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

INCOME TAX APPEAL NO.663 OF 2024
WITH
INCOME TAX APPEAL NO. 735 OF 2024

Pr.Commissioner Of Income Tax Central 4 ...Appellant
Versus
Aurum Ventures Private Limited ...Respondents

Mr. Suresh Kumar, for Appellant.

Mr. P.C.Tripathi, for Respondents.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 17 JULY 2026

P.C.

1. These two appeals are filed by the Revenue challenging the common order dated 20 June 2023 passed by the Income Tax Appellate Tribunal, Mumbai Bench, whereby the appeals preferred by the Revenue against the orders dated 30 August 2021 passed by the Commissioner of Income Tax (Appeals) [CIT(A)] came to be dismissed.

2. The assessment years involved are Assessment Year 2015–16 and Assessment Year 2016–17.

3. The substantial questions of law proposed in both the appeals are common, the only distinction being the figures involved for the respective assessment years.

For the sake of convenience, we refer to the questions of law as framed in Income Tax Appeal No. 663 of 2024, which read thus:

QUESTIONS OF LAW

i. Whether on the facts and circumstances of the case and in law, the tribunal has erred in considering the certain incriminating documents have been found and seized during the search proceedings viz. (I) copy of Resolution of Board of Directors held on 26.11.2013 (A-3 to panchnama dated 25.03.2018 page No.44 to 46), (ii) Escrow Account Agreement dated 03.12.2013 (A-3 to panchnama dated 25.03.2018 page No.52 to 57), (iii) copy of undertaking given by Aurum Platz Prt. Ltd. to IFCI Ltd. on 03.12.2013 with respect to sale of duplex apartment at "Aurum Platz" (A-3 to panchnama dated 25.03.2018 page No.7l to 72), (iv) Correspondence of Aurum Venture Pvt. Ltd. with IFCI Ltd. regarding concluded negotiation for the sale of apartment No.6 (A-3 to panchnama dated 25.03.2018 page No.l52) and (v) Correspondence between holding company, Aurum Ventures Pvt. Ltd. and Shri Prasoon, CGM, IFCI regarding the Aurum loan facility of Rs. 1 15 Crores, wherein it was clearly mentioned at para 4 that the repayment of the loan and interest thereon was to be paid from the income and sale of flats of the "Aurum Platz" Building (A-3 to panchnama dated25.03.2018 page No.169 to 170), these documents unearthed during the search proceedings, which clearly establish the fact that the intention of the assessee was to sale flats and the intention of the assessee to carry out business and not renting or leasing of flats, as part of the regular records maintained by the assessee.

ii. Whether on the facts and circumstances of the case and in law, the tribunal has failed to appreciate the fact unearthed from the documents seized during the search proceedings, led to establishing the fact that the income offered by the assessee under the head i.e. capital gain was with variance from the right head of income i.e. Income from Business and Profession. Thereby, the tribunal has not justified in treating the seized documents as non-incriminating.

Iii. Whether on the facts and circumstances of the case and in law, the tribunal has erred in considering that treatment of income received from sale of apartments as business income of the assessee was made by the AO based on the regular books of accounts maintained by the assessee and details called for during the course of assessment proceedings u/s 153A of the Act, as there was no reference of any incriminating material found during the course of search in the assessment order.

iv. Whether on the facts and circumstances of the case and in law, the tribunal has erred in deleting addition made u/s.36(l)(iii) of Act, without considering the facts of the case that on similar grounds in the assessee's own case, the Ld.CIT(A) has confirmed the addition made u/s.36(l)(iii) of the Act, in the order u/s 153A r.w.s. 143(3) dated 30.l2.20l9 for A.Y. 2017- 18 and in the order u/s 143(3) dated 30.12.2019 for A.Y. 2018-19 and the assessee has accepted the decision of the CIT(A), confirming the disallowance made u/s.36(1)(iii) of the Act.

v. On the facts and circumstances of the case and in law, the tribunal, has erred in deleting the disallowance u/s 36(l)(iii) of the Act without considering the detailed findings of the Assessing Officer that the investments made by the assessee are capital in nature and emanating from information unearthed by the investigation wing during the course of search on Aurum Group which are incriminating in nature.

