IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-33-2018

Date of Decision: 4.2.2019

Principal Commissioner of Income Tax (Central), Gurgaon
....Appellant.

Versus

M/s Parabolic Drugs Ltd., Faridkot

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Rajesh Sethi, Sr. Standing Counsel with
Mr. Tushar Gera, Advocate for the appellant.

Mr. Veer Singh, Advocate for
Mr. Surjeet Bhadu, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos.33 of 2018 and 426 of 2017 as according to learned counsel for the parties, identical questions of law and facts are involved therein. For brevity, the facts are being extracted from ITA-33-2018.

2. ITA-33-2018 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 18.10.2016 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 240/Chd/2015, claiming the following substantial questions of law:-

i) Whether on the facts and circumstances of the

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case, the ITAT was right in concluding that there was a difference in scope of proceedings under Section 153A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment?

ii) Whether on the facts and circumstances of the case, the ITAT was right in holding that no addition can be made u/s 133A in respect of completed assessment if no incriminating material is found during search?

iii) Whether there is any restriction on the powers of the Assessing Officer under Section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se?

iv) Whether on the facts and circumstances of the case the ITAT was correct in interpreting Section 153A which starts with a non-obstinate clause stating therein that the operation of Sections 139, 147, 148, 149, 151 and 153 was deposed. Meaning thereby that in search cases the Assessing Officer is duty bound to take up the assessment u/s 153A and that the above mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if any escaped

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income or under-assessed income undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceeding u/s 153A in search cases?

v) Whether on the facts and circumstances of the case the ITAT was right to bring in special procedure of block assessment as laid in Chapter XIV B into the new procedure of search assessment u/s 153A introduced by Finance Act, 2003, w.e.f. 1.06.2003, when Chapter XIV B was scrapped to reduce litigation and disputes regarding treatment of a particular income as undisclosed and whether it is relatable to material found during search (Finance Bill 2003 under head "Assessment in search cases – abolition of the special procedure in Chapter XIV-B and introduction of new provisions")?

vi) Whether on the facts and circumstances of the case the ITAT was right in ignoring the basic difference in search assessment u/s 153A and chapter XIV B being that in section 153A the "total income" has to be assessed or reassessed in six separate A.Y.s, as opposed to assessing the "undisclosed income" in the scrapped Chapter XIV B for block period in a single assessment?

vii) Whether on the facts and circumstances of the case the ITAT was right in following Delhi High Court

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decision in the case of CIT vs. Kabul Chawla (61 taxman.com 412) when the Hon'ble HC itself admits in para 37 (iv) the "Although section 153A does not say that additions should strictly made on the basis of evidence found in course of search..." thereby interpreting the statute in the manner which were never worded or intended by the legislature?

viii) Whether on the facts and circumstances of the case the ITAT has erred in ignoring the Principle of Strict Interpretation of statues when the words used in the statue i.e. sec. 153A(1)(b) of the IT Act, 1961 are Assess or Reassess the "Total Income"?

ix) Whether on the facts and circumstances of the case the ITAT was right in not following the Hon'ble SC judgment on interpretation of statue in the case of Smt. Tarulata Shyam & Other vs. CIT (108 ITR 345), Keshavji Ravji and Co. vs. CIT (183 ITR 1), Padamsundara Rao (Decd.) & others vs. State of Tamil Nadu 255 ITR 147, Prakash Nath Khanna & Other vs. CIT 266 ITR 1, Institute of Chartered Accountants of India vs. Price Water House 93 Taxman 588?

x) Whether on the facts and circumstances of the case the ITAT is not following the Hon'ble SC

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Judgment on the issue of additions in search case u/s 153A in the case of CIT vs. Anil Kumar Bhatia 352 ITR 492 (Delhi HC), Madugula Venu vs. DIT 29 Taxman.com 200 (Delhi HC), CIT vs. Raj Kumar Arora 367 ITR 517 (Allahabad HC), Canara Housing Development Company vs. DCIT 49 taxman.com 98 (Karnataka HC), Filatex India Ltd. vs. CIT 229 Taxman 555 (Delhi HC), Sunny Jacob Jewellers and Wedding Centre, 362 ITR 664 (Kerala HC) and CIT vs. Continental Warehousing Corporation 64 taxman.com 34 (SC)?

xi) Whether the Hon'ble ITAT was justified in following the decision of the Hon'ble High Court dated 28.5.2015 in the case of CIT vs. Kabul Chawla, when the said decision was distinguished in the Revenue favoring judgment of the Hon'ble Delhi High Court dated 27.10.2016 in the case of Smt. Dayawanti through Smt. Sunita Gupta (L/H) vs. CIT?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income for the assessment year 2005-06 at a total income of ₹ 69,12,480/- on 29.10.2005. A search under Section 132(1) of the Act was conducted on M/s Surya, Nectar & Parabolic Group of cases on 17.9.2010 and the assessee was one of the concerns covered under Section 132 of the Act. The Assessing Officer framed the assessment vide order dated 31.3.2013

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(Annexure A-1) assessing the total income at ₹ 3,05,13,573/-. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 16.12.2004 (Annexure A-2) upheld the addition made by the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated (Annexure A-3) allowed the appeal of the assessee and deleted the addition made by the Assessing Officer. Hence, the present appeals by the revenue.

4. At the outset, learned counsel for the respondent-assessee submitted that vide order dated 23.08.2018 (appended as Annexure R-1) passed by National Company Law Tribunal, "Chandigarh Bench", Chandigarh (hereinafter referred to as 'NCLT') in a petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code'), admitted the petition filed by an operational creditor, namely, M/s Weather makers Pvt. Ltd. against the respondent-Company and the moratorium was declared for all of the following in terms of Section 14(1) of the Code:-

> "(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
>
> (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> (c) any action to foreclose, recover or enforce any security

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interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

5. It was urged on behalf of the respondent-assessee that in view of the decision of the Delhi High Court in **Principal Commissioner of Income Tax v. Monnet Ispat and Engergy Ltd. ITA Nos. 533, 552 and 554 of 2017** decided on 4.9.2017, wherein, it had been laid down that by virtue of Section 238 of the Code, it is the Code that would apply notwithstanding anything inconsistent therewith contained in any other law for the time being in force, where, NCLT had admitted the petition under the Code against the assessee and had prohibited, *inter alia,* 'the institution of suits or continuation of pending suits or proceedings' against the assessee. It was contended that this would include the present appeal filed by the revenue against the order of the Tribunal in respect of the tax liability of the assessee. However, the Delhi High Court had disposed of the appeals with liberty to the revenue to revive them subject to the furthers orders that might be passed by the NCLT. Further, the Special Leave to Appeal (C) No. 6483-2018 filed against the said order was dismissed by the Apex Court vide order dated 10.8.2018 with the following observations:-

"Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment,

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including the Income Tax Act.

We may also refer int his connection to **Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. & others (2000) 5 SCC 694** and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.

We are of the view that the High Court of Delhi is, therefore, correct in law.

Accordingly, the Special Leave Petitions are dismissed."

6. Prayer was made by learned counsel for the respondent-assessee for an appropriate order in terms of the order passed by the Delhi High Court. Learned counsel for the appellant-revenue, however, could not seriously oppose the prayer made by the respondent-assessee.

7. In view of the above, the present appeals are disposed of with liberty to the revenue to revive the same subject to the further orders of the NCLT.

(AJAY KUMAR MITTAL)
JUDGE

February 4, 2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**

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