections filed by the Assessee. It is needless to mention that we have not considered any other aspect of the matter and it would be open for the parties to make their submission on all questions which they would desire to canvass. Order accordingly. No costs.

JUDGE **JUDGE**

APTE/GULANDE