
(2023) 07 PAT CK 0058

In the Patna High Court

Case No : Miscellaneous Appeal No. 823 Of 2017

Assistant Commissioner Of Income Tax

APPELLANT

Vs

Vs Satish Kumar Keshri

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(1), 143(3), 153, 153A, 153A(1)

Citation : (2023) 07 PAT CK 0058

Hon'ble Judges : K. Vinod Chandran, CJ; Partha Sarthy, J

Bench : Division Bench

Advocate : Archana Sinha @ Archana Shahi, A.K.Rastogi, Parijat Saurav, Smriti Singh

Final Decision : Dismissed

Judgement

1. Heard Smt. Archana Sinha, learned Senior Standing Counsel for the appellant-Income Tax Department and Shri A.K.Rastogi, learned Senior Counsel for the assessee-respondent.

2. The appeal arises from the order of the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') dated 04.07.2017 for the assessment year 2002-03 and raises a question of law, which is re-framed as follows:-

Whether the ITAT was justified in finding the assessment passed under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), pursuant to search and seizure, bad, on the consideration that no assessment proceedings were pending as on the date of initiation of proceedings under Section 153A?

3. In the assessment year 2002-03, the original assessment of the assessee was completed under Section 143(3) of the Act on 06.06.2003. This was subsequently set aside by the 1st Appellate Authority under Section 263 of the Act by order dated 24.11.2004; in which there was a remand back to the Assessing Officer for carrying out a fresh assessment. On 15.12.2004, a search was conducted in the premises of the assessee under Section 132(1) of the Act.

Section 153A proceeding was initiated in pursuance of the search conducted.

4. The assessee contended before the Assessing Officer that there was no assessment pending as on the date of search or initiation of proceeding under Section 153A; for it to be abated, empowering the Assessing Officer to proceed for assessment on the basis of the original records, disclosed income and those found out on search. The Assessing Officer rejected the prayer of the assessee, especially since there was a remand made by the learned Commissioner of Income Tax. The remanded assessment proceeding, which was pending, was treated as abated and an assessment order under Section 153A read with Section 143(3) of the Act was passed on 29.12.2006. In the meanwhile, the remand order of the 1st Appellate Authority was challenged before the Tribunal by the assessee. The 1st Appellate Authority's order was set aside by the Tribunal reviving the order of the Assessing Officer dated 06.06.2003; by order dated 28.04.2006 that is even before the order of assessment under Section 153A read with Section 143(3) of the Act.

5. The assessee challenged the order under Section 153 read with Section 143(3) of the Act before the 1st Appellate Authority, without success. The Tribunal, however, reversed the order of the 1st Appellate Authority and the Assessing Officer, and held the assessment to have been completed as on the date of initiation of proceeding under Section 153A of the Act. Hence, there were no proceedings pending, of an assessment, for it to abate as on the date of initiation of proceedings under Section 153A, was the finding.

6. The Tribunal relied on a judgment of the High Court of Delhi in Commissioner of Income Tax v. Kabul Chawla; [2016] 380 ITR 573 (Delhi), which has been affirmed by the Hon'ble Supreme Court in Principal Commissioner of Income-Tax v. Abhisar Buildwell P. Ltd.; [2023] 454 ITR 212(SC). The principle insofar as assessment and re-assessment under Section 153A was summarised by the High Court of Delhi, as follows:-

"Summary of the legal position

On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

(i) Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes

place. The Assessing Officer has the power to assess and reassess the "total income" of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six assessment years "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this section only on the basis of the seized material."

(v) In the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word "assess" in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to the completed assessment proceedings.

(vi) In so far as the pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

7. Hence, the assessment referred to in Section 153A enables the Assessing Officer to proceed for assessment, when any such assessment for the previous six years is pending, treating the proceedings to have abated. In so proceeding with the assessment, the Assessing Officer would be entitled to reckon both disclosed and undisclosed income of the assessee. Insofar as completed assessment, they do not abate and for the purpose of re-assessing, there should be some incriminating material disclosed in the search, which alone can lead to re-opening of the proceedings on the basis of the seized material, which has some relevance or nexus to the allegation of undisclosed income. The assessee's assessment for the relevant year stood completed as on 06.06.2003 long before the search and consequent proceeding initiated under Section 153A and there is no question arising of the relevant assessment to abate under the second proviso to Section 153A. The Tribunal was perfectly within the statutory framework, in making a remand directing the Assessing Officer to carry out re-assessment of

the assessment year 2002-03, which stood completed as on the date of initiation of Section 153A proceedings, if some incriminating material seized during the search is available.

8. We bow to the proposition as declared by the High Court of Delhi and affirmed by the Hon'ble Supreme Court of India and answer the question framed in favour of the assessee and against the Revenue. The appeal filed by the Revenue stands rejected.