

(2017) 02 GUJ CK 0014
In the Gujarat High Court
Case No : Tax Appeal No. 54 to 57 of 2017

Principal Commissioner of Income Tax	APPELLANT
Vs	
Devangi Alias Rupa	RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Income Tax Act, 1961 — Section 153A

Citation : (2017) 394 ITR 184

Hon'ble Judges : M.R. Shah and B.N. Karia, JJ.

Bench : Division Bench

Advocate : Mr. Manish Bhatt, Ld. Counsel with Mrs Mauna M. Bhatt, Advocate, for the Appellant No. 1; Mr. S.N. Soparkar, Ld. Counsel with Mr B.S. Soparkar, Advocate, for the Opponent No. 1

Final Decision : Dismissed

Judgement

M.R. Shah, J. (Oral)—As common question of law and facts arise in this group of appeals, they are disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Income Tax Appellate Tribunal, "C" Bench, Ahmedabad, passed in IT (SS) A Nos. 138 to 141/AHD/2011 for AY 200102 to 200405, by which, the learned Tribunal has allowed the said appeals and has directed to AO to delete the addition made under Section 153 A of the Act for AY 200001 to 200405, the Revenue has preferred present Appeals with the following proposed questions of law.

"A. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in narrowing down the scope of assessment u/s 153 A in respect of completed assessments by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax ?

B. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the scope of Section 153 A is limited to

assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income that comes to the notice of the Assessing Officer ?

C. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in limiting the scope of Section 153 A only to undisclosed income when as per the section the Assessing Officer has to assess the total income of the six assessment years ?

D. Whether the findings of the Tribunal that no incriminating material is found is perverse in as much as incriminating documents were found, though pertaining to the other Assessment Years which could be linked with the present Assessment Year ?"

2.1. A search was conducted at the premises of the assessee on 10.02.2006. Therefore, the proceedings under Section 153 A of the Act was initiated by the Assessing Officer by issuing notice under Section 153(A)(a) of the Act. That on the basis of the incriminating material seized by the department for the period of AY 200405 onwards, the Assessing Officer made the addition for AY 200001 to 200405. On the basis of the material collected during the search conducted on 10.02.2016, the Assessing Officer denied the capital gain claimed by the assessee and directed to made addition treating the income as business income. Feeling aggrieved and dissatisfied with the assessment orders, which were on the basis of proceedings under Section 153 A of the Act, the assessee preferred appeals before the learned CIT(A). The learned CIT(A) confirmed the addition made by the Assessing Officer. The orders passed by the learned CIT(A) were carried before the learned Tribunal by way of appeals being IT (SS) A Nos. 138 to 141/AHD/2011. Relying upon its earlier decision of this Court in the case of CIT v. Klabul Chawla reported in (2016) 280 ITR 573 (Delhi) and having observed that no incriminating material was found with respect to the AY 200001 to 200405, at the time of search, which was conducted on 10.02.2006 and therefore, the Assessing Officer was not justified in making the addition and by holding that only undisclosed income and undisclosed assets deducted during the search could be brought to tax and consequently has directed the AO to delete the addition made while passing the assessment order under Section 153 A of the Act.

2.2. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Tribunal in quashing and setting aside the addition made by the AO while framing assessment under Section 153 A of the Act, the Revenue has preferred present Tax Appeals with the following proposed questions of law .

"A. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in narrowing down the scope of assessment u/s 153 A in respect of completed assessments by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax ?

B. Whether on the facts and in the circumstances of the case, the Appellate

Tribunal is correct in law in holding that the scope of Section 153 A is limited to assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income that comes to the notice of the Assessing Officer ?

C. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in limiting the scope of Section 153 A only to undisclosed income when as per the section the Assessing Officer has to assess the total income of the six assessment years ?

D. Whether the findings of the Tribunal that no incriminating material is found is perverse in as much as incriminating documents were found, though pertaining to the other Assessment Years which could be linked with the present Assessment Year ?"

