:ak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1827 OF 2022

Pr. Commissioner of Income Tax-Central-1 ...Appellant
Vs.
Milan Kavin Parikh ...Respondent

Mr. Suresh Kumar for Appellant.
Mr. Atul Jasani for Respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 25 NOVEMBER 2025.

Oral Judgment (Per G. S. Kulkarni) :-

1. This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, "**the Act**") assails an order dated 07 April 2021 passed by the Income Tax Appellate Tribunal, Mumbai Bench (for short, "**Tribunal**"), whereby the respondent's/assessee's apeal assailing the order dated 19 October 2020 passed by the Commissioner of Income Tax (Appeals) stands allowed. The assessment year in question is A.Y. 2006-07.

2. The appellant/revenue in assailing the order of the Tribunal has although raised seven questions of law, as fairly agreed by the parties, we confine the adjudication of the present appeal on the following relevant question of law:-

> "i. Whether on the facts and in the circumstances of the case and in law, the ITAT failed to consider that the provisions of section 153A mandate that once the cases fall within the meaning of section 153A, the AO shall compute total income of the assessee which may be computed from known and unknown sources of income whether disclosed by the assessee or otherwise unidentified or finding or mentioning the incriminating material or otherwise.

ii. Whether on the facts and in the circumstances of the case and in law, u/s. 153A or 153C of the Act, the Assessing Officer is not eligible to bring to tax all the Income which was hitherto untaxed besides the Income detected on account of search conducted u/s. 132 of the Income Tax Act, 1961?

iii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred, in not considering that the HSBC Bank, Geneva refuse to divulge any information about Sulay Tading Ltd. and Laptis Trading Ltd. and the assessee being beneficial owner of such accounts citing Swiss secrecy laws.

iv. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in not considering that the Base Note as received from French Authorities, the statement of the assessee recorded u/s. 132(4) at the time of search on 08.08.2011, and material gathered in post search proceedings like HSBC Geneva's letter and the Addl. DIT (Inv.) Mumbai's letter to HSBC Geneva, seeking specific information from the bank about deposits in the bank accounts and assessee's relationship with the same, all constitute incriminating material against the assessee, gathered on account of search and seizure action."

3. The brief facts are: The respondent/assessee, who claimed to be a Director of M/s.Mahendra Brothers Exports Private Limited and also Partner in M/s. Ketan Brothers Exports, filed the return of income for the assessment year in question on 16 October 2006 declaring an income of Rs.2,23,167/-. After filing such return, a search and seizure action under Section 132 of the Act was conducted in the case of M/s. Mahendra Brothers Exports Pvt. Ltd. and other group concerns including on the Directors and other related persons including the assessee on 08 August 2011. Such action was taken after the receipt of information by the department in relation to the undisclosed overseas Bank accounts.

4. The Assessing Officer considered such material and as observed by him in paragraph 5 of the assessment order noted that information was received by the Government of India from French Sovereign Government under DTAA in exercise of its sovereign powers that some Indian nationals and residents have foreign bank accounts in HSBC Bank (Suisse) SA Geneva, which were not

disclosed to the Indian Tax Authorities. It was recorded that the said information was received in the form of document called "base note" containing various details of the account holders such as name, date of birth, place of birth, sex, residential address, profession, nationality along with date of opening of account in HSBC Bank (Suisse) SA Geneva, besides mentioning account balances in some years. It was observed that in the case of the assessee also, a "base note" was received which recorded that the assessee was a beneficiary/beneficial owner of bank accounts in HSBC Bank (Suisse) SA Geneva, containing all personal details of the assessee.

5. To investigate such facts, search and seizure action was conducted on 08 August 2011 under Section 132 of the Act on the said entities. Before the department, the assessee had taken a categorical stand and denied to have any bank account with HSBC Bank (Suisse) SA Geneva or being the beneficial owner of such accounts, in recording of his statement under Section 132(4) of the Income Tax Act. However, merely on the basis of base note, the Assessing Officer was of the opinion that the assessee was one of the beneficiaries of the bank accounts, as set out in the assessment order. It also needs to be observed that the assessee in supporting his case of having no connection with such bank accounts produced a letter from HSBC Bank (Suisse) SA Geneva, stating that the assessee had no bank account in the said bank nor had any transactions with the said bank. The department had also made queries with the said Bank, inquiring whether the assessee was beneficial owner in respect of the four accounts held by the companies. In response to such inquiries, HSBC Bank (Suisse) SA Geneva, confirmed the said letter as having been issued by it, as furnished by the assessee

before the Assessing Officer. It appears that during the course of assessment proceedings, the assessee was examined on oath by the Assessing Officer under Section 131 of the Act on three occasions and was confronted with the information as contained in the base note about foreign bank accounts and the department's case of the assessee's beneficial ownership therein, which was denied by him. The Assessing Officer nonetheless added the entire peak balance of USD 2,43,132.65 as appearing in the month of January 2006 in the bank account of one of the group companies, namely, Sulay Trading Ltd. and USD 60,35,211.5 being 25% of peak balance of USD 2,41,40,846 as appearing in the month of March 2006 in the bank account of another company, namely, Laptis Trading Company Ltd. held with HSBC Bank (Suisse) SA Geneva. Thus, such entire amounts were added in the hands of the assessee, as appearing in the bank statement of the said trading company, namely Sulay Trading Ltd. as also Laptis Trading Company thereby the Assessing Officer making an aggregate addition of Rs.27,99,45,729/- as unexplained money under Section 69 of the Act, merely on the premise of the information contained in the base note, by framing assessment under Section 143(3) read with Section 153A of the Act dated 27 March 2015.

