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

INCOME TAX APPEAL NO.1456 OF 2017

Commissioner of Income Tax-(E),
Pune, 3rd Floor, 'C' Wing Room No.322,
PMT Building, Shankar Sheth Road,
Swargate, Pune-411 037 ... Appellant

Versus

Maharashtra Academy of Engineering
and Educational Research
S.No.124, Ex-Serviceman Colony,
Paud Road, Kothrud,
Pune : AAAAM1206F ... Respondent

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Mr. Suresh Kumar for the Appellant.
Mr. Riyaz Padvekar a/w Mr. Tanzil Padvekar and Mr. Mandar Vaidya for the Respondent.

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CORAM : DHIRAJ SINGH THAKUR &
ABHAY AHUJA, JJ.

DATE : 25 AUGUST 2022

: ORDER :

(PER DHIRAJ SINGH THAKUR, J.)

. The present Appeal is preferred under Section 260A of the Income Tax Act, 1961 ("the Act") relevant to the assessment year 1999-2000 against the Order dated 10 February 2017 passed by the Income Tax Appellate Tribunal ("ITAT"), Pune.

2 The following questions of law have been proposed for our

consideration :

A. Whether in the facts and circumstances of the case and in law, the ITAT was right in holding that no addition was made on rental income which was reason for reopening under section 147, whereas in fact the assessing officer by withdrawing exemption under section 11 had taxed the assessee as an AOP and as a result the rental income as proposed in the reason recorded under Section 147 had also been brought to tax ?

B. Whether in the facts and circumstances of the case and in law, the ITAT was right in not appreciating the fact that the rental income which was reason for reopening under section 147 was a part of total income assessed under section 143(3) read with section 147 ?

C. Whether in the facts and in circumstances of the case and in law the ITAT was right in holding that no other addition may be made while completing proceedings under section 147 if no addition is made on the ground on which the proceedings have been reopened ?

3 Learned Counsel for the parties agree that in case question No.C as proposed by the revenue is answered against the revenue,

the question Nos.A and B, would be rendered academic. Be that as it may, briefly stated the material facts in the background of which the present controversy arises, are as under :

4 The assessee is a trust incorporated in the year 1983 and is registered under the Bombay Public Trust Act, 1950. The trust is also registered under Section 12AA(1) of the Act. The trust is engaged in running educational institutions. In its returns for the years 1999-2000 to 2001-02, the income disclosed was 'Nil', as the income was claimed to be exempt under Section 11 and also under Section 10(23C)(vi) of the Act.

5 A search operation under Section 132 of the Act was carried out by the department in the case of two trustees of the assessee. Survey operation under Section 133A of the Act was also carried out in the case of the assessee trust. Pursuant to the search and survey operations, during the inquiry made by the department, a number of illegalities were alleged to have been noted by the department, which included taking donations from various persons for admission under the management quota in violation of Maharashtra Educational Institutes (prohibition of Capitation Fees) Act, 1987. Violations were also alleged in regard to Section 13 of the Act among others, as regards expenditure incurred by the trust on the air fare of the trustees and their family members,

expenses on foreign exchange etc.

6 Based upon the aforesaid mentioned facts, the assessment was reopened & a notice issued under Section 147 of the Act dated 29 March 2006. Objections filed by the assessee to the issuance of notice under Section 148 were disposed of vide Order dated 8 August 2008. The assessing officer finally proceeded to pass the order of assessment dated 8 August 2008. The said Order was challenged before the Commissioner of Income Tax (Appeals)-III, Pune. CIT (A)-III, Pune vide its order dated 29 February 2012. While dismissing the appeal some more additions were made to the income of the assessee.

7 Being aggrieved of the Order of CIT (A)-III, Pune, an appeal was preferred by the assessee before the Income The Appellate Tribunal, Pune, bearing ITA No.915 to 920/PUN/2012.

8 The ITAT in the Order, impugned in the present appeal, noticed that the reason for reopening of the assessment was that the assessee had shown income from other sources to the tune of Rs.17,97,33,097/-, which included rent income of Rs.1,92,34,679/-. The assessing officer for the said reason had stated that since the object of the trust was to run educational institution and not to give property on rent, therefore, the rental income ought to have been taxed as income from house property and not under the head of 'income from other sources/business income'.

The ITAT held that as against the reason for reopening of assessment communicated by the assessing officer, the assessment order passed by the assessing officer, did not bring to tax such rental income as 'income from house property' and no addition was made on that account by the assessing officer. The ITAT by relying upon the judgment of this Court in the case of **Jet Airways (I) Ltd**[1] as also one rendered by Delhi High Court in the case of **Ranbaxy Laboratories Ltd**[2]**,** allowed the appeal bearing ITA No.915 to 920/Pun/2012, by holding that since addition had been made for a reason different from what had been communicated to the assessee and since no addition had been made on the ground for which the assessing officer had 'reason to believe' for reopening of assessment, the reassessment proceedings were rendered invalid.

9 This Court in **Jet Airways** held :

> "...........*Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under Section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh*

1 (2011) 331 ITR 236 (Bom)

2 336 ITR 137

> *notice under Section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.*"

10 In **Ranbaxy Laboratories Ltd**., Delhi High Court held :

> *"...............The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment..............."*

11 Learned Counsel for the Appellant in the present case has not disputed the factual finding recorded by the ITAT that the assessing officer had not made any addition on the ground on which he had reopened assessment and that additions were made on grounds other than those based upon which the assessing officer had based his reasons of belief for reopening of assessment. If that be so, then in our opinion, the ITAT committed no error in holding that the reassessment

proceedings for the assessment year 1999-2000 were bad in law.

12 For the reasons mentioned above, the appeal is found to be without merit and is accordingly dismissed.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**

RAJESH VASANT CHITTEWAN
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