3. We have heard Shri Manish Bhatt, learned counsel for the Revenue and Shri S.N. Soparkar, learned counsel for the Assessee. At the outset, it is required to be noted that dispute is with respect to block assessment under Section 153 A of the Act for the AY 200001 to 200405. It is required to be noted that search was conducted on 10.02.2006. On the basis of the search conducted on 10.02.2006, some incriminating material was detected/found for the period of AY 200405 onwards for the assessment block period under Section 153 A were framed by the Assessing Officer and the Assessing Officer made the addition. However, it is required to be noted and does not seem to be any dispute except for AY 200405, that at the time of search conducted on 10.02.2006 no incriminating material was found with respect to the period/assessment year 200102 to 200304. Therefore, the learned Tribunal directed the AO to delete the addition made in the assessment under Section 153 A of the Act by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax. Therefore, the short question which is posed for consideration of this Court is whether the learned Tribunal is justified in holding so ?

4. Identical question came to be considered by the Division Bench of this Court in the case of Principal Commissioner of Income Tax 2 v. Jay Infrastructure and Properties Pvt Ltd rendered in Tax Appeal No. 740 of 2016 and considering the earlier decision of the Division Bench in the case of Principal Commissioner of Income Tax 4 v. Saumya Construction Pvt Ltd rendered in Tax Appeal No.24 of 2016 in which, it is specifically held that the AO while framing the assessment under Section 153 A of the Act for the block period may make addition considering the incriminating material found for the year under consideration only which was collected during the search. The Division Bench in the case of Saumya Construction Pvt Ltd (supra) in para 15, 16 and 19 has observed and held as under:

15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of

the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso makes the intention of the legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the subsection pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Subsection (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under subsection (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, subsection (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading Assessment in case of search or requisition. It is well settled as held by the Supreme Court in a catena of decisions that the heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the legislature is clear viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of subsection (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to

furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India), Jodhpur v. Assistant Commissioner of Income Tax (supra)*, the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of *Jai Steel (India), Jodhpur v. Assistant Commissioner of Income Tax (supra)*. Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of *Commissioner of Income tax v. Jayaben Ratilal Sorathia (supra)* wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year."

4.1. Considering the aforesaid facts and circumstances of the case, it cannot be said that the learned Tribunal has committed any error and/or any substantial question of law arise.

5. Shri Bhatt, learned counsel for the revenue has tried to distinguish the facts in Tax Appeal No. 57 of 2017 by submitting that when search was conducted on 10.05.2006 on the basis of the incriminating material, it was found that assessee

was involved in trading and not investor and therefore, for AY 200405 there was some incriminating material available to treat the income as being business income. However, the aforesaid has no substance. The search conducted was on 10.02.2006. The assessment for AY 200405 was framed on the basis of material already on record much prior to the search conducted on 10.02.2006. It was a scrutiny assessment under Section 153 A of the Act and on the basis of the material on record, the assessment was framed for AY 200405. On the basis of some incriminating material found/detected during the search on 10.02.2006, which was for the period of AY 200405 onwards and in absence of any specific incriminating material detected for the AY 200405, the AO was not justified in making any addition. Therefore, even Tax Appeal No. 57 of 2017 shall also be covered while considering Tax Appeal No. 54 to 56 of 2017 for AY 200102 to 200304. It is to be noted that for the AY 200405 which was part of the block assessment and assessment under Section 153 A of the Act on the basis of search conducted on 10.02.2006.

6. In view of the above and for the reasons stated above and considering the binding decisions of this Court in the case of Jay Infrastructure and Properties Pvt Ltd (supra) and Saumya Construction Pvt Ltd (supra) and decision of the Delhi High Court in the case of Commissioner of Income Tax (Central) III v. Kabul Chawla reported in (2015) 61 Taxmann. Com 412 (Delhi), we see no reason to interfere with the impugned judgment and order passed by the learned Tribunal. No substantial question of law arise in this group of appeals. Hence, all these appeals deserve to be dismissed and are accordingly dismissed.