IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM :

THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A. Nos.392 and 393 of 2019

The Principal Commissioner of Income Tax
Central 1, No.108, Mahatma Gandhi Road
Chennai – 600 034. .. Appellant in both appeals

Vs

M.Kiran Kumar .. Respondent in both appeals

Prayer: Appeals under Sections 260A of the Income Tax Act, 1961 against the order dated 19.12.2018 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai, in I.T.A.Nos.1055 and 1054/Chny/2018.

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|---|---|---|
| For the Appellant in both the appeals | : | Mr.Karthik Ranganathan |
| For the Respondent in both the appeals | : | Mr.N.Muralikumaran Senior Counsel for M/s.McGan Law Firm |

JUDGMENT
(Delivered by the Hon'ble Acting Chief Justice)

Heard Mr.Karthik Ranganathan, learned counsel for the appellant; and Mr.N.Muralikumaran, learned Senior Counsel appearing on behalf of the respondent.

2. These appeals are directed against the order dated 19.12.2018 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai, in I.T.A.Nos.1055 and 1054/Chny/2018, respectively.

3. The respondent is the assessee and the assessment years involved in these appeals are 2009-2010 and 2011-2012. The appellant is in the business of trading in gold jewellery and bullion in the name of M/s.A.K. Exports and is also the Managing Director of M/s.Lalithaa Jewellery Mart Private Limited. Pursuant to a search and seizure operation under Section 132 of the Income Tax Act, 1961, a notice under Section 153A of the Act was issued to the assessee and after considering the response of the assessee, the Assessing Officer completed the assessment making addition on account of deemed dividend under Section 2(22)(e) of Act for the

assessment years 2009-2010 and 2011-2012, respectively.

4. Assailing the assessment orders dated 31.12.2016, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who, by order dated 28.12.2017, allowed the appeals and deleted the additions made by the Assessing Officer, by holding that no addition or disallowance can be made to the income returned, in cases where assessment has been completed and no incriminating material has been found during the course of search.

5. Calling in question the said order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred appeals before the Appellate Tribunal. The Appellate Tribunal, by order dated 19.12.2018, which is impugned in these appeals, dismissed the appeals preferred by the Revenue. Hence, these appeals.

6. By order dated 27.6.2019, these appeals were admitted on the following substantial questions of law:

*"i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Assessing Officer cannot initiate proceedings under Section 153A of the Income Tax Act where there was no incriminating material found during the course of search operation under Section 132 of the Act?*

*ii. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in accepting the stand of the assessee that the audited tally statement found during search and which formed the basis of search assessment, was filed along with the return of income for the assessment year 2011-12 without appreciating that the said return of income was e-filed and for that assessment year, annexure less return was only envisaged?*

*iii. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in placing reliance on SLP dismissal simpliciter in the case of PCIT Vs Meeta Gutgutia [reported in 96 Taxmann.com 468] when the issue of jurisdiction under Section 153A of the Income Tax Act was not at all before the Hon'ble Supreme Court in the said SLP? and*

*iv. Whether, on the facts and in the circumstances of* *the case, the Tribunal was justified in deciding the impugned issue on the basis of SLP (special leave petition) dismissal simpliciter by the Hon'ble Supreme Court in the case of PCIT Vs. Meeta Gutgutia [reported in 96 Taxmann.com 468] without taking cognizance of the well settled ratio that SLP dismissal simpliciter has no binding effect as laid down in the cases of CIT Vs. Geetha Ramakrishna Mills (P) Ltd. [reported in 288 ITR 489 (Madras)] and Kunhayammed Vs. State of Kerala [reported in 245 ITR 360 (SC)]?"*

7. When the matter was taken up on 23.4.2024, 24.5.2024 and 10.6.2024, we had directed learned counsel for the appellant to place on record the incriminating material which formed the basis for passing the assessment orders.

8. Learned counsel for the appellant submitted that on several occasions he had sent emails to the authorities to produce the relevant incriminating material which was relied upon, so as to challenge the order of the Appellate Tribunal. Even today, learned counsel for the appellant submitted that despite the best efforts put

in by the Revenue, they are not in a position to place any incriminating material found during the search, so as to substantiate their claim with regard to the additions made in the assessment orders. The email received from the DCIT, Central Circle-1(4), Chennai, dated 5.7.2024, reads as under:

> *"The material is still being traced. The department is putting its sincere efforts to trace the relevant material."*

The aforesaid stand is taken by the department, despite the fact that the assessment years involved are 2009-2010 and 2011-2012 and the Revenue has accepted before the Tribunal that there are no incriminating materials found during the search.

9. The Apex Court in *Principal Commissioner of Income Tax, Central-3* v. *Abhisar Buildwell Pvt. Ltd, (2024) 2 SCC 433*, emphatically held that the Assessing Officer would not be justified to assess income in case no incriminating material is found during the search. We may refer with profit certain observations made in the said decision hereunder:

> *"36. In view of the above and for the reasons stated*

*above, it is concluded as under:*

*36.1. That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;*

*36.2. All pending assessments/reassessments shall stand abated;*

*36.3. 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*

*36.4.* ***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 132-A***

> ***of the 1961 Act****. 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."*
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> *[emphasis supplied]*

10. The ratio laid down by the Apex Court in the decision, referred supra, squarely applies to the facts and circumstances of the instant case. No incriminating material, based on which the assessment orders are passed, is placed before us. As a sequitur, the substantial questions of law are answered against the Revenue, while affirming the order passed by the Appellate Tribunal.

These appeals are disposed of accordingly. There shall be no order as to costs.

(R.M.D., ACJ.) (M.S.Q., J.)
10.07.2024

Index : Yes/No
NC : Yes/No
sasi

To

1. The Registrar
   Income Tax Appellate Tribunal
   'A' Bench, Chennai.

2. The Commissioner of Income Tax (Appeals) 18
   46, Mahatma Gandhi Road
   Nungambakkam, Chennai – 34.

3. The Assistant Commissioner of Income Tax
   Central Circle-1(4), Chennai.

THE HON'BLE ACTING CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ,J.

(sasi)

T.C.A. Nos.392 and 393 of 2019

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