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

INCOME TAX APPEAL NO.691 OF 2016

The Pr. Commissioner of Income-Tax-17 … Appellant

V/s.

Shri Bharat Sakhsaria … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Rajeev Kumar for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 04, 2018.

P.C.:-

1. Revenue has filed appeal against the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 29th May, 2015.

2. Following question has been presented for our consideration:

> "Whether on the facts and circumstances of the case the Hon'ble ITAT was correct in holding that the Assessment order dated 23.02.2000 is passed beyond the period of limitation

prescribed u/s.158BE(1)(b) of the Income Tax Act?”

3. Brief facts are that:

Search and seizure action was initiated against the Respondent-Assessee by the Departmental Authorities. The first search was conducted on 13th January, 1998. The proceedings were reduced in writing in the form of panchnama. This panchnama records that the search had commenced at 12.15 p.m. The proceedings were closed at 3.45 p.m. temporarily. According to the Department, further search was carried out on 6th February, 1998. The panchnama of the proceedings records that no documents or articles were found or seized. It also records that the search commenced at 11.00 a.m. and was closed at 11.35 a.m. The Assessing Officer passed the order of assessment on 23rd February, 2000. In this context, the question arose whether such order of assessment was within the time permitted under Section 158BE(1)(b) of Income Tax Act, 1961 ("the Act" for short).

4. The Tribunal held that the last action of search took place on 13th January, 1998 and therefore, the order of assessment was passed beyond the period of limitation prescribed. The Tribunal did not accept the Revenue's contention that the search had concluded only on 6th February, 1998. In the process, the Tribunal relied on the decision of Delhi High Court in case of **CIT Vs. Shri S. Katyal**[1]. In such judgment Delhi High Court had examined facts which were substantially similar to the present case. The Court had come to the conclusion that the later events could not be equated with continuation of search. The Court had held that on 3rd January, 2001 i.e. the date which the Revenue wanted to be believe the search had ended, nothing was found or seized. All that was done on 3rd January, 2001, according to the High Court was that the seals were removed from the cash box and the almary and the keys were handed back to the assessee. It was in the nature of revocation of the seizure order passed earlier.

5. Facts are substantially similar in the present case. Though

1 (2009) 308 ITR 168(Del)

the panchnama drawn on 13th January, 1998 records that the search was temporarily concluded, concededly no further search was carried out on 6th February, 1998. The panchnama of 6th February, 1998 also clearly shows that no articles or things were found or seized. Infact, the search commenced at 11.00 a.m. and ended about in 35 minutes.

6. Learned counsel for the assessee brought to our notice several other decisions of the High Courts including that of this Court in case of **Commissioner of Income-tax – 15 Vs. Plastika Enterprises**[1] taking a similar view. We have no hesitation in accepting the findings and conclusion of Tribunal. No question of law arises. Tax appeal is dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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1 (2009)180 Taxman 293(Bombay)