

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

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| ITA No.1095/Bang/2010 |
| Assessment year : 2004-05 |

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| M/s Sridevi Dairy Farms (P) Ltd., No.356, 24th 'B' Cross, 9th Main, II Stage, Banashankari, Bangalore-560 070. PAN : AACCS 6259A. | Vs. | The Dy. Commissioner of Income-tax, Central Circle 1(1), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Narendra Sharma, Advocate |
| Respondent by | : | Shri Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru. |

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| Date of hearing | : | 24.02.2022 |
| Date of Pronouncement | : | 24.02.2022 |

ORDER

Per Chandra Poojari, Accountant Member

The Tribunal disposed of this appeal by consolidated order dated 20.01.2012 in ITA Nos.1093 to 1095/Bang/20110 dismissing this appeal of the assessee for 2004-05 observing that the dispute raised by the assessee before the Tribunal had already become final in the original proceedings u/s. 143(3) of the Income-tax Act, 1961 [the Act]. Consequently, the assessee carried the matter in appeal before the High Court of Karnataka in ITA No.159/2012 raising the following substantial questions of law:-

- “1. Without prejudice, whether the Tribunal was justified in law in not holding that once the interest claimed by the appellant for the assessment year 2002-03 and 2003-04 is disallowed the appellant is entitled to claim 1/5th of the interest in the assessment year 2004-05 being the income offered under the head income from house property as a pre-construction period interest allowable as deduction as per Explanation to section 24 of the Act on the facts and circumstances of the case?
2. Whether the Tribunal was justified in law in holding agitate the interest as that the appellant cannot issue of claim of 1/5th of allowable in the proceedings under section 143(3) read with section 153A of the Act, when the issue has arises on account of disallowance in earlier year 153A proceedings?
3. Whether the jurisdiction assumed by the Assessing Officer under Section 153A is valid in law more so when the addition made by the learned Officer does not arise out of search material, on the facts and circumstances of the case?”

2. The Hon'ble High Court of Karnataka vide judgment dated 23.11.2021 has remitted the issues back to the Tribunal for fresh adjudication with the following observations:-

- “6. The co-ordinate bench of this Court (where one of us, Hon'ble SSJ was a member) in **ITA No. 322/2018 and connected matters (D.D. 29.09.2021) Principal Commissioner of Income Tax and another vs. M/S. Delhi International Airport Private Limited**) had the occasion to adjudicate upon the scope of Section 153A of the Act and its effect. Considering the relevant judgments vis-à-vis the provisions of the Act, the substantial questions of law relating to Section 153A raised therein have been answered in favour of the assessee and against the Revenue. In such circumstances, the question of law No.3 in this appeal certainly requires re-consideration by the Tribunal.

Accordingly, we direct the Tribunal to re-consider the matter in the light of the ruling of this Court in M/S. Delhi International Airport Private Limited, supra and decide the matter afresh in accordance with law.

7. However, we make it clear that the Tribunal shall adjudicate upon the other issues involved in the appeal, in the event, the issue is answered in favour of the Revenue inasmuch as this question is concerned, i.e, the maintainability or invoking of Section 153A of the Act with reference to the incriminating material. In such an event, the parties are at liberty to urge all contentions on the merits of the case. Thus, all the rights and contentions of the parties are left open to be adjudicated before the Tribunal on merits.”

3. Accordingly this appeal of the assessee was listed for hearing before us.

4. At the time of hearing, the Id. AR submitted that the issue to be considered before us is, whether the AO was right in making addition while framing assessment u/s. 143(3) r.w.s. 153A of the Act, though there was no seized material unearthed during the course of search action u/s. 132 on the ground that the issue had reached finality in the original assessment proceedings. He filed a copy of the original assessment order in this case u/s. 143(3) of the Act dated 14.11.2005. He submitted that in the original assessment, the AO accepted the income declared by the assessee at Rs.20,58,650 while framing the assessment u/s .143(3) of the Act. Consequent to search action u/s. 132 of the Act on 24.8.2006 in the case of the assessee, there was no unearthing of any seized material relating to this assessment year i.e., AY 2004-05 and the AO thereafter framed assessment order u/s. 143(3) r.w.s. 153A of the Act on 31.12.2008 wherein he disallowed the excess depreciation claimed by the assessee and the loss debited to Profit & Loss account by observing that it s a capital loss on

sale of car. Further, he also disallowed agricultural loss while computing total income of assessee after search action.

