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

INCOME TAX APPEAL NO.202 OF 2017
WITH
INCOME TAX APPEAL NO.204 OF 2017

Principal Commissioner of Income Tax
(Central - 4) .... Appellant

versus

M/s. Harsh Deep Construction ... Respondent

…….

- Mr.Tejveer Singh, Advocate for Appellant.
- Mr.Sashi Tulsiyan a/w P.C. Tripathi, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th APRIL, 2019.

P.C. :

1. These Appeals are filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal concerning same assessee. They have been heard together and would be disposed of by this common judgment.

2. The Appeals arise out of search and seizure action

initiated by the revenue against the Association of Persons ('AOP' for short) or its members. The Assessing Officer made additions in the hands of the Respondent-Assessee, an individual which were challenged unsuccessfully before the CIT (Appeals). In further appeals, the tribunal deleted the additions. In one of the assessment years covered under these Appeals, the questions of validity of search authorization against the assessee and the question whether the search carried out at the premises of the assessee, which was in relation to such authorization was valid, were addressed by the tribunal. Looking to the search authorization, the Panchanama of search and other relevant factors, the Tribunal came to the conclusion that no action against the assessee under section 153A of the Income Tax Act (for short 'the Act') could have been taken.

3. Having stated so, tribunal also proceeded to examine the additions made by the Assessing Officer for both assessment years as confirmed by the CIT (Appeals). The tribunal on merits held that the additions were totally impermissible.

4. Having heard learned Counsel for the parties and having perused documents on record, we are of the opinion that even though revenue may have an arguable case in relation to the tribunal’s first conclusion of invalidity of assessment under section 153A of the Act, in view of the tribunal's ultimate conclusions, these Appeals are not required to be entertained. The tribunal in the impugned judgment while deleting additions on merits has come to the conclusion that the revenue authorities did not contradict the submissions of the assessee regarding impermissibility of reliance on certain documents and the statements recorded in search. The tribunal also noted that the analysis carried out by the Assessing Officer suffered from multiple infirmities. Assessing Officer had not carried out the qualitative analysis and had carried out on certain arithmetical calculations based on loose papers. The tribunal concluded as under;

> *“24. In the instant case, it is an admitted fact that the revenue has not seized any other valuables, cash or investments corroborating the figure of Rs..15.00 crores.*

Further the notings made in panchanama shows that the search commenced in the residence of Shri Harshad Doshi at 1.30 a.m. (almost midnight) on 17.10.2008 and continued upto 1.00 am (again mid night) on 18.10.2008. We have noticed earlier that Shri Dilesh Shah was called upon to the residence of Shri Harshad Doshi. The copy of sworn statement furnished in page no.2 of the paper book shows that the search officials did not record the time at which the recording of statement was commenced, even though the sheet contained a column for recording the time. Hence there could be merit in the contentions of the assessee that the statement was recorded at the fag end of the search and Shri Dilesh Shah was exhausted and he was constrained to admit the additional income. Further, we have noticed that the noting found in the loose sheet did not tally with the entries made in the books of account. No other material was brought on record by the AO to corroborate the noting made in the loose sheet. None of the buyers of the flat was examined to ascertain the truth. Under these set of facts, we are of the view that the loose sheet referred above cannot be considered to be a document that could be relied upon. Further, the facts and circumstances show that Shri Dilesh Shah was under some compulsion to admit additional income. The very *fact that the assessee did not offer the same in the return of income shows that the assessee was not in agreement with the admission so made, as according to it, the same did not reflect the truth. Even though there is no proper explanation as to why the affidavit prepared within two days of the search, was filed after expiry of two years, yet the surrounding circumstances show that the assessee was under the belief that the admission has been wrongly made. Further, we have also, for the reasons discussed supra, noticed that the statement taken from Shri Dilesh Shah may not be a statement taken as per the provisions of sec. 132(4) of the Act. In view of the foregoing discussions, we are of the view that the tax authorities are not justified in placing reliance on the page no.90 of the Annexure I and the sworn statement taken from Shri Dilesh Shah."*

5. In the result the entire issue is based on appreciation of materials on record. No question of law arises.

6. Income Tax Appeals are dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**