IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-II : NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA Nos.4988 to 4991/Del/2015
Assessment Years : 2002-03 to 2004-05 & 2007-08

D.S. Sharma, House No.1373, Sector-37, Faridabad.	Vs.	ACIT, Central Circle-1, Faridabad.

PAN: AOCPS8078H

(Appellant) (Respondent)

Assessee By	:	Shri Saubhagya Aggarwal, Advocate
Department By	:	Shri M.K. Jain, Sr. DR

Date of Hearing	:	21.10.2015
Date of Pronouncement	:	30.10.2015

ORDER

All these appeals are filed by the assessee against the common order of the CIT(A)-3, Gurgaon dated 4.6.2015 for assessment years 2002-03 to 2004-05 and order dated 4.6.2015 for assessment year 2007-08.

2. As the issue arising from all these appