IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.1691 OF 2014
WITH
INCOME TAX APPEAL NO.1737 OF 2014

The Commissioner of Income-Tax-8 ... **Appellant**
V/s.
Shri.Atul Barot ... **Respondent**

.....

Mr.Arvind Pinto, Advocate for the Appellant.

Mr.Nitesh Joshi with Mr.Atul K. Jasani, Advocate for the Respondent.

....

CORAM : S.V.GANGAPURWALA &
A.M.BADAR JJ.

DATED : 12th July 2017.

P.C.

1 The present Appeals pertain to Assessment year 2006-07 and 2007-08. The present Appeals are filed on the following grounds :

"a) Whether on the facts and circumstances of the case, the ITAT is justifeid in law and on facts in drawing upon imagination to hold that the return for A.Y. 2006-07 had been processed u/s.143(1) and the limitation period of twelve months for initiation of scrutiny had expired i.e. from the end of months in which the return for A.Y. 2006-07 had been filed ?”

b) Whether on the facts and circumstance of the case, the Hon'ble ITAT is justified in ignoring the material evidence on record to the effect that for the A.Y. 2006-07 scrutiny assessment u/s.143(3) was pending on the date of search i.e. 19.07.2007, having been initiated earlier by 143(2) notice dated 28.06.2007 (Vide Exhibit-'F') and the said proceedings had to abate as per statutory requirement of Section 153A to facilitate initiation of proceedings u/s.153A (Vide Exhibit.'G') that the 143(1) processing had been done only on 21.07.2007 (Exhibit-H) well after initiation of scrutiny u/s.143(3) ?”

2 We have heard the learned counsel for the respective parties. Upon going through the Judgment and the arguments canvased by the learned counsel for the respective parties, it appears that the Tribunal has failed to consider that during the search and proceeding under Section 153A of the Act, the Assessment Proceedings under Section 143 of the Act had not concluded. In view of that the Judgment relied in the case of ***the Commissioner of Income-Tax v. Continental Warehousing***

Corporation (Nhava Sheva) Ltd. reported in **[2015] 374 ITR 645 (Bom)** would not apply. The Assessing Officer would within his right to consider the other evidence also.

3 It is not disputed that the search had taken place on 19th July 2007 and on the said date the Assessment Proceedings of both years were not concluded. It would be necessary for the Tribunal to consider the entire evidence and then to arrive at the appropriate conclusion.

4 In light of above, the following order :

(i) The impugned Judgment of the Tribunal for the Assessment Year 2006-07 and 2007-08 is quashed and set aside.

(ii) The parties are relegated before the Tribunal. They shall appear before the Tribunal on 14th August 2017.

(iii) The Tribunal shall after hearing the parties decide the matter for the Assessment Year of 2006-07 and 2007-08 before it afresh on its own merits considering that on the date of search, Assessment Proceedings were not concluded.

(iv) It is made clear that we have not considered the factual matrix/evidence on merits in the present case and that is left open for the Tribunal to consider.

(v) Appeals are accordingly partly allowed.

(vi) No costs.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**