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

ITAT/281/2022
IA NO. GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
-VERSUS-
M/s. PHALGUNI ENCLAVE PVT. LTD.

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th May, 2023

Appearance :
Mr. Tilak Mitra, Adv.
...for appellant
Mr. S. Kejriwal, Adv.
Mr. N. Mittal, Adv.
...for respondent

The Court :- It appears that there is a delay of twenty days in filing this appeal. We have perused the affidavit filed in support of the delay condone petition and we find that sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the delay in filing the appeal is condoned. The petition for condonation of delay is allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act (the Act) is directed against the order dated 16.06.2022 passed by the Income Tax Appellate Tribunal "A" Bench Kolkata (the Tribunal) in IT(SS) A No. 24/Kol/2021 and CO 05/Kol/2022 relating to assessment year 2011-12.

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

- i) WHETHER Learned Tribunal has erred in not making any independent enquiry to determine the existence of incriminating materials in to the seized materials ?
- ii) WHETHER the Learned Tribunal has committed a blatant error in fact in ignoring the fact that the Supreme Court had admitted a special leave petition in respect of the similar issue in (2017) 79 Taxman 115 (SC) CIT –vs-RRJ Securities Ltd.?
- iii) WHETHER the Ld. Tribunal was unjustified in law in adjudicating the matter in favor of the assessee by citing the case of Veer Prabhu Marketing where notice was issued u/s 153 C and not u/s 153A as in this instant case ?
- iv) WHETHER ld tribunal has committed a gross error in relying on the judgement of CIT-Vs- Kabul Chawla in (2016) ITR 573 (Del) which is different as contended addition was u/s 2(22) (e) of the act ?
- v) WHETHER the ld tribunal has committed a gross error in relying on the judgement of CIT-Vs- Kabul Chawla in (2016) ITR 573 (Del) which is different as contended addition was u/s 2(22)(e) of the act ?
- vi) WHETHER the ld Tribunal is not justified in adjudicating the matter in favour of the assessee in view of the judgement of E

N Goakumar-vs-CIT (central) in (2016) 75 Taxman.com 215 (kerala)?

- vii) WHETHER the Ld Tribunal has erred in law in observing the that the addition made by the assessment officer u/s 153A/143(c) are not based on any incriminating materials/paper seized during search operation?

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.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)