IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.1874 OF 2014
WITH
INCOME TAX APPEAL NO.58 OF 2015

The Commissioner of Income Tax, Central-IV ... **Appellant**
V/s.
M/s.SKS Ispat & Power Limited ... **Respondent**

.....

Mr.Tejveer Singh, Advocate for the Appellant.

Mr.Beni Chaterjee, Senior Counsel with Mr.Abhishek Padwalkar i/by Mr.Ranit Basu, Advocate for the Respondent.

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

DATED : 12th July 2017.

P.C.

1 These Appeals are for the Assessment years 2002-03 and 2003-04. The Revenue assails the Order of the Tribunal thereby allowing the Appeal of the Assessee.

2 Mr.Singh, the learned counsel for the Appellant contends that the Tribunal was not justified in deleting the addition made on account of unaccounted sundry creditors

(purchases) and unexplained share of the money thereby limiting the scope of Assessment under Section 153A of the Act on the basis of incriminating material discovered in the search only and thus denying the Revenue to assess the undisclosed income on basis of other evidences or post search inquiries or investigations made during subsequent Assessment proceedings. According to the learned Counsel, the Judgments relied by the Tribunal while limiting the scope of inquiry under Section 153A of the Act to the extent of discovery of incriminating material during search only is improper. The said Judgments were in respect of assessments which had taken place under Section 143(3) of the Act. In the present case, the assessment has taken place under Section 143(1) of the Act. The distinguishing feature in Sections 143(1) and 143(3) has not been considered by the Tribunal in an assessment under Section 143(3) of the Act a long drawn inquiry is contemplated. It would also amount to examination of evidence. However, inquiry under Section 143 (1) of the Act is limited on the basis of return filed. In view of that the Judgments relied would not be applicable.

3 The learned Senior Advocate for the respondent supports the order and submits that this Court has time and again held that assessment under Section 153A of the Act would be limited to the extent of any incriminating articles, incriminating evidence found during the search.

4 Even in case of The Commissioner of Income Tax v. Gurinder Singh Bawa decided by this Court, the assessment was under Section 143(1) of the Act. The learned Advocate relied on the judgment of this Court in ***The Commissioner of Income Tax v. Gurinder Singh Bawa*** reported in **[2016] 386 ITR 483 (Bom)** and another Judgment of this Court in the case of ***The Commissioner of Income Tax v. Continental Warehousing Corporation & Anr.*** reported in **[2016] 374 ITR 645 (Bom)**.

5 We have considered the arguments canvased by the learned counsel for the respective parties. On perusal of Section 153A of the Act, it is manifest that it does not make any distinction between assessment conducted under Section 143(1) and 143(3). This Court had occasion to consider the scope of Section 153A of the Act in case of ***The Commissioner of Income Tax v. Gurinder Singh Bawa*** and in the case of ***The Commissioner of Income Tax v. Continental Warehousing Corporation & Anr.***(referred to supra). It has been observed that Section 153A cannot be a tool to have a second inning of assessment either to the Revenue or the Assessee. Even in case of ***The Commissioner of Income Tax v. Gurinder Singh Bawa*** (referred to supra) the assessment was under Section 143(1) of the Act and the Court held that the scope of assessment after search under Section 153A would be limited to the incriminating evidence found during the search and no further. In the said Judgment, the Judgment of this Court in ***The***

Commissioner of Income Tax v. Continental Warehousing Corporation & Anr. (referred to supra) has been followed.

6 Considering the authoritative pronouncements of this Court in above referred cases one of which is also with regard to assessment under Section 143(1), the issue is no longer res integra and stands concluded in the above referred Judgments.

7 In light of the above, the Appeals being sans substantial question of law stand dismissed. No costs.

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