

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER  
AND  
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 3828/Del/2010  
AY: 2006-07**

Smt. Sunita Gupta  
A 2/14A  
Model Town I  
Delhi

vs. DCIT, Central Circle 15  
Jhandewalan  
New Delhi

PAN: AAJPG 0480 F

**(Appellant)**

**(Respondent)**

**Appellant by** : Shri A.K.Jain, C.A.

**Respondent by** : Sh. Ravi Jain, CIT, D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the Assessee directed against the order dated 26.5.2010 of Ld.CIT(A)-II, Delhi pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2006-07.

**2.** Facts in brief:- A search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was carried on at the residence of the family of the assessee on 22.3.2006. The facts relevant to this appeal are brought out at para 7.1 of the order of the Ld.CIT(A) which is extracted for ready reference.

*"7.1. The facts in this regard as mentioned in the assessment order are that jewellery weighing 446.89 gms. valuing Rs. 10,82,074/- was found from the*

room of the appellant and jewellery weighing 185 gms valuing Rs. 1,49,000/- was found from the locker No.517 with Canara Bank. Thus in total 631.89 gms jewellery was found valuing Rs. 12,31,074/-. The A.O. noted that the jewellery appearing at S.No.7 and 8 in the valuation report was worth Rs.4,25,080/-. No evidence/source of acquisition of these two items was explained during the course of search. Accordingly these two items of jewellery valuing Rs.4,25,080/- were seized. Not only that, in the statement dated 3/5/2006 Shri Abhay Gupta has also admitted to disclose a sum of Rs.4,25,000/- as unexplained jewellery acquired from undisclosed income earned by his family members from various activities. The statement of Sh. Abhay Gupta was also signed by the appellant on the last page. The A.O. further noted that in the return filed for the year, the amount so surrendered was not offered. During assessment proceedings it was contended that the jewellery has been received by her as gifts from time to time but no supporting evidence was filed as to which assessee gifted and on what occasion etc. Considering this fact and also the fact that there was a disclosure of Rs.4,25,000/- towards jewellery, the A.O. added an amount of Rs.4,25,080/- to the total income of the appellant for the year. Against this action of A.O. these three grounds have been raised.”

**3.** Aggrieved the assessee carried the matter in appeal. The First Appellate Authority (F.A.A.) upheld the order of the Assessing Officer (hereinafter referred to as the AO). The Ld.CIT(A) followed his order in the case of M/s Balaji Perfumes, Prop. Shri Varun Gupta in ITA no.405/07-08 vide order dt. 14.12.2009. He held that the assessee had contended that the jewellery seized was received by her as gift on various occasions but had not furnished any evidence in support of this contention either before the search party or before the A.O./ the Ld.CIT(A). No details of the occasions during which these items were received as gifts have been furnished. The Ld.CIT(A) on the ground that it was admitted that the jewellery was purchased from undisclosed sources, the addition was upheld.

**4.** Further aggrieved, the assessee is in appeal before us.

**5.** We have heard Shri A.K.Jain, the Ld.Counsel for the assessee and Shri Ravi Jain, the Ld.Sr.D.R. on behalf of the Revenue.

**6.** The Ld.Counsel for the assessee submitted that:

**(a)** Search was carried out at the residence of the family of the assessee on 22<sup>nd</sup> March, 2006 and that there was no warrant in the name of the assessee. Nevertheless restraint orders u/s 132(3) of the Act were given against the operation of bank locker of the assessee with regard to locker no.517 with Canara Bank, Tagore Park, Model Town-I, Delhi. On 10.4.2006 a warrant was issued for searching the locker of the assessee. The jewellery found in the locker valuing Rs.1,49,000/- was not seized.

**(b).** It was argued that the assessment order passed u/s 143(3) of the Act has to be quashed as consequent to search, an order has to be passed u/s 153A of the Act. He relied on the order of the Ld.CIT(A) for the A.Y. 2001-02 wherein it was held that, as no search on the assessee was conducted on 22.3.2006 initiation of assessment proceedings u/s 153A of the Act for the A.Y. 2000-2001 is bad in law, as it was beyond the period of 6 years.

**(c).** He further argued that as there was a limited warrant issued against the assessee for operating of the bank locker on 10.4.2006, the assessment should have been framed u/s 153A of the Act only. He argued that the assessment framed u/s 143(3) of the Act is bad in law. He relied on the following cases.

(i) CIT vs. Pushpa Rani 289 ITR 328 (Del.)

(ii) Sujit Tosaria vs. DCIT, 92 TTJ 338 (ITAT, Delhi Bench)

(iii) CIT vs. Shri Jasjit Singh (Del) in ITA 337/15 judgement dt. 11.8.2015.

(iv) CIT vs. Indeo Airways Pvt.Ltd. (Del) in ITA 1620 and 1622/2010 judgement dated 31.8.2012.

**(d).** Alternatively he submitted that no addition should have been made as there was no seizure from the locker.

**(e).** He further submitted that the addition in question was based only on the statement of Shri Abhay Gupta and the benefit of telescoping should be given as surrender was made to the tune of Rs.3,50,000/-.

**7.** The Ld.D.R. on the other hand opposed the contentions of the assessee and submitted that there is no concept of limited warrant in the Income Tax Act. He submitted that search had taken place on 22.3.2006 and certain gold and jewellery was seized. He submitted that the assessee had signed the admission given by Shri Abhay Gupta. He further submitted that the assessee contended that the gold and jewellery was acquired by her by way of gifts on various occasions, but no evidence or details have been filed. He distinguished the case law cited by the assessee.

