ORDER OD–5 & O-16

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

ITAT/53/2018
IA NO: GA/2/2018 (OLD NO: GA/552/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 4
VERSUS
M/S. JAQUA INDUSTRIES AND SALES CO. PVT. LTD.

AND

ITAT/55/2018
IA NO: GA/1/2018 (OLD NO: GA/567/2018)
GA/2/2018 (OLD NO: GA/568/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 4
VERSUS
M/S. JAQUA INDUSTRIES AND SALES CO. PVT. LTD.

BEFORE:

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

Date : 15th January 2024.

Appearance:

Mr. Soumen Bhattacharjee, Advocate
... for appellant.

Mr. R. Chatterjee, Advocate
Mr. Govind Jethalia, Advocate
... for respondent.

1. Affidavits of service filed in Court are taken on record.

2. Heard Sri Soumen Bhattacharjee, learned counsel for the appellant and Sri R. Chatterjee, learned counsel for the respondent assessee.

3. ITAT/53/2018 relates to assessment year 2009-10. ITAT/55/2018 relates to assessment year 2007-08. With respect to both the aforesaid assessment years, the Income Tax Appellate Tribunal, 'D' Bench, Kolkata

passed a common order dated 09.06.2017, whereby the appeal of the revenue (appellant herein) was dismissed. Against the aforesaid order of the Income Tax Appellate Tribunal, the revenue has filed the above-noted two appeals.

4. The revenue is aggrieved with the finding/conclusion recorded in paragraph 38 of the impugned order of the Income Tax Appellate Tribunal, which is reproduced below:-

> *"Conclusion*
>
> *38. The present appeal concerns AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."*

5. In the case of Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd. [2023] 454 ITR 212 (SC), Hon'ble Supreme Court held that in case no incriminating material is unearthed during the search, the A.O. cannot assess or re-assess taking into consideration the other material in respect of completed/unabated assessments and, therefore, in respect of completed/unabated assessments, no addition can be made by the A.O. in the absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961.

6. We find that the question which is sought to be raised by the revenue in the present two appeals is squarely covered by the above-referred judgment of

Hon'ble Supreme Court in Abhisar Buildwell (P) Ltd. (supra). Therefore, both the appeals are dismissed. All pending applications, if any, stand disposed of.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar