OD-12

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

ITAT/106/2025
IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
AMICUS REAL ESTATE PVT LTD

BEFORE:
The Hon'ble CHIEF JUSTICE (ACTING) SOUMEN SEN
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 18th September, 2025.

APPEARANCE :
Mr. Aryak Dutta, Adv.
Mr. Prithu Dudhoria, Adv.
...for the appellant.

Mr. Pranit Bag, Adv.
Ms. Amani Kayan, Adv.
Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Sayani Gupta, Adv.
...for the respondent.

1. This appeal is filed against the order dated 14th June, 2024 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in I.T.A. No. 803/Kol/2023 relating to the assessment year 2010-11.
2. The appellant is aggrieved by the order passed by the CIT(A) reversing the order of the Assessing Officer. The dispute relates to the assessment year 2010-11. Factually, it appears and as noted by the CIT(A) that in each and every seized material referred to by the Assessing Officer and the impounded material bearing No. CG-2 actually pertains to financial year 2011-12 relevant to assessment

year 2012-13. In view thereof, they cannot be treated as incriminating material for the year under appeal.

3. Similarly, there is a factual finding that for the other impounded materials, the Assessing Officer has himself observed in the assessments that they are part of the regular books of accounts duly disclosed in the income tax return as well as audited balance sheet. The discussion in the original assessment order at pages 17 to 19 are based on post-search enquiries. The addition made for the unexplained share capital and unexplained unsecured loans, details of the alleged credits have been disclosed in the audited balance sheet of the company. Apart from the aforesaid, no other incriminating materials is found.

4. In this factual background, the learned Commissioner of Appeal relied upon a decision of the Hon'ble Supreme Court in CIT Vs. Abhisar Buildwell (P) Ltd. reported in (2023) 454 ITR 212 (S.C.), and decision of the Delhi High Court in CIT Vs. Kabul Chawla reported in [2015] 61 taxmann.com 412 and the decision of Gujarat High Court in CIT v. Saumya Construction (P.) Ltd. [2017] 81 taxmann.com 292

5. The CIT(A) has on the basis of the aforesaid factual aspect and other details arrived at the following conclusion:

> "14. In view of the above and for the reasons stated above, it is concluded as under:
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> i) 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 fulfillment 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."

6. The appellate tribunal has considered the judgment of the CIT(A) meticulously and has agreed with the findings of fact in relation to the observations of the Assessing Officer on the impounded material. On the basis of the facts as summarized by the Appellate Tribunal in affirming the order of the CIT(A) in paragraph 6 and the appellant being unable to show any perversity, we are not inclined to admit the appeal as it does not contain any substantial question of law.
7. The appeal and the connected applications stand dismissed.
8. However, there shall be no order as to costs.

[SOUMEN SEN, CJ(ACTING.)]

(RAJA BASU CHOWDHURY, J.)

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