IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.56 of 2019 (O&M)
Date of decision: 15.05.2023

Pr. Commissioner of Income Tax (Central), Gurgaon …Appellant

Vs.

M/s DHG Marketing Pvt. Ltd. …Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Pridhi Jaswinder Sandhu, Senior Standing Counsel, for the appellant.

Mr. Akshay Bhan, Senior Advocate, with Mr. Shantnu Bansal, Advocate, for the respondent.

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Ritu Bahri, J. (oral)

The instant appeal under Section 260-A of the Income Tax Act, 1961, has been filed against the order dated 09.05.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh, whereby appeal filed by the revenue-respondent against the order dated 31.03.2017 (Annexure A-2) passed by the Commissioner of Income Tax (Appeals)-3, Gurgaon, has been dismissed.

On 04.10.2012, a search was conducted at the premises of the respondent-assessee. At that time assessment pertaining to the year 2010-2011 was not pending. During the course of search, no incriminating material was found. Thereafter, notice under Section 153A of the Act was issued to the assessee, in response to which, the assessee filed its return of income declaring 'Nil' income. Later on, notices under Section 143(2) and 142 (1) along with questionnaire were issued, which were duly replied by the assessee. After considering the replies filed by the assessee, the Assessing Officer made addition amounting to Rs.4.15 crores, under Section 68 of the Act on account of unexplained credits relating to share capital received by the assessee during the relevant period. On appeal, the Commissioner of Income Tax (Appeals) deleted the said addition made by the Assessing Officer. Aggrieved by the said order, the revenue filed an appeal before the Tribunal.

The Tribunal, after hearing learned counsel for the parties, dismissed the appeal filed by the revenue by referring to the judgment dated 28.08.2015 passed by the High Court of Delhi in ***Commissioner of Income Tax, Central-III vs. Kabul Chawla,*** (2016) 380 ITR 573 (Delhi). It was held that no addition could be made in such circumstances.

Another question for consideration before the Tribunal was, whether in the absence of any incriminating material found during the search, addition under Section 153-A of the Act could be made in case of completed assessment.

In the present case, notice of motion was issued on 24.02.2020. A similar issue was pending consideration before the Hon'ble Supreme Court in Civil Appeal No.6580 of 2021 (**Principal Commissioner of Income Tax, Central-2 vs. Abhisar Buildwll P. Ltd.**). In that case, the Hon'ble Supreme Court has upheld the views taken in ***Kabul Chawla's*** case (supra) and ***Principal Commissioner of Income Tax-4 Vs. Saumya Construction,*** (2016) 387 ITR 529 (Gujarat) and held that no addition can be made in the case of completed assessment in the absence of any incriminating material. It has been further observed as under:-

"13. xxx xxx xxx

(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 ofany 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 Section 147/148 of the Act and those powers are saved."

In the present case also, no incriminating material has been found during the search conducted at the premises of the respondent-assessee. Hence, no addition in the income of the assessee, for the relevant year, could be made by the Assessing Officer.

Keeping in view the judgment passed by the Hon'ble Supreme Court in ***Abhisar Buildwell P. Ltd.'s*** case (supra), no ground is made out to interfere in the impugned judgment/order, as the same has been passed by appreciating the facts in the right perspective. No substantial question of law arises for consideration.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

15.05.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No