Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.11 OF 2017

The Principal Commissioner of Income Tax ... Appellant
Versus
Trimurti Exports ...Respondent

Mr K Aravin D, *Senior Standing Counsel with Ms A Razaq, Junior Standing Counsel for the Appellant.*
Mr N Sardessai, *Senior Advocate with Ms G Kamat & Mr G Panandikar, Advocates for the Respondent.*

CORAM: G.S. PATEL & NUTAN D. SARDESSAI, JJ
DATED: 11th October 2017

PC:-

1. We have briefly heard both sides on the proposed substantial questions of law.

2. As regards the question under Section 153A of the Income Tax Act, 1961, our attention is drawn to paragraph 12 of the ITAT order. This is actually in two parts. The first part makes general observations in regard to the provisions of Section 153A and the proviso. The ITAT held that once reassessment is done under Section 153A, everything in the original assessment "would stand effaced". We find that this is actually unrelated to the facts of the case in regard to the addition of Rs. 50 lakh, since no evidence was found during a Section 132 search to serve as a foundation for the addition of this amount of Rs.50 lakhs and further since the books of accounts of the assessee had also not been rejected. No defects were pointed out to substantiate and estimated addition. Thus, on the facts the question would not arise but the apprehension correctly expressed is that the general observations, if left open, would conceivably affect other cases in future as well.

3. As regards the observations on the impact of Section 153A, Section 153A(b) and the proviso, we clarify that these questions are specifically left open for determination in an appropriate proceeding and that the observations of the Tribunal in paragraph 12 cannot serve as precedent since they are without an appropriate factual context. No other substantial question of law arises.

4. As regards other questions in relation to a disallowance of Rs.1 lakh paid to the Comunidade of Tivim and the provisions of Section 40(a)(ia) the ITAT noticed in paragraph 16 that the provisions of Section 194I did not apply. This was one basis of its decision. The second basis was its reliance on decision of Allahabad High Court in the case of *Vector Shipping Services Pvt Ltd*, a decision that has been held not to be good law and has been overruled by the Supreme Court in the case of Palam Gas Service in 394 ITR 300.

5. Since the ITAT has given a dual basis for its finding, even if the second basis is incorrect, factually the first basis is not and the question could not in this case fairly be said to arise. We say this because in a companion case the entirety of the finding is based only on the overruled judgment and in that case the question will undoubtedly arise.

6. The appeal is therefore rejected, with the above observations.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**