

OD – 6

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/136/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-13, KOLKATA
VERSUS
KANCHAN OIL INDUSTRIES LIMITED

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 24th November 2023.

Appearance:
Ms. Smita Das De, Adv.
.... for appellant

The Court:- Heard Ms. Smita Das De, learned Senior Standing Counsel for the Income Tax Department/appellant.

This appeal relates to Assessment Year 2004-05 in which, according to the learned Counsel for the appellant; tax effect is above the monetary limit fixed for filing appeal.

The appeal has already been admitted.

The substantial question of law involved in this appeal is as under :-

“1. Whether in case of a concluded assessment, the provisions as stipulated under Section 153A of the said Act restricts the assessment within the incriminating materials

as found and seized during the search and seizure proceedings? If the answer to this question is in favour of the revenue and against the assessee, whether the assessing officer had the jurisdiction to deny to the assessee the deduction under Section 80-IB of the Income Tax Act, 1961?”

The substantial question of law as framed in this appeal is squarely covered by a judgment of this Court dated 26.04.2023 in ITA/85/2022 (*Principal Commissioner of Income Tax, Central – 1, Kolkata -vs- M/s. MBL infrastructure Ltd.*), which is reproduced below :-

“The Court : This appeal has been filed by the revenue challenging the order passed by the Income Tax Appellate Tribunal. The legal issue involved in the instant case is the scope of assessment under Section 153A of the Income Tax Act. **The legal issue which has been raised by the revenue has been answered by the Hon’ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell [P] Ltd. reported in [2023] 149 taxmann.com 399 [SC].** The Hon’ble Supreme Court has summarised the legal position in paragraph 11 of the judgment and in paragraph 13 the Hon’ble Supreme Court has held that it is an agreement with a view taken by the Delhi High Court in the case of Commissioner of Income Tax [Central]-III vs. Kabul Chawla reported in [2016] 380 ITR 573 [Delhi] and that of the High Court of Gujarat in the case of Principal Commissioner of Income Tax-4 vs. Saumya Construction reported in [2016] 387 ITR 529 [Gujarat]. In the penultimate paragraph of the judgment namely, in paragraph 14 the conclusion has been recorded, which is as follows :

“14. In view of the above and for the reasons stated above, it is concluded as under:

ij] that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii] all pending assessments/reassessments shall stand abated;

iii] in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

*iv] in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. **Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961.** However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

In the light of the above decision, the appeal stands disposed of in terms of the order passed by the Hon'ble Supreme Court and the question of law stands answered accordingly."

In view of the aforesaid, the question of law as framed above is answered in negative i.e. against the revenue.

The appeal is accordingly disposed of in terms of the judgment
aforequoted.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

RS