**8.** Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case law cited, we hold as follows.

**9.** A search has taken place on 22.3.2006 in the premises of Shri Ajay Gupta, Shri Anup Gupta, Shri Abhay Gupta, M/s Balaji Perfumes and M/s Assam Supari Traders. There is no warrant on the said date against the assessee. An order u/s 132(3) of the Act was passed on locker no.517 at Canara Bank in the name of Mrs.Sunita Gupta, Deepika Gupta. Consequently warrant was issued in the name of Mrs. Sunita Gupta and Locker no.517 with Canara Bank, Tagore Park, Model Town I, Delhi was searched and a Panchanama was drawn on 10.4.2006. Hence there is a search warrant on Mrs.Sunita Gupta on 10.4.2006. There is no seizure during the course of search proceedings. Inventory of jewellery valued Rs.1,49,000/- was made.

**10.** The issue before us is whether, the order ostensibly passed u/s 143(3) of the Act, should be considered as that which is actually passed u/s 153C/u/s 153A r.w.s. 143(3) of the Act.

**11.** A perusal of the assessment order shows that the assessment is framed after statutory approval of the Addl.CIT, Range II, New Delhi communicated vide order no.389 dt. 31.12.2007 as required u/s 153D of the Act.

**12.** Under such circumstances, we refer to the decision of Hon'ble Delhi High Court in ITA 568/2015 in the case of Pr.CIT-2 vs. Natural Products Biotech Ltd. order dated 29<sup>th</sup> September,2015 wherein it was held as under.

*“The question sought to be urged is whether the ITAT was correct in upholding the order of the CIT(A) that since the requisites of S.153 C of the Act were not satisfied and the assessment proceedings stood vitiated.*

**2.** On 14<sup>th</sup> August, 2015 this Court passed an order in the present appeal, the relevant portion of which reads as under:

*“3. The point urged by the Revenue in this Appeal against the order dated 28th November, 2014 of the ITAT in ITA No. 20861 DEL/2013 pertaining to the Assessment Year ('AY') 2009-10 is that the Assessment itself was framed only under Section 143 (3) of the IT Act and therefore the ITAT was in error in proceeding on the basis that it was under Section 153C of the Act.*

*4. Learned counsel for the Respondent/Assessee on the other hand drew the attention of this Court to para 9 of the Assessment Order which states that it has been passed with the prior approval of the Addl. CIT Central Range-III, New Delhi vide his letter dated 28th December, 2010. He submits that this was the prior approval that was required, in terms of Section 153 D of the Act, to initiate proceedings under Section 153 C of the Act.*

*5. The learned Counsel for the Revenue states that he needs some time to examine this aspect. At his request list on 29th September, 2015.”*

**3.** *The Court is today informed that the submission of the learned counsel for the Assessee made on the previous occasion is correct.*

**4.** *The point involved in the resent appeal stands covered against the Revenue by the order passed by this Court on 14<sup>th</sup> August 2015 in ITA Nos. 569, 570, 571 of 2015 (Pr. Commissioner of Income Tax v. Natural Products Bio Tech Ltd.).*

**5.** *No substantial question of law arises for determination by this Court.*

*The appeal is dismissed.”*

**13.** Applying the propositions laid down in the above cases, to the facts of the case on hand, we have to hold that the impugned order passed by the A.O. was only u/s 153A r.w.s. 143(3) of the Act or 143C of the Act. As the search in the case of the assessee had taken place on 10<sup>th</sup> April, 2006, the A.Y. of search is 2007-08 and not the impugned A.Y. 2006-07.

**13.1.** During the impugned A.Y. 2006-07, the assessment may have been framed u/s 153C of the Act, if it is an offshoot of the search at the residence of the family of the assessee on 22<sup>nd</sup> March, 2006. If it is presumed that the order was passed u/s 153C, then it has to be struck down on the ground that, the requisites of S.153C are not fulfilled.

**13.2.** Alternatively if it is presumed that the assessment passed u/s 153A of the Act, as a consequence to a search on the locker of the assessee on 10<sup>th</sup> April, 2006, the additions made in the assessment have to be deleted for the reason that, the same are not based on any incriminating material or assets seized during the search. We rely on the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla reported in 380 ITR 573 (Del.) wherein it is laid down that no addition can be made in the assessment being framed u/s 153A,

when there is no incriminating material or assets seized during the course of search.

**13.3.** In the case of CIT vs. Pushpa Rani 289 ITR 328 the Jurisdictional High Court observed that when no addition whatsoever has been made, based on the assets found in the respective lockers which were being operated by the assessee, the appeals filed by the Revenue against the Tribunal order cannot be entertained.

**13.4.** In view of the above discussion, the appeals of the assessee have to be allowed for the reason that the assessment cannot be taken as an assessment passed u/s 143(3) of the Act per se and also for the reason that if the assessment has taken as passed u/s 153C r.w.s. 143(3) of the Act, then it has to be struck down on the ground that the requisite procedures laid down in the Section are not followed or in the alternative if it is taken as assessment passed u/s 153A r.w.s. 143(3) of the Act, the addition has to be deleted for the reason that, the same is not based on the assets founds in the locker of the assessee.

**14.** In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 28<sup>th</sup> June, 2016.

Sd/-  
**(I.C. SUDHIR)**  
**JUDICIAL MEMBER**

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 28<sup>th</sup> June, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar