

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 615/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

Mr. Srinivasa Raju Kondraju, Deputy Commissioner
Nellore Vs. of Income Tax,
[PAN No. ARLPK3791Q] Central Circle-1(3),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas, AR
राजस्व द्वारा/Revenue by: Ms. L. Sunitha Rao, CIT-DR

सुनवाई की तारीख/Date of hearing: 25/07/2023
घोषणा की तारीख/Pronouncement on: 31/07/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 26/08/2022 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Srinivasa Raju Kondraju ("the assessee") for the assessment year 2016-17, assessee preferred this appeal.

2. After hearing both the sides, we are of the considered opinion that the only question that arises for consideration in this appeal is, in the absence of any incriminating material found during the search, whether any interference could be made with the concluded assessments while

assessing the income under section 153A of the Income Tax Act, 1961 ('the Act').

3. Brief facts of the case are that the assessee is an individual, deriving income from business from civil contract works and share of profit as Partner from Green City Estates. For the assessment year 2016-17, he filed his return of income on 31/03/2018 declaring income at Rs. 9,11,350/-. The return was processed under section 143(1) of the Act without initiation of the proceedings under section 143(2) of the Act and it attained finality. Subsequently, search and seizure operation under section 132 of the Act was conducted covering case of assessee on 15/11/2018. Having issued notice under section 153A of the Act and considered the return of income filed in response thereto, learned Assessing Officer completed the assessment under section 143(3) read with section 153A of the Act by making addition of Rs. 6,81,089/-.

4. Aggrieved thereby, the assessee preferred appeal before the CIT(A) and, among other things, argued that there was no incriminating material relevant to the matter on the issue pertaining to assessment year 2016-17 and since no assessment was pending for the assessment year 2016-17 as on the date of search in this matter, in terms of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 / (2015) 61 taxmann.com 412 (Delhi), no interference could be made with the concluded assessment, while making assessment under section 153A of the Act.

5. Learned CIT(A) did not agree with the contentions raised by the assessee and recorded that once the search warrant was executed, the assessment as provided under section 153A of the Act is mandatory, and non-pendency of any proceedings as on the date of search does not limit the jurisdiction of the learned Assessing Officer to a seized material alone, but rather it very clearly provides from the abatement of pending proceedings as a kind of assessment which could be made, based on records and seized material or either. According to the learned CIT(A), if there is any subsequent information received, pending the completion of assessment proceedings under section 153A of the Act or information other than seized material available before the initiation of notice under section 153A of the Act for which the learned Assessing Officer was contemplating issue of notice under section 148 of the Act, would also merge with the proceedings under section 153A of the Act. He, therefore,

concluded that section 153A of the Act is very clear and it is an obligation on the part of the learned Assessing Officer to initiate the proceedings without any discretion or judgment and the learned Assessing Officer is empowered and rather obliged to make additions as a regular assessment also while completing the assessment proceedings. On this premise, learned CIT(A) dismissed the appeal.

6. Assessee, therefore, preferred this appeal on many grounds, but the main plank of argument of the learned AR is that when there is no incriminating material found during the search in case of a concluded assessment, no addition could be made. According to him, authorities below failed to appreciate the difference between the abated and un-abated assessments and the well settled principle under section 153A of the Act that jurisdiction to make assessment for a concluded assessment is limited, but incriminating material found during the course of search. In support of his contentions, he placed reliance on the latest decision of the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. [2023] 149 taxmann.com 399 (SC).

7. Per contra, learned DR submits on behalf of the Revenue that section 153A of the Act does not limit the jurisdiction of the learned Assessing Officer to make the addition to the seized material alone and on the other hand, it is the bounding duty of the learned Assessing Officer to initiate proceedings under section 153A of the Act, the moment the search warrant is executed. According to the learned DR, there is no room from interpretation of this aspect and no discretion is left with the learned Assessing Officer to initiate or not initiate proceedings under section 153A of the Act in case of a search or, to limit his power to assess basing on the incriminating material alone. Learned DR placed reliance on several decisions reported in support of his contentions, namely, Gopal Lal Bhadraka vs. DICT (2012) 27 taxmann.com 167 (AP), E.N. Gopakumar vs. CIT (2016) 75 taxmann.com 215 (Ker), CIT vs. Raj Kumar Arora (2014) 52 taxmann.com 172 (All), Suman Poddar vs. ITO, SLP No. 26864/2019, dt. 22/11/2019 (SC), Suman Poddar vs. ITO, ITA No. 841/2019, dt. 17/09/2019 (Del), Suman Poddar vs. ITO, ITA No. 1006/Del/2019, dt. 25/07/2019 (ITAT, New Delhi), Krishna Devi vs. ITO, ITA No. 6356/Del/2019, dt. 04/01/2022, SEBI vs. Rakhi Trading Pvt. Ltd., Civil Appeal No. 1969 of 2011, 08/02/2018 (SC), Anandtex International P. Ltd., vs. ACIT, ITA No. 2476/Del/2018, dt. 24/02/2022. Learned DR tried to make a distinction between the assessments concluded under section 143(3) of the Act and 143(1) of the

Act, to say that the concluded assessment means only such assessment which is terminated by the order passed under section 143(3) of the Act.

8. We have gone through the record in the light of the submissions made on either side. Insofar as the facts and figures are concerned, there is not much dispute. The return of income filed by the assessee for the assessment year 2016-17 on 31/03/2018 was processed under section 143(1) of the Act and notice under section 143(2) of the Act was never issued by the date of search on 15/11/2018, after expiry of the last date for issuance of notice under section 143(2) of the Act, in this case. It is also not the case of the Revenue that any incriminating material was found during the search that was considered by the learned Assessing Officer but made the assessment.

9. As stated earlier, the return of income filed by the assessee for the assessment year 2016-17 on 31/03/2018 was processed under section 143(1) of the Act. Neither notice under section 143(2) of the Act was issued nor any proceedings were pending as on the date of search. Though the divergent views taken on this aspect are brought to our notice by both the counsel, the Hon'ble Supreme Court put a quietus to the issue by the decision in the case of PCIT vs. Abhisar Buildwell P. Ltd. (supra). While in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi) and the Hon'ble Gujarat High Court in the case of PCIT Vs. Saumya Construction (2016) 387 ITR 529 and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material, Hon'ble Apex Court concluded that-

“i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”

10. This decision applies to the facts of the case on all fours and respectfully following the same, we hold that since no incriminating material found in the case of assessee for the assessment year 2016-17, the concluded assessment cannot be disturbed and the addition made by the learned Assessing Officer and sustained by the learned CIT(A) cannot be upheld. We accordingly allow the grounds raised by assessee.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 31st day of July, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 31/07/2023

TNMM

Copy forwarded to:

1. Mr. Srinivasa Raju Kondraju, Lakeview Colony, Netaji Nagar, Podalakur Road, Near Nellore Tank, Nellore.
2. Deputy Commissioner of Income Tax, Central Circle-1(3), Hyderabad.
3. Pr.CIT(Central), Hyderabad
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD