IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.211 OF 2024

Pr. Commissioner of Income Tax-Central-3,
Mumbai …Appellant
Versus
Surendra B. Jiwrajka ...Respondent

Ms. Swapna Gokhale for Appellant.

Mr. Rajendra for Respondent.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 12 November 2025

P.C.:-

1. Heard Ms. Gokhale, learned counsel for the Appellant and Mr. Rajendra, learned counsel for the Respondent – Assessee.

2. This Appeal relates to the Assessment Year 2012-13.

3. The tax effect in this Appeal is less than Rs.2 Crores. At least, the appeal memo does not refer to any exceptions within which this Appeal would fall. However, Ms. Gokhale submits that this Appeal falls within the exceptions carved out in the CBDT Circular because it is concerned with penny stock Companies.

4. Without examining the merits of Ms. Gokhale's contention about this Appeal falling within any of the exceptions, we have heard the learned counsel for the parties on merits.

5. Ms. Gokhale submitted that the CIT (Appeals) and ITAT have failed to consider the factual material in its proper perspective. Further, she submitted that they have also erred in relying on the principle in the case of **Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell (P) Ltd.**[1] She submitted that the decision in **P.R. Metrani v. CIT**[2] was ignored.

6. Ms Gokhale submitted that this was a case where there was overwhelming incriminating evidence in the form of statements of various persons admitting that the companies had indulged in giving accommodation entries to bogus LTCG/STCG. There were also orders issued by SEBI regarding manipulation in penny scrips, and the Assessee stated that the sale proceeds of penny scrips were his regular income after withdrawing the exemption claimed under Section 10(38) of the Income Tax Act, 1961. Based on all this, Ms. Gokhale submitted that this Appeal may be admitted on the substantial questions of law formulated in paragraph 4 of the Appeal Memo.

7. Mr Rajendra submitted that though the Assessee had made a statement about withdrawal of exemption under

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1 (2023) 149 taxmann.com 399 (SC)

2 (2006) 287 ITR 209

Section 10(38), this statement was later on retracted because the SEBI, on detailed investigations, found no wrongdoing on the part of the Assessee. He submitted that all the facts on record have been duly examined, and there are concurrent findings recorded by the Commissioner (Appeals) and the ITAT that the Assessee did not indulge in any manipulation or fraud as alleged. He submitted that these are pure findings of fact and in the absence of any perversity, no substantial question of law arises in this Appeal.

8. Mr Rajendra further submitted that this was a case in which powers were exercised under Section 153A of the IT Act. He pointed out that during the search, no incriminating material was found. Therefore, considering the law laid down in **Abhisar Buildwell** (supra), the very initiation of this proceeding under Section 153A was without jurisdiction.

9. We have considered the rival contentions and perused the record.

10. In our opinion, in the facts of the present case, this Appeal raises no substantial questions of law and therefore does not deserve to be admitted.

11. Firstly, since this was an assessment under Section 153A, the jurisdictional prerequisites of finding any incriminating material during the search had to be fulfilled. The two authorities have held that such a prerequisite was not fulfilled. Therefore, following the law laid down in **Abhisar Buildwell** (supra), the Assessee was entitled to relief, which has been granted by the Commissioner (Appeals) and ITAT.

12. Apart from the above position, this is a case where the Commissioner (Appeals) and ITAT have, on a concurrent review of the factual material on record held in favour of the Assessee and against the Revenue. The findings of fact have been concurrently recorded, and they are not based on "no evidence or on any relevant evidence having been excluded from consideration". Even the aspect of retraction has been duly considered. Ultimately, when exercising our jurisdiction under Article 260-A of the Income Tax Act, we cannot be expected to re-appreciate, re-evaluate, or delve into the factual material on record, particularly when we find no perversity.

13. The two authorities have also taken cognisance of the orders made by SEBI and other regulatory authorities, finding no fault with the Assessee's role or conduct.

14. For all the above reasons, we decline to admit this Appeal on the ground that it involves no substantial question of law. The appeal is dismissed. No costs.

(Advait M. Sethna, J) **(M.S. Sonak, J.)**