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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
INCOME TAX APPEAL NO. 1753 OF 2016

Pr. CIT-2 Kolhapur ...Appellant
vs
M/s RDS Construction Co. ...Respondent.

WITH
INCOME TAX APPEAL NO. 1612 OF 2016

Pr. CIT-2 Kolhapur ...Appellant
vs
M/s RDS Construction Co. ...Respondent.

.....

Mr N.N.Singh for the Appellant in both appeals

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CORAM : AKIL KURESHI &
B.P.COLABAWALLA, JJ.
FEBRUARY 13, 2019.

P.C. :

These appeals arise in common background. The facts may be noted from Income Tax Appeal No.1753 of 2016.

2 This appeal is filed by the revenue challenging the Judgment of the Income Tax Appellate Tribunal. The following questions are presented for our consideration.

> "(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that AO has not power to reassess the income u/s 153A even in the case of completed assessment u/s 143(3) of the I.T.Act, 1961 ?
> (B) Whether on the facts and in the circumstances of the case and in law, the ITAT was right in deleting the additions made by the AO u/s 41(1) on a/c of bogus claim of expenses in the name of labour contractors / sub-contractors which are outstanding for a number of years?"

3 Question No.1 is squarely covered by the Judgment of Division Bench of this Court in the case of **Commissioner of Income Tax Vs. Continental Warehousing Corporation Ltd.** reported in **372 ITR 645**. It was held that in the proceedings under Section 153(3) of the Income Tax Act, 1961 ("IT Act" for short), finalized assessment or the reassessment shall not abate, and only undisclosed income and undisclosed assets detected during the search could not be brought to tax. In that view of the matter no question of law arise in this respect.

4 Question No.2 came up for consideration under similar situation. The question was rejected by making the following observations -

> "6. Insofar as question no.(i) is concerned, the same arises out of the additions made by the Assessing Officer under Section 41(1) of the Income Tax Act, 1961 ("the Act" for short) on account of bogus claim of liability. The Tribunal while giving relief to the assessee, referred to the decision of the Supreme Court and other decisions holding that merely because period of 3 years expired from arising of the liability would not automatically mean that the liability has ceased. We do not find any error in the view of the Tribunal."

5 In the result no question of law arises. Income Tax Appeals are dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(AKIL KURESHI, J.)**