

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

ITAT/157/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
M/S. SALARPURIA PROPERTIES PVT LTD. KOLKATA

BEFORE:-

THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM

-A N D-

HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE : 2ND AUGUST, 2023.

Appearance :

Ms. Smita Das De, Adv.

...for appellant

Mr. J.P. Khaitan, Sr. Adv.

Mr. Akhilesh Gupta, Adv.

Mr. Indranil Banerjee, Adv.

...for respondent

The Court :- This appeal by the revenue filed under Section 260(A) of the Income Tax Act, 1961 (the Act) is directed against the order dated May 10, 2022 passed by the Income Tax Appellate Tribunal “A” Bench, Kolkata (the Tribunal) in I.T.A. No. 2094/Kol/2017 for the assessment year 2010-11.

The revenue has raised the following substantial question of law for consideration :-

“Whether in the facts and in the circumstances of the case the Tribunal was justified in law in deleting the addition made under Section 14A read with Rule 8D(2) of the said Act by

holding that no addition can be made under Section 153A/143(3) of the said Act since no incriminating documents/materials were found or seized during the search ?”

We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel duly assisted by Mr. Akhilesh Gupta and Mr. Indranil Banderjee, learned Advocates appearing for respondent.

The issue involved in this appeal is squarely covered by the decision of 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 had summarized the legal position in paragraph 11 of the judgement and in paragraph 13 the Hon’ble Supreme Court has held that it is in agreement with the view taken by the Delhi High Court in the case of the *Commissioner of Income Tax Vs. [Central] –III vs. Kabul Chawla*, reported in [2016] 380 ITR 573 [Delhi] and that of High Court of Gujarat in the case of *Principal Commissioner of Income Tax-4 Vs. Saumya Construction* reported in [2016] 387 ITR 529 [Gujarat]. The conclusion has been recorded in paragraph 14 of the judgement which is quoted hereinbelow :-

“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.”

Before the learned Tribunal the assessee had substantially raised the contention that the *Commissioner of Income Tax (Appeals) CIT(A)* erred in not adjudicating the validity of an order under Section 153A read with Section 143(3) of the Act in view of the facts and circumstances of the case, more particularly, when there was no incriminating material found during the course of search. Further, before the learned Tribunal the assessee contended that the CIT(A) erred in directing the assessing officer to follow adjudication of the appeal in the original order under Section 143(3) when the issue in such an order under Section 143(3) had merged with the order so passed under Section 153A read with Section 143(3) and in view of the facts and circumstances of the case. After taking note of the submissions on either side the Tribunal on facts has recorded that there is no reference at all by the assessing officer to any incriminating material found during the search and the various additions were undisputably made on the basis of the observations of the assessing officer during the assessment proceedings for which there were no incriminating materials found during the search. Furthermore, the Tribunal held that it is the settled legal position that in order to make addition in an unabated assessment on the date of search, there has to be incriminating material found during the search. Thus, the learned Tribunal rightly decided the issue in

favour of the assessee and granted relief and we find no grounds to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is dismissed and the substantial question of law is answered against the revenue.

Consequently, the stay application being GA/2/2023 is dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)