IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.642 of 2018

==

Assistant Commissioner Of Income Tax, Circle 2, Patna

... ... Appellant/s

Versus

M/s G R D Construction Pvt. Ltd.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 643 of 2018

==

Assistant Commissioner Of Income Tax, Central Circle 2, Patna

... ... Appellant/s

Versus

M/s G R D Construction Pvt. Ltd.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 644 of 2018

==

Assistant Commissioner Of Income Tax, Central Circle 2, Patna

... ... Appellant/s

Versus

M/s G R D Construction Pvt. Ltd.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 645 of 2018

==

Assistant Commissioner of Income Tax, Central Circle- 2 Patna.

... ... Appellant/s

Versus

M/s Ganesh Ram Dokania 207, Basudeo Vihar Apartment, Nageshwar Colony, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 646 of 2018

==

Assistant Commissioner of Income Tax, Central Circle-2, Patna Patna.

... ... Appellant/s

Versus

M/s Ganesh Ram Dokania 207, Basudeo Vihar Apartment, Nageshwar Colony, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 648 of 2018

==

Assistant Commissioner of Income Tax, Central Circle- 2 Patna.

... ... Appellant/s

Versus

M/s Ganesh Ram Dokania 207, Basudeo Vihar Apartment, Nageshwar Colony, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 649 of 2018

==

Assistant Commissioner of Income Tax Central Circle-2 Patna.

... ... Appellant/s

Versus

M/s Ganesh Ram Dokania 207, Basudeo Vihar Apartment, Nageshwar Colony, Patna.

... ... Respondent/s

==

Appearance :

(In Miscellaneous Appeal No. 642 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 643 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 644 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 645 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 646 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 648 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 649 of 2018)
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s : Mr.

==
CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-08-2024

The above appeals are with respect to two entities; sister concerns, challenging the order of the Tribunal which set aside the assessments based on a single search conducted in the residential and business premises on 01.08.2014 at Banka and Kolkata. Subject assessment years are also different insofar as MA No. 642, 643 and 644 of 2018 being respectively concerned with assessment years 2009-10, 2010-11 and 2011-12, with respect to the assessee M/s. G.R.D Construction Private Limited. M.A. Nos. 645, 646, 648 and 649 of 2018 with respect to M/s. Ganesh Ram Dokania are respectively concerned with assessment years 2012-13, 2013-14, 2009-10 and 2015-16.

2. The questions of law arising in the above appeals are re-framed as follows: -

(i) Whether the Tribunal was right in having found the assessment under Section 153A to be not possible by reason of the second proviso having mandated that any assessment or reassessment relating to any assessment year falling within the period of six assessment years, pending on the date of limitation of search under Section 132 or making of requisition under Section 132A, shall abate?

(ii) Whether the assessment under Section 153A based on the search and conducted in the premises of the assessee, can be set at naught on the strength of the second *proviso*, merely because the assessment of the said year was completed prior to the search?

(iii)Whether the finding of the Tribunal; of no incriminating material found on search, is factually correct, especially in the context of the First Appellate Authority also having found enough materials to have been recovered in search for the purpose of proceeding for assessment under Section 153A of the Income Tax Act and is not the finding perverse in the fact and circumstances?

3. In all the appeals, the issue arises with respect to the additions made by the assessing officer based on the search and seizure operation carried out under Section 132(1) of the Income Tax Act, 1961 in the residential and business premises of Sri Krishna Kumar Dokania and his family on 01.08.2014 at

Banka and Kolkata. The family is in management of a business group engaged in civil construction and real estate which has M/s Dinesh Ram Dokania as the flaghship company engaged in civil construction work whereas M/s GRK Construction Private Limited is engaged in real estate business. Notice under Section 153 of the Income tax Act was issued and the assessee filed return of income. From the examination of the books of accounts produced by the assessee, allotment of shares in the financial year 2008-09 was found to the extent of Rs. 4,78,10,000/-. The existence of the entities to whom such shares were allotted, from whom the amounts were received for such allotment, were asked to be proved alongwith their creditworthiness and the genuineness of the transaction. The assessee did not do anything to establish the three aspects which were specifically asked to be proved, in which circumstance the said amounts were added to the income of the assessee.

4. The 1st Appellate Authority made a remand and based on the remand report found that the assessee produced the books of accounts and filed report as also acknowledgment of filed ITR of third parties, bank statements and confirmation of loans from various parties; pursuant to summons issued after search. However, the fresh introduction of share capital of Rs.

95,62,000/- on a premium of Rs. 4,78,00,000/- was not found proved. The 1st Appellate Authority found that a sum of Rs. 1.74 Crores has been received by the appellants in the earlier assessment year which was deleted from the instant assessment year and directed to be included in the earlier assessment year i.e. AY 2008-09.

5. The Tribunal laid down the procedure under Section 153A of the Income Tax Act correctly in paragraph no. 8, which we would extract hereunder: -

> "37. i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
>
> ii Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
>
> iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the

undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the Course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

(underlining by us for emphasis)

6. We are of the opinion that the Tribunal has correctly interpreted Section 153 of the Income Tax Act and it has not been stated anywhere that merely because the assessment was completed prior to the search, there could be no further proceedings taken on the search effected under Section 132 or the requisition made under Section 133 of the Income Tax Act. We find the two questions of law sought to be framed by the learned Senior Standing Counsel for the assessee to have not arisen in the above cases.

7. However, the Tribunal found that the *panchnama* recorded in the search, refers only to the tendering documents and other details which has no connection with the share application money/share capital/share premium on account of which the additions were made. It has been stated that there is no reference to the documents in detail from where the Assessing Officer has picked up the information regarding share application money. In this context we have to specifically notice that there was search conducted and requisition made and the specific ground taken by the Assessing Officer on verification of the books of accounts produced by the assessee is that as for the

shares allotted on a premium, the source, identity and genuineness are not proved. The 1st Appellate Authority has also noticed the verification of the books of accounts, presumably produced on the requisition made which has led to the additions. In such circumstance, we are of the opinion that the Tribunal erred in appreciating the facts correctly and answering the question of law, 3rd raised, in favour of the revenue and against the assessee, we remand the matter for fresh adjudication before the Tribunal; which is the last fact finding authority. The Tribunal would do well to also examine the remand report filed before the 1st Appellate Authority.

8. Insofar as the other appeals are concerned, all of them relate to a fresh consideration of the return filed from which the net profit was found to be comparatively low. While the returns disclosed net profit of 5.29 per cent of the gross proceeds, the assessing officer applied 8 per cent on the gross proceeds; without any reasoning behind that and also not on the basis of any material seized on search conducted.

9. We find absolutely no reason to entertain the above appeals for the other years with respect to the two entities; wherein no question of law arises and hence the appeals stand rejected.

10. MA No. 642 of 2018 is allowed to the limited extent ordering remand and the other appeals stand rejected.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2024
Transmission Date	NA