5. According to the Id. AR, there was no seized material whatsoever to come to the conclusion that the above expenditure is not allowable and bring to tax as income of the assessee. Further, the assessment already concluded for this AY 2004-05 u/s. 143(3) of the Act and there was no incriminating material to make such addition, hence the assessment u/s. 143(3) r.w.s. 153A of the Act cannot be made and it has to be annulled.

6. The Id. DR strongly supported the orders of the lower authorities.

7. We have heard both the parties and perused the material on record. In our opinion, as rightly pointed out by the Id. AR the assessment for AY 2004-05 was already concluded u/s. 143(3) of the Act. Search action in the case of assessee has not resulted in unearthing of any incriminating material which suggest that there was undisclosed income by the assessee. The addition proposed by the AO in his order u/s .143(3) r.w.s. 153A is not based on any seized material found during the course of search. As such, the assessment framed thereafter cannot stand on its own. As rightly pointed out by the Id. AR, the Hon'ble High Court of Karnataka in the case of *CIT v. Delhi International Airport Pvt. Ltd. in ITA No.322/2018 dated 29.9.2021* held as under:-

“30. Thus, it is clear that the Assessing Officer while passing the order under Section 153, read with Section 143[3] of the Act, ordinarily cannot disturb the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings establishes that the finalized assessments are contrary to the material unearthed during the course of 153A proceedings, as held by the Co-ordinate Bench of this Court in the case of **IBC Knowledge Park (P) Ltd.**, supra. A concluded assessment could not be disturbed without there being any basis for doing so which is impermissible in law. Even in

case of a searched person, the same reason would hold good. As observed in **Canara Housing Development Company** supra, the Assessing Officer is empowered to assess or reassess the total income of six assessment years i.e., the income which was returned in the earlier return, the income which was unearthed during search and also any income which was not disclosed in the earlier return or which was not unearthed during the search by separate assessment orders but in our considered view the completed assessments should be subject to the safeguards provided in **IBC Knowledge Park (P) Ltd.** supra.

"54. On a consideration of the relevant sections as well as judicial precedent referred to above, what emerges is that, Section 158BD of the Act deals with undisclosed income of a third party. However, insofar as the incriminating material of the searched person or other person detected during the course of search is concerned, the same can be considered during the course of assessment. Further, such incriminating material must relate to undisclosed income which would empower the Assessing Officer to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good as in case of any other person. As observed by us, detection or the existence of incriminating material is a must for disturbing the assessment already made and concluded. But, at the same time, such can be at three stages: one, at the stage when the re-assessment is initiated, the second, at the stage during the course of re-assessment and third, at a stage where the re-assessment is altered by a different assessment in respect of searched person or in respect of third party. In this regard, reference may be made to the decision of Apex Court in case of M/s. Calcutta Knitwear (supra) and based on the said decision, the CBDT has also issued circular dated 31.12.2015 vide No.24/ 2015. The relevant extract of the circular for ready reference can be extracted as under:

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As regards the pending assessments are concerned only one assessment shall be made separately for each assessment year

on the basis of the income unearthed during search and any other material existing or brought on the record of the Assessing Officer. Even in the absence of any incriminating material abated assessment or reassessment could be done. The returns filed under Section 139 of the Act gets replaced by the returns filed under Section 153A1I] of the Act. Pending proceedings in appeal, revision/application shall not abate subsequent initiation of Section 153A proceedings. Further, recording of satisfaction under Section 153A may not be necessary unlike Section 153C of the Act which mandates recording of satisfaction.

For the reasons aforesaid, substantial question of law in ITA Nos.322/2018 to 324/2018, 354/2018 and 355/2018, substantial question of law No.1 in ITA Nos.380/2018, 382/2018 to 385/2018 and 197/2021 to 199/2021 and substantial question of law Nos.1 and 2 in ITA No.381/2018 are answered in favour of the assessee and against the Revenue.

Substantial question of Law No.2 in ITA Nos.380/2018, 383/2018 to 385/2018 is squarely covered by the ruling of the coordinate Bench of this Court in ITA No.352/2018 and connected matters (DD 25.05.2021) wherein the said substantial question of law has been answered in favour of the assessee and against the Revenue.

Substantial question of law No.2 in ITA No.382/2018 and substantial question of law No.3 in ITA Nos_380/2018, 38-3/2018 to 385/2018 does not arise for our consideration since the same are not pressed by the Revenue.”

8. The above judgment is squarely applicable to the facts of the present case. Accordingly, we are inclined to annul the assessment.
9. Since we have annulled the assessment, we refrain from going into other issues raised by the assessee.

10. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 24th day of February, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th February, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.