

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4891/MUM/2017
Assessment Year: 2007-08
&
ITA No. 4883/MUM/2017
Assessment Year: 2008-09**

Deputy Commissioner of
Income Tax, CC-6(2), R.
No.1903, 19th Floor, Air
India Building, Nariman
Point, Mumbai-400 021.

Vs. Shri Sameer Nerurkar,
G-8, Shrikant Chambers,
Next to R K Studio, Sion
Trombay Road, Chembur,
Mumbai-400 071.

Appellant

**PAN No. AADPN7509C
Respondent**

Revenue by : Ms. Vidisha Kalara, CIT-DR
Assessee by : Mr. Gaurav Kabra, AR

Date of Hearing : 18/10/2019
Date of pronouncement: 31/10/2019

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-54, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 144 r.w.s 153A of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

ITA No. 4891/MUM/2017
Assessment Year: 2007-08

2. The ground raised by the revenue in this appeal reads as under:-

“Whether the Ld. CIT(A) has erred in law and facts in granting relief to the assessee while holding that no addition can be made in respect of an unabated assessment which has become final if no incriminating material is found during the search”

3. Before us, the ld. Departmental Representative (DR) submits that there is a conceptual difference between section 143(1) and 143(3) as pointed out by the Hon’ble Supreme Court in *ACIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.* 161 Taxman 316 (SC) and explains that intimation u/s.143(1)(a) cannot be treated to be an order of assessment. It is explained that the order of the Supreme Court in *Rajesh Jhaveri* (supra) has not been discussed by the Hon’ble Bombay High Court in *Continental Warehousing Corporation* decided on 21.04.2015.

Relying on the decision of the Hon’ble Delhi High Court in *CIT v. Kabul Chawla* (61 taxmann.com 412), the ld. DR submits that there is a wide definition of incriminating material which includes (i) a statement in the course of search, (ii) books of accounts and other documents and (iii) undisclosed income or property discovered in search.

It is further submitted that if intimation u/s. 143(1)(a) and assessment u/s.143(3) are equated and the former is held as assessment, then it lead to a situation which is basically against the provisions of section 153A. Further, it is stated by the ld. DR that (i) no expression as abated assessment versus non-abated assessment is in the Act, (ii)

repeated usage of assessment or re-assessment is there in section 153A, (iii) there is limited significance of second proviso to Section 153A (1).

Thus it is argued that harmonious construction of various sections of the Act including 153A provisions cannot be achieved in a situation where only intimation u/s. 143(1)(a) has been issued prior to the date of search and in post-search, the AO is not allowed to scrutinize the returned income.

Thus, the ld. DR mentions that the AO has wide power to make an assessment/re-assessment for all the six years mandatorily, in case no 143(3) was done prior to search proceedings.

It is clarified further that no assessment u/s.143(3) was done in all these cases prior to search and hence there was no occasion for AO to examine the books of accounts and thus no scrutiny had taken place.

The ld. DR thus submits that as per the language and spirit of section 153A, the AO has wide jurisdiction for all the assessment years in assessee's case.

4. On the other hand, the ld. counsel for the assessee submits that the issue in the present appeal is decided in its favour by the judgement of the Hon'ble Bombay High Court in the case of *CIT v. Continental Warehousing Corporation* (2016) 374 ITR 645 (Bom). Therefore, it is stated by him that the order passed by the ld. CIT(A) be affirmed.

5. The short question here is :

Whether addition can be made in respect of an unabated assessment which has become final if no incriminating material is found during the search ?

We have heard the rival submissions and perused the relevant material available on record. The reasons for a decision are given below.

In the instant case, we find that for A.Y. 2007-08, the ld. CIT(A) has confirmed and addition of Rs.14,80,000/-, Rs.10,68,230/-, whereas he has deleted Rs.1,12,000/-, Rs.2,00,000/-, Rs.1,22,49,900/-.

Similarly, we find that for A.Y. 2008-09, the ld. CIT(A) has confirmed the addition of Rs.18,00,000/- made by the AO, whereas he has deleted the disallowance of Rs.1,15,000/-, Rs.1,50,000/-, Rs.1,02,22,625/-, Rs.64,000/-, Rs.2,48,271/-, Rs.25,33,229/-, Rs.14,25,643/-.

We find that the ld. CIT(A) has confirmed or deleted the addition/disallowance for the above two assessment years on the basis of incriminating documents found during the course of search.

