

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No. 1063/Mum/2016,(A.Y 2009-10)

The DCIT, Cen.Cir.7(3),  
Room No.655, 6<sup>th</sup> Floor,  
Aaykar Bhavan,M.K.Road,  
Mumbai 400 020

..... Appellant

Vs.

Smt. Madhu Prakash Kapoor,  
Pallonji Mansion,  
Flat No.G/D 43,Cuffparade,  
Mumbai 400 005.  
PAN:AGQPK0792D

.... Respondent

Appellant by : Shri R.P.Meena  
Respondent by : Shri Anuj Kisnadwala

Date of hearing : 05/07/2017  
Date of pronouncement : 03/10/2017

**ORDER**

PER G.S.PANNU,A.M:

The captioned appeal filed by the Revenue is directed against an order of the CIT(A)-49 Mumbai dated 21/12/2015, pertaining to the assessment year 2009-10, which in turn has arisen from order passed by the Assessing Officer dated 14/03/2014 under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The Ground raised by the Revenue in its appeal reads as under:-

*"On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.23,55,388/-for the A.Y. 2009-10 relying on the decision of the Bombay High Court in the case of All Cargo Global Logistic Ltd. without appreciating the facts that the above said decision of the High Court has not been accepted by the department and SLP has been filed in the Supreme Court and the same is pending".*

3. As the Ground of appeal reveals, the solitary issue in this appeal relates to the competence of the Assessing Officer to make addition of Rs.23,55,388/- in an assessment finalized under section 143(3) r.w.s. 153A of the Act. In order to appreciate the controversy in this appeal, the following fact-situation is relevant. The assessee individual is a part of Bharti Shipyard Ltd. group of cases, wherein a search action was carried out by the Department under section 132(1) of the Act on 24/11/2011. As a consequence, assessee was issued a notice under section 153A(1) of the Act calling for a return of income, which was furnished by the assessee on 19/06/2013, declaring a loss of Rs.35,40,183/-, whereas in the return of income originally filed by the assessee under section 139(1) of the Act on 27/08/2009 assessee had declared a loss of Rs.15,56,964/-. The difference between the two returns and which is relevant for our purpose can be understood as follows. In the return of income originally filed under section 139(1) of the Act the loss under the head house property was declared at 21,47,570/-, whereas in the return filed in response to notice issued under section 153A(1)(a) of the Act the loss under the head house property was increased to Rs.46,00,639/-. The difference was on account of an enhanced claim of deduction on account of interest expenditure at Rs.50,16,947/- as against the claim made in the original return at Rs.25,63,878/-. In the assessment finalized under section 153A r.w.s. 143(3) of the Act, the Assessing Officer has assessed the

income under the head house property at a positive figure of Rs.2,07,818/-,thereby resulting in an addition of Rs.23,55,388/- vis-à-vis the income declared in the original return of income. At this stage, we may also briefly touch upon the manner in which the addition of Rs.23,55,388/- has been computed by the Assessing Officer. In its return of income, assessee declared income from house property at Cricket Club of India on deemed to be let out basis and rent was estimated at Rs.6,00,000/-. The assessee was 50% owner of the said property and as per the Assessing Officer the determination of Annual Letting Value (ALV) for a deemed to be let out property was to be determined after considering the provisions of section 23 of the Act, namely, that the ALV has to be based on an amount which the house is likely to fetch if it was let out in the open market. Be that as it may, the Assessing Officer estimated the deemed let out value at Rs.43,24,800/- and determined the income from house property (before allowing deduction of interest) at Rs.27,71,696/- for a period of 11 months. After allowing interest claim under section 24(b) of the Act at Rs.25,63,878/- as was originally claimed in the return filed under section 139(1) of the Act, the income from house property was assessed at a positive figure of Rs.2,07,818/-, thereby resulting in an addition of Rs.23,55,388/-. The enhanced claim of interest made in the return filed in response to notice u/s 153A of Rs.24,53,069/- was denied by the Assessing Officer, which has also been affirmed by the CIT(A) and it is not a subject matter of dispute before us. The dispute before us is with regard to the addition of Rs.23,55,388/- made to the income determined under the head house property, which we have narrated above. The said addition has been deleted by the CIT(A) on the ground

that there was no incriminating material to justify such an addition considering the fact that originally assessment for the instant assessment year had become final and did not abate in terms of the second proviso to section 153A(1) of the Act. In coming to such a decision, the CIT(A) has relied upon the decision of the Special Bench of the Tribunal in the case of All Cargo Global Logistics Ltd. vs. DCIT, 137 ITD 287(SB), which has been further affirmed by the Hon'ble Bombay High Court in a decision reported in 374ITR 645(Bom). Against such a decision of the CIT(A), Revenue is in appeal before us in terms of the aforesaid Ground of appeal.

4. As the perusal of the aforesaid Grounds of appeal reveals, the only plea raised by the Revenue is that the decision of the Hon'ble Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra), which has been relied upon by the CIT(A) has not been accepted by the Department as the SLP filed in the Hon'ble Supreme Court is pending. Quite clearly, pendency of the SLP in the Hon'ble Supreme Court does not take away the binding nature of the judgment of the Hon'ble Bombay High Court, which clearly continues to hold the field. Therefore, on this ground itself, we find no merit in the plea raised by the Revenue.

5. So however, on facts also we may briefly touch upon the issue. In the instant case, the return of income was originally filed by the assessee under section 139(1) of the Act on 27/08/2009 and no notice under section 143(2) of the Act was issued within the prescribed period and, therefore, on the date of search i.e. on 24/11/2011, the assessment for the impugned assessment year could not be construed

to be pending. Consequently, the assessment for the year under consideration did not abate in terms of the second proviso to section 153A(1) of the Act. In such a situation, the scope and ambit of an assessment which is required to be made under section 153A(1) of the Act has been the subject matter of consideration by the Hon'ble Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra). One of the points addressed by the Hon'ble High Court was whether the scope of assessment under section 153A of the Act envisages additions, which are otherwise not based on any incriminating material found during the course of search. As per Hon'ble High Court, no addition could be made in respect of the assessment that had become final in the event no incriminating material was found during the course of search. The Hon'ble High Court also noticed its earlier judgment in the case of Murali Agro-products Ltd. (supra) and elaborately culled out the scope and ambit of the assessment and reassessment of total income under section 153A(1) of the Act read with the proviso thereof. The Hon'ble Bombay High Court in Continental Warehousing Corporation (supra) has ruled that an unabated assessment under section 153A(1) would not encompass an addition, if no incriminating material is found during the course of search, because in such a case, the original assessment had become final.

5.1 The aforesaid proposition has been relied upon by the CIT(A) to hold that the addition of Rs.23,55,388/- made to the income assessable under the head house property is bad in law, inasmuch as, there is no incriminating material found in the course of search to support such an addition. The absence of reference to any incriminating material by the Assessing Officer is starkly evident from the reading of the assessment order itself and in any case, such finding of the CIT(A) has not been

assailed by the Revenue before us on the basis of any cogent material or evidence. Therefore, in our considered opinion, the ratio of the judgment of Hon'ble Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra) is clearly attracted and the CIT(A) has made no mistake in deleting the addition of Rs.23,55,388/- made to the income assessable under the head house property. Accordingly, we hereby affirm the order of the CIT(A) on this aspect.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 03/10/2017.

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(G.S. PANNU)  
ACCOCUNTANT MEMBER

Mumbai, Dated 03/10/2017

Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**