4. At the outset Mr. Suresh Kumar learned counsel for the Appellants would fairly submit that in the interim period the position in law and insofar as the materials which may be recovered in the search and seizure only in the event they are incriminating could be taken into consideration is the settled position in law. In this context reliance is placed on the decision of the Supreme Court in **Principal Commissioner of Income Tax Central-3 Vs. Abhisar Buildwell (P) Ltd.**[1]

5. Our attention is drawn to an order dated 13 March 2026 passed by this Bench on Income Tax Appeal No. 996 of 2024,**The Principal Commissioner of Income Tax Central-4 Vs. Maneesh Pharmaceuticals Ltd.** in which this Court in similar context had made the following observations referred to this decision :

> 1. These appeals under Section 260A of the Income Tax Act, 1961 (`the Act') filed by Revenue challenge an order dated 25th October 2021 passed by the Income Tax Appellate Tribunal (Tribunal) whereby the appeals filed by the Department are rejected confirming the orders passed by the Commissioner of Income Tax (Appeals) [CIT-(A)]. Assessment Year in question in Appeal No.939 of 2019 is A.Y.2006-07. Insofar as Appeal No.996 of 2024 and Appeal No.122 of 2025 are concerned, the assessment years in question are A.Y.2007-08, 2008-09 and 2009-10 for which a common order dated 25th October 2021 has been passed by the Tribunal. Learned Counsel on behalf of the Appellant-Revenue contends that the only difference in these appeals is that in some assessment years, the assessment orders are passed under Section 143(1) of the Act and in some years the assessment orders are passed under Section 143(3) of the Act. However the issue and questions of law remain the same. Illustratively, as the questions of law, as raised on behalf of Revenue are common, we quote the questions of law in the lead Appeal No.939 of 2019, which reads thus :
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> "QUESTION OF LAW
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> i. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in directing the AO to delete the additions which were made by the AO on account of ALP adjustment of Rs. 19,53,522l-, deduction u/s. 10B of Rs. 10,69,98,599/- and exceptional items written off of Rs. 33,27,68,000/-, relying on the decision of Bombay High Court in the case of All Cargo Logistics Ltd(374 ITR 645) without appreciating the fact that the case for A.Y. 2008-09 was never selected for scrutiny for regular assessment u/s 143(3) of the I.T. Act and therefore the question of its abatement never arose.

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ii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in directing the AO to delete the additions which were made by the AO on account of ALP adjustment of Rs. 19,53,522/-, deduction u/s. 10B of Rs. 10,69,98,599/- and exceptional items written off of Rs. 33,27,68,000/-, relying on the decision of Bombay High Court in the case of All Cargo Logistics Ltd(374 ITR 645) without appreciating the fact that the decision of the High Court has not been accepted by the department and SLP has been filed and the same is pending."

2. The Respondent-assessee filed its return of income for the Assessment years in question declaring its income, as set out in the respective proceedings. A search action under Section 132 of the Act was conducted in the case of the assessee on 29th August 2011, consequent to which a notice under Section 153A was issued to the assessee and thereafter the Assessing Officer completed the assessment proceedings under Section 153A read with Section 143(3) of the Act assessing the income of the assessee.

3. Aggrieved by such order passed by the Assessing Officer, the assessee has filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A) for short]. The CIT(A) passed an order dated 21st May 2018 partly allowing the appeal of the assessee whereby the additions which were made by the Assessing Officer were deleted on account of ALP adjustments and disallowance of other items while observing that the additions were not based on any incriminating material found from the search relying on the decision of the Tribunal in the case of **All Cargo Global Logistics Limited Vs Deputy Commissioner of Income Tax, Central Circle-44**[2], and also the decision of this Court in the case of **CIT Vs. Continental Warehousing Corporation**[3]. The Department being aggrieved by the orders passed by the CIT(A) approached the Tribunal in which the impugned orders have been passed. On such backdrop the present appeals are filed.

4. At the outset Mr.Suresh Kumar, learned counsel for Revenue, would not dispute that no incriminating material was found from the search under Section 132 of the Act against assessee. He also fairly submitted that the position in law in such circumstances when the assessment under Section 143(3) itself has attained finality, is well settled. We may observe that the Tribunal disposing of the Revenue's appeals made the following observations :

"5. We have heard both the parties and perused the records. It is not disputed by the revenue that on the aforesaid items of addition, no incriminating material was found during search. Assessment order under section 143(3) was already passed for assessment year 2007-08 prior to the search and notice. The period for issuing notice under section 143(2) was also over for assessment year 2008-09 and 2009-10 by the time of search and notice. In such circumstances it is evident that these are not abated assessments. In such circumstances the decision of honourable Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra) and Continental Warehousing Ltd. (supra) clearly mandate that the addition cannot be done under section 153A without any incrementing material found during search. The Revenue submits in grounds of appeal that they have not accepted the Hon'ble Bombay High Court decision and SLP has been filed before Hon'ble Supreme Court. This is no reason for us to not follow Hon'ble Jurisdictional High Court exposition. Hence in our considered opinion there is no infirmity in the order of learned CIT(appeals)."

5. We find that there are consistent line of decisions on the issues which were canvassed by the assessee before the forums below. In **Commissioner of Income Tax,**

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2 [2012] 33 CCH 0294 (Mum) (SB)

3 (374 ITR 645)

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Central-II, Mumbai Vs. Gurinder Singh Bawa[4], a co-ordinate Bench of this Court of which one of us (G.S.Kulkarni, J.) was a member, in similar situation, categorically held that once the assessment has attained finality for a particular year i.e. it is not pending, then it cannot be subject to tax in proceedings under Section 153A of the Act. Such decision was also accepted by the Department. The relevant extract of the said decision is required to be noted, which reads thus :

> "6. Mr.Kotangale, the learned counsel for the Revenue very fairly states that the decision of the Special Bench of the Tribunal in A1-Cargo Global Logistics Ltd was a subject matter of challenge before this Court as a part of the group of appeals disposed of as CIT V. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015)374 ITR 645/58 taxmann.com 78/232 Taxman 270 (Bom) upholding the view of the Special Bench of the Tribunal in A1-Cargo Global Logistics Ltd. Consequently, once an assessment has attained finality for a particular year i.e. it is not pending then the same cannot be subject to tax in proceedings under Section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under Section 153A of the Act which are contrary to and/or not disclosed during regular assessment proceedings.
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> 7. In view of the above, on issue of jurisdiction itself the issue stands concluded against the revenue by the decision of this Court in Continental Warehousing Corpn. (Nhava Sheva) Ltd. (supra). In the appeal before us, the revenue has made no grievance with regard to the impugned order of the Tribunal holding that in law the proceedings under Section 153A of the Act are without jurisdiction. This in view of the fact that no assessment were pending, so as to abate nor any incriminating evidence was found. The grievance of the revenue is only with regard to finding in the impugned order on the merits of the individual claim regarding gifts and deemed dividend. However once it is not disputed by the revenue that the decision of this Court in Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) would apply to the present facts and also that there are no assessments pending on the time of the initiation of proceedings under Section 153A of the Act. The occasion to consider the issues raised on merits in the proposed questions becomes academic."

6. Similar view is also taken in the case of **Commissioner of Income Tax Vs. SKS Ispat & Power Limited**[5], in which also reference to the decision in the case of CIT Vs Gurinder Singh Bawa (supra) is made. The relevant extract of which reads thus :

> "4. Even in the case of CIT Vs. Gurinder Singh Bawa (2017) 79 taxmann.com 398 (2016) 386 ITR 483 (Bom) decided by this Court, the assessment was under section 143(1) of the Act. The learned advocate relied on the judgment of this court in Gurinder Singh Bawa (supra) and another judgment of this Court in the case of CIT Vs. Continental Warehousing Corpn. (Nhava Sheva) Ltd. (2015) 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom).
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> 5. We have considered the arguments canvassed by the learned counsel for the respective parties. On perusal of section 153A of the Act, it is manifest that it does not make any distinction between assessment conducted under section 143(1) and 143(3). This court had occasion to consider the scope of section 153A of the Act in the case of Gurinder Singh Bawa and in the case of Continental Warehousing Corpn. (Nhava Sheva) Ltd. (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 the case of 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 this Court in Continental Warehousing Corpn. (Nhava Sheva) Ltd (referred to supra) has been followed."

4 (2017)79-taxmann.com-398

5 (2018)99-taxmann.com-424

7. This apart, the position stands well settled under a recent decision of Supreme Court in the case of **Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell (P) Ltd**[6] in which the Supreme Court laid down the following clear position in 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 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.

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."

8. We may also refer to a decision of this Court on a batch of petitions in **Principal Commissioner of Income Tax, Central-1 Vs. Speciality Paper Limited**[7], in which in similar circumstances also referring to the decision of this Court in CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) as also decision of Supreme Court in Principal Commissioner of Income-tax, Central-3 Vs. Abhisar Buildwell (P.) Ltd.(supra), the Court made the following observations:

v"2. Before the Tribunal, disputes had arisen from the order passed by the Commissioner of Income Tax (Appeal) taking a view that in the absence of any incriminating material found in the course of search, no additions are permissible in the assessments made under Section 153 (C) of the Act in years, where the original assessments do not abate, following the decision of this Court in **Commissioner of Income Tax vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.**[8].

3. In *Commissioner of Income Tax vs. Continental Warehousing Corporation* (supra), before this Court, an issue which had fell for consideration of this Court, was 'whether in a case where pursuant to issuance of a notice under Section 153A assessments are abated, Assessing Officer retains original jurisdiction as well as jurisdiction conferred on him under Section 153A, for which assessments be made for each of six assessment years separately'. This Court, considering the relevant provisions, held that no addition can be made in respect of unabated assessments

6 (2023) 149 taxmann.com 399 (SC)

7 Income Tax Appeal No.16 of 2019 and batch, decided on 14-8-2024

8 374 ITR 645 (Bom.)

which have become final, if no incriminating material was found during search. The relevant observations as made by the Court are required to be noted which read thus:-

> "29. We are not in agreement with Mr. Pinto that these observations are made in passing or that they are not binding on us because the essential controversy before the Bench was somewhat different. He urges that was only in relation to the legality and validity of the order of the Commissioner under section 263 of the IT Act. Had that been the case, the Division Bench was not required to trace out the history of section 153A of the IT Act and the power that is conferred thereunder. When the Revenue argued before the Division Bench that the power under section 153A can be invoked and exercised even in cases where the second proviso to sub-section (1) is not applicable that the Division Bench was required to express a specific opinion. The provision deals with those cases where assessment or reassessment, if any, relating to the assessment years falling within the period of six assessment years referred to in sub-section (1) of section 153A were pending. If they were pending on the date of the initiation of the search under section 132 or making of requisition under section 132A, as the case may be, they abate. It is only pending proceedings that would abate and not where there are orders made of assessment or reassessment and which are in force on the date of initiation of the search or making of the requisition. As that specific argument was canvassed and dealt with by the Division Bench and that is how it was called upon to interpret section 153A of the IT Act, then, each of the above conclusions rendered by the Division Bench would bind us.
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> 30. Even otherwise, we agree with the Division Bench when it observes as above with regard to the ambit and scope of the powers conferred under section 153A of the Act. Since we are not required to trace out the history and we can do nothing better than to reproduce the observations and conclusions as above that we are not repeating the same. Even if the exercise of power under section 153A is permissible still the provision cannot be read in the manner suggested by Mr. Pinto. Not only the finalised assessment cannot be touched by resorting to those provisions, but even while exercising the power can be exercised where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st March, 2003. There is a mandate to issue notices under section 153(1)(a) and assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, the crucial words "search" and "requisition" appear in the substantive provision and the provisos. That would throw light on the issue of applicability of the provision. It being enacted to a search or requisition that its construction would have to be accordingly. That is the conclusion reached by the Division Bench in Murli Agro (supra) with which we respectfully agree. These are the conclusions which can be reached and upon reading of the legal provisions in question."

