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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1261 OF 2016

Pr. Commissioner of Income Tax,
Central -2 ..Appellant
Vs.
Parag M. Sanghvi ..Respondent

…........

Mr. Ashok Kotangle a/w. Ms. Padma Divakar for appellant.

…........

CORAM : AKIL KURESHI & M.S. KARNIK, JJ.

DATE : 4th JANUARY, 2019

P.C. :

The Revenue is in Appeal against the judgment of Income Tax Appellate Tribunal dated 30/9/2015. Though several questions are framed, we refer to only one of them which will bring out full controversy, which question reads as under :-

"Whether on the facts and in the circumstances of the case and in Law the Hon'ble ITAT was right in narrowing down the scope of assessment u/s. 153A of the I.T. Act, 1961 in respect of completed assessments by holding that only undisclosed income and undisclosed assets detected during search could be brought to tax ?”

2. Learned Counsel for the Revenue fairly submitted that the case is squarely covered by the judgment of this Court reported in **Commissioner of Income Tax v. Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645** in which following observations were made :

> 22. A bare perusal thereof would indicate as to how a non obstante clause has been inserted and with a defined intent. One would find that in section 139 of the IT Act, the return of income is contemplated. These provisions fall in Chapter XIV entitled "Procedure for Assessment". Section 139 deals with return of income whereas section 140 states that such return has to be verified Section 147 which also falls within this Chapter deals with income escaping assessment and section 148 provides for issuance of notice where income has escaped assessment. Section 149 sets out a time limit for SRP 19/61 ITXA523.13.doc notice. Then, appear sections 149, 151 and 153 which, inter-alia, deal with time limit, sanction for issue and time limit for completion of assessments and reassessments. All these are brought in section 153A and specifically mentioned with an intent to bring them within the non obstante clause. Notwithstanding anything contained in these provisions where search is initiated under section 132 or books of account, other documents or any assets are

requisitioned under section 132A after 31st day of May, 2003, that the Assessing Officer is in a position to and mandated to issue notice within the meaning of sub-section (1) of section 153A. That is because the preceding Chapter, namely, Chapter XIII within which the powers of search and seizure and powers to requisition books of account are spelt out enable the Revenue to take care of cases where it effects a search and seizure. That search and seizure is effected and after the same is effected books of account, other documents, money, bullion, jewellery or other valuable article or thing is found as a result thereof that notwithstanding anything and within the meaning of the above provisions having been concluded, it is open for the Revenue to make an assessment. It is also open to the Revenue to make a reassessment in cases where it exercises the powers to requisition books of account etc. This is because it is of the view that the books of account are required to be summoned or taken into custody. It, therefore, issues a summons in that regard. It may also requisition the books of account or other documents for that might be useful and or any assets representing withholding or part income or property which has not been or would not have been disclosed for the purpose of the Indian Income Tax Act, 1922, or the Income Tax Act of 1961 by any person from whose possession or control they have been taken into custody. This is when the authorities have reason to believe that such powers need to be exercised. Therefore, the fetters and which are to be found in other provisions are removed and a notice of assessment in such cases is then issued. That is mandated by sub-section (1) of section 153A. It is not only the issuance of the notice but assessment or reassessment of total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition has to be made.

23. We are of the view that there is much substance in the contentions of Mr. Dastur that the provisions such as section 153A enabling assessment in case of search or requisition making specific reference to the provisions which enable carrying out of search or exercise of power of requisition that the assessment in furtherance thereof is contemplated."

3. In the result, Income Tax Appeal is dismissed.

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