6. Such assessment order passed by the Assessing Officer was assailed by the assessee before the CIT (Appeals) not only on the jurisdictional issue but also on merits *inter alia* taking a clear stand of the assessee in no manner being connected with the said bank accounts. The assessee categorically contended that the addition could not have been made, as no incriminating material was found during the course of search as undertaken under Section 132(1) of the Income

Tax Act to connect him with the base note. The CIT (Appeals), however, did not find any merit in the case of the assessee and dismissed the appeal accepting the view taken by the Assessing Officer.

7. The order passed by the CIT (Appeals) in the circumstances came to be challenged by the assessee before the Tribunal in the appeal in question. Before the Tribunal, the contention as noted by us in regard to no incriminating material being found in the search action, as also the assessee having no connection whatsoever with the HSBC Bank Accounts held by such entities and the base note was asserted by the assessee. The Tribunal in the impugned order held that the action of the Assessing Officer was taken merely on the base note and it was indisputed that during the course of search proceedings on the assessee no incriminating materials in respect of the assessee, being a beneficial owner of bank accounts in HSBC Bank (Suisse) SA Geneva, Switzerland were found. It was also observed that the assessee also denied in the statement recorded under Section 132(4) of the Income Tax Act before the Assessing Officer that he was in any manner the beneficial owner of the foreign bank accounts. For such reasons, the tribunal was of the opinion that during the course of search, as no incriminating material was found by the search team and the addition which was made by the Assessing Officer and as confirmed by the CIT (Appeals) being founded only on the base note, which was being considered to be incriminating material, was not an acceptable approach on the part of the department. The tribunal thus considered whether the base note or statements recorded during search under Section 132(4) of the Act or material gathered during post search proceedings

could constitute incriminating materials found during search or not. The tribunal in such context considering the position in law in this regard in the decisions as noted by it, has reached to a conclusion that the course of action as adopted by the Assessing Officer and as confirmed by the CIT (Appeals) was not sustainable both on facts and in law and accordingly has allowed the appeal.

8. We have heard Mr. Suresh Kumar, learned counsel for the appellant/ Revenue and Mr. Jasani, learned counsel for the respondent/assessee. With their assistance, we have also perused the record.

9. At the out set, we may observe that it appears to be an undisputed position that no incriminating material in the search proceedings was found against the assessee. Also there was sufficient evidence to indicate that the assessee did not have any connection with the bank accounts which according to the Assessing Officer was the incriminating material, although the bank account concerned the group companies of the assessee's company in which he was a director. We also find that HSBC Bank (Suisse) SA Geneva also confirmed the position by issuing a letter granted in favour of the assessee, that the assessee had no connection whatsoever with the said bank accounts being considered by the department to have a concern with the assessee. Thus, unless a clear and unimpeachable nexus was brought about on acceptable materials to justify the contentions and that too establishing a basis to link the assessee to the accounts which were held by the said entities with HSBC Bank (Suisse) SA Geneva, in our opinion, it was certainly not acceptable for the Assessing Officer to nonetheless derive a nexus or any relation of the assessee in regard to the said bank accounts. This was an approach in the

absence of any incriminating materials / evidence, much less any incriminating evidence and material gathered in the course of search action. In any event, as seen from the facts of the present case, the base note on which the revenue sought to place reliance was in fact a document available post-search and admittedly was not a document recovered under the search action. Further the assessment proceedings in the present case had also stood completed, hence, the base note being a document available post-search could not be considered to be any incriminating document to assess or re-assess the assessee's income.

10. The position in law in such context is well settled considering the decision of the Supreme Court in **Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd.**[1] wherein the Supreme Court in such context considering the views taken by different High Courts, namely the Gujarat High Court, Delhi High Court, this Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court, and the Kerala High Court as set out in paragraph 7 of the said decision and examining the provisions of Section 153(A) of the Income Tax Act as also, in the context of the search action taken under Section 132 has held that when no incriminating material was unearthed during the search, the Assessing Officer cannot assess or reassess income taking into consideration other materials in respect of completed assessment / unabated assessments. It was held that in respect of completed / unabated assessments, no addition can be made by the AO in the absence of any incriminating material found during the course of search under Section 132 or requisition under Section

1 [2023] 149 taxmann.com 399 (SC)

132A of the Income-tax Act. The Supreme Court held that however, the completed/unabated assessment can be re-opened by the AO only in exercise of powers under Section 147/148 of the Income Act Act. Such is not the case in the present proceedings. The relevant observations as made by the Court are required to be noted which read thus:-

> "12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.
>
> 14. In view of the above and for the reasons stated above, it is concluded as under:
>
> (i) That in case of search under Section 132 or requisition under Section 132-A, 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 132-A of the 1961 Act. 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.
>
> The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

11. Mr. Jasani, learned counsel for the respondent/assessee has also placed reliance on the decision of the Division Bench of this Court of which one of us (G. S. Kulkarni, J.) was a member in **Principal Commissioner of Income-tax Central-2 Vs. Welspun India Ltd.**[2] wherein following the decision of the Supreme Court in **Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd.** (supra) in similar circumstances, the Court dismissed the appeal filed by the Revenue observing that when no incriminating material was found to be an admitted position, no question of law had arisen for consideration of the Court, in view of the aforesaid settled position in law.

12. In the light of the aforesaid discussion, no question of law as raised by the Revenue falls for consideration in the present proceedings. The appeal needs to fail. It is, accordingly, dismissed. No costs.

13. We clarify that except examining the aforesaid issue, we have not delved on any other issue or any other pending proceedings. All contentions of the parties in that regard are expressly kept open.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**

2 [2024] 167 taxmann.com 333 (Bombay)