6. Mr. Suresh Kumar, learned counsel for the Revenue has drawn our attention to the decision of the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 Vs. Abhisar Buildwell (P.) Ltd.***[9] to submit that the issue involving interpretation of the provisions of Section 153A read with Sections 132 and 143 had fell for consideration of the Supreme Court, which had arisen from the decision of this Court as also from the decisions of the other High Courts. The Supreme Court held that in respect of completed assessments/ unabated assessments, no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under Section 132 or requisition under Section 132A. It is also, however, held that completed/ unabated assessments can be reopened by Assessing Officer in exercise of powers under Section

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> 147/148 subject to fulfillment of conditions as envisaged under Section 147/148 and those powers were saved.
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> 7. Thus, the view of this Court in *Commissioner of Income Tax vs. Continental Warehousing Corporation* (supra) has found approval of the Supreme Court. In view of the authoritative pronouncement of the Supreme Court in *Principal Commissioner of Income-tax, Central-3 Vs. Abhisar Buildwell (P.) Ltd.* (supra), the question of law as raised by the revenue would not arise for consideration. However, it is clarified that the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under Section 147/148 of the Act subject to fulfillment of conditions as envisaged under the said provisions and as may be permissible in law. All contentions of the parties in that regard are expressly kept open.
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> 9. The aforesaid discussion would clearly indicate that the position in law now stands well settled as followed by the Tribunal. Hence, no error whatsoever, muchless any illegality can be attributed to the orders passed by the Tribunal as impugned. The question of law stands clearly covered by the decisions as noted hereinabove. The appeals accordingly are required to be rejected. They are accordingly rejected. No costs.
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> 10. Interim Application No.41715 of 2025 does not survive and stands disposed of.

6. Applying the aforesaid principles to the facts of the present case, we find that, as observed by the Tribunal in the impugned order, a search and seizure action under Section 132(1) of the Income Tax Act was carried out on 22 March 2018 by the DDIT (Investigation), Unit–6(1), Mumbai, in the case of the Aurum Group and its related entities. Consequent thereto, notices under Section 153A of the Act came to be issued.

7. Upon a consideration of the material on record, the Tribunal has categorically held that no incriminating material was found during the course of the search in relation to the additions and disallowances made by the Assessing Officer. The Tribunal's findings in that regard are based on the record. The relevant observations of the Tribunal need to be noted which read thus:

> 17. We have perused the material on record, the orders passed by the lower authorities and have given our thoughtful consideration to the contentions placed by the Ld. DR and Ld. AR. The crux of the matter under appeal which needs adjudication is whether addition or disallowance can be made during the course of assessment proceedings u/s 153A if no incriminating material or

evidence was found during the course of search action in relation to those addition and disallowance. It is a settled position in law that completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. Thus, it is sufficiently clear that the additions made during the course of assessment proceedings u/s 153A can only be made on the basis of incriminating material found and seized during the course of search and the earlier proceeding which has attained finality cannot be disturbed.

18. In the present case, the assessment proceeding for the year under consideration, was completed vide order dated 23.12.2017 u/s 143(3) of the Act i.e. before the date on which search was conducted. The addition made by the AO by treating the proceeds from sale of flats as income under the head'Profits and Gains from Business and Profession' and disallowance of interest expenditure u/s 36(l)(iii) was not based on any 'incriminating material' seized during the course of search proceedings. This is evident from the fact that there is absolutely no reference of any incriminating material by the Assessing Officer in his assessment order. The documents relied upon by the AO were part of regular books of accounts maintained by the assessee and did not pertain to any undisclosed income earned by the assessee company

8. In the light of the aforesaid discussion, we are of the clear opinion that no substantial question of law arises for consideration on the issue urged on behalf of the Revenue.

9. Insofar as the other issue, namely, the disallowance of interest expenditure under Section 36(1)(iii) of the Income Tax Act, is concerned, the same is also not founded on any incriminating material seized during the course of the search proceedings. We are in complete agreement with the view taken by the Tribunal, which is in consonance with the law laid down by the Courts and the settled legal position as noticed by us hereinabove. In that view of the matter as well, no substantial question of law arises for consideration in the present appeal.

10. Insofar as the companion appeal is concerned, it arises out of the very order passed by the Tribunal. Since the issues involved are identical, separate

reasons are not required to be recorded while adjudicating the said appeal. It is being dismissed on the aforesaid reasons.

11. The appeals are accordingly dismissed. No costs.

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