Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2793 OF 2018

AND

INCOME TAX APPEAL NO.2788 OF 2018

Pr. Commissioner Of Income Tax Central - 1 …Appellant
Versus
Surendra L Hiranandani …Respondent

Mr Akhileshwar Sharma for the Appellant.
Mr Fenil Bhatt, i/b. Mr. Atul K. Jasani, for the Respondents.

CORAM: SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.

DATED: 16th JULY 2026.

Order (Per: Advait M. Sethna, J) :-

1. These Appeals are filed under Section 260-A of the Income Tax Act, 1961. It assails the common judgment and order passed by the Income Tax Appellate Tribunal, 'E-Bench', Mumbai ("***ITAT***" for short) in Income Tax Appeal 3226/M/2017 & Ors. (for short "***Impugned Order***"). The Appeal No.2793 of 2018 pertains to A.Y. 2012-13 whereas Appeal No.2788 of 2018 pertains to A.Y. 2008-2009.

2. Heard learned counsel for the parties. The issues arising in these Appeals being similar and arising out of the common

Impugned Order of the ITAT, we dispose of the Appeals by this order.

3. Mr. Akhileshwar Sharma would submit that the following substantial questions of law arises for consideration in these Appeals which are formulated as under:-

(a) Whether an assessment order pursuant to search and prejudicial to the interests of Revenue confers jurisdiction upon the Principal Commissioner of Income Tax to exercise power of review under Section 263 of the Income Tax Act, 1961 in the absence of any addition to the income made by the Assessing Officer other than that arising out of the incriminating material, in the assessment year where the original assessment was unabated?

4. Mr. Sharma, learned counsel for the Appellant in the course of his arguments would fairly submit that the legal issue formulated through the substantial question of law arose for consideration before the Supreme Court in ***Principal Commissioner of Income Tax, Central -3 Vs. Abhisar Buildwell (P) Ltd.***[1].

5. We have gone through the decision of the Supreme Court in ***Abhisar Buildwell*** (supra). It is apposite to refer to the findings recorded by the Supreme Court in paragraphs 11 and 12 of the said judgment.

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

6. In a nutshell, the Supreme Court has observed that the intention of the legislature seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume jurisdiction to assess or reassess the 'total income' for the entire six years block/assessment period. The intention does not seem to be to reopen the completed/unabated assessments, unless incriminating material is found with respect to the concerned assessment year. The object of Section 153A of the Act is to bring under tax the undisclosed income which is found during the course of search or pursuant to requisition. Therefore, only in a case where undisclosed income is found on the basis of incriminating material, the Assessing Officer would assume jurisdiction to assess or reassess the total income even in the case of completed/unabated assessment.

7. Mr. Fenil Bhatt, learned counsel for the Respondent would submit that the substantial questions of law as formulated in these Appeals stands covered by the decision of the Supreme Court in ***Abhisar Buildwell*** (supra) against the Revenue. In view thereof, the Appeals raises no substantial question of law and deserves to be dismissed.

8. In the given factual complexion, in our considered view, the decision of the Supreme Court in ***Abhisar Buildwell*** (supra) would squarely apply. Accordingly, the Assessing Officer having taken the correct view cannot be disturbed by the Principal Commissioner of Income Tax by taking recourse to Section 263 of the Income Tax Act, 1961.

9. As the above substantial question of law is fully covered by the Supreme Court decision in ***Abhisar Buildwell*** (supra) in favour of the assessee and against the Revenue and the same being applicable to the given factual matrix, no substantial question of law arises for consideration in the present Appeals.

10. In view of the above, the Appeal stands Dismissed.

(ADVAIT M. SETHNA, J.) **(SUMAN SHYAM, J.)**