In the case of *SKS Ispat & Power Limited* (2017) 298 ITR 584, the Hon'ble Bombay High Court after referring to its own decision in *Continental Warehousing Corporation* (supra) and *CIT v. Gurinder Singh Bawa* (2016) 386 ITR 483 (Bom) has held the following:

“In case of *CIT v. Gurinder Singh Bawa* and in the case of *CIT v. Continental Warehousing Corporation & Anr.* (referred to supra), it has been observed that Section 153A cannot be a tool to have a second inning of assessment either to the Revenue or the Assessee. Even in case of *CIT v. Gurinder Singh Bawa* (referred to supra) the assessment was under Section 143(1) of the Act and the Court held that the scope of assessment after search under Section 153A would be limited to the incriminating evidence found during the search and no further. In the said judgment, the judgment of Court in *CIT v. Continental Warehousing Corporation & Anr.* (referred to supra) has been followed.

Considering the authoritative pronouncements of Court in above referred cases one of which is also with regard to assessment under Section 143(1), the issue is no longer res integra and stands concluded in the above referred judgments.

Section 153A could not be tool to have second inning of assessment either to Revenue or Assessee thus scope of assessment after search u/s 153A would be limited to incriminating evidence found during search.”

5.1 In response to a query raised by the Bench to explain the additions made with regard to incriminating documents, the ld. DR has filed a written submission stating that the same is contained in para 7.3.6 for A.Y. 2007-08 & A.Y. 2008-09.

As mentioned earlier, ld. CIT(A) has confirmed or deleted the addition/disallowance for the above two assessment years on the basis of incriminating documents found during the course of search.

6. In *HDFC Bank Ltd. v. DCIT* (2016) 383 ITR 529 (Bom), the Hon’ble Bombay High Court at para 23 has held:

“We are conscious of the fact that we are fallible and, therefore, an order passed by us may not meet the approval of all and some may justifiably consider our order to be incorrect. However the same has to be corrected/rectified in a manner known to law and not by disregarding binding decisions of this Court. In fact our court in *Panjumal Hassomal Advani Vs. Harpal Singh Abnashi Singh Sawhney & Ors.* AIR 1975(Bom) 120 has observed that a coordinate bench cannot refuse to follow an earlier decision on the ground that it is incorrect and / or rendered on misinterpretation. This for the reason that the decision of a coordinate bench would continue to be binding till it is corrected by a higher Court. This principle laid down in respect of a coordinate Court would apply with greater force on subordinate Courts and Tribunals. We are also conscious of the fact that we are not final and our orders are subject to appeals to the Supreme Court. However, for the purposes of certainty, fairness and uniformity of law, all authorities within the State are bound to follow the orders passed by us in all like matters, which by itself implies that if there are some distinguishing features in the matter before the Tribunal and, therefore, unlike, then the Tribunal is free to decide on the basis of the facts put before it. However till such time as the decision of this court stands it is not open to the Tribunal or any other Authority in the State of Maharashtra to disregard it while considering a like issue. In case we are wrong, the aggrieved party can certainly take it up to the Supreme Court and have it set aside and / or corrected or where the same issue arises in a subsequent case the issue may be reurged before the Court to impress upon it that the decision rendered earlier, requires

reconsideration. It is not open to the Tribunal to sit in appeal from the orders of this Court and not follow it. In case the doctrine of precedent is not strictly followed there would complete confusion and uncertainty. The victim of such arbitrary action would be the Rule of law of which we as the Indian State are so justifiably proud.”

Further, in *East India Commercial Co. Ltd. v. Collector of Customs*, AIR 1962 SC 1893, it has been held by the Hon’ble Supreme Court that the law declared by the highest court in the state is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.

7. As mentioned earlier, in the case of *Gurinder Singh Bawa* (supra), the assessment was under Section 143(1) and the Hon’ble Bombay High Court held that the scope of assessment after search u/s 153A would be limited to the incriminating evidence found during the search and no further.

Respectfully following the ratio laid down in the above decisions of the Hon’ble Jurisdictional High Court, we uphold the order of the Id. CIT(A). Facts being identical, our decision for the A.Y. 2007-08 applies *mutatis mutandis* to A.Y. 2008-09.

8. In the result, the appeals are dismissed.

Order pronounced in the open Court on 31.10.2019

Sd/
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31.10.2019
S. Samanta, P.S.(On tour)

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,

(Assistant Registrar)
ITAT, Mumbai