

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.452 OF 2014**

The Commissioner of Income Tax-2 ... Appellant

vs.

State Bank of India ... Respondent

.....

Mr. Suresh Kumar for the Appellant.

Mr. Girish Dave a/w. Ms.Kadambari Dave and Atul Jasani for the Respondent.

.....

**CORAM : M.S.SANKLECHA &
A.K. MENON, JJ.**

DATE : 01st AUGUST, 2016

P.C.:

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') challenges the order dated 4th September, 2013 passed by the Income Tax Appellate Tribunal (for short 'the Tribunal'). The impugned order is in respect of Assessment Year 2003-04.

2. This appeal raises the following question of law for our consideration :-

(a) *Whether on the facts and circumstances of the case, the Tribunal was correct in law, in admitting the additional ground of appeal when the assessee had not raised this issue before the Assessment Officer or the Commissioner of Income Tax (Appeals) ?*

(b) *Whether on the facts and circumstances of the case, the Tribunal was correct in law, in admitting the additional ground of appeal relying on the judgment of Supreme court in the case of NTPC reported at 229 ITR 383 thereby overlooking the fact that the judgment is clearly distinguishable, as the fact relating to the conduct of search in the assessee's case were not available on record and in the process, the Tribunal has overlooked the judgment of Supreme Court in the case of Jute Corporation of India Ltd. Reported at 187 ITR 688 ?*

(c) *Whether on the facts and circumstances of the case, the Tribunal was correct in law, in quashing the re-assessment proceedings relying on the judgment of Delhi High Court in the case of Anil Kumar Bhatia overlooking the fact that the Department has not accepted the decision and SLP has been filed before the Supreme Court ?*

(d) *Whether on the facts and circumstances of the case, the Tribunal was correct in law in quashing the re-assessment proceedings based on 2nd proviso to section 153A of the Income Tax Act, 1961 ignoring the fact that re-assessment proceedings were initiated by issue of notice under section 148 of the Income Tax Act, 1961 on 08/02/2006 for A. Y. 2003-04 and the same*

could not be said to have abated on the date of search 02/07/2005 as the same was not pending on the date of search ?

3. It is agreed position between the parties that identical questions as raised herein were raised by the revenue in its Income Tax Appeal Nos. 1119 and 1134 of 2013 before this Court. Both the aforesaid appeals bearing no.1119 and 1134 of 2013 were dismissed on all the identical questions raised herein by order dated 21st April, 2015 of this Court.

4. In the above view, the questions as raised herein stand concluded against the revenue by the decision of this Court dated 21st April, 2015 in the Income Tax Appeal Nos. 1119 and 1134 of 2013.

5. Accordingly, the questions as raised herein for our consideration does not give rise to any substantial question of law. Thus not entertained.

6. Appeal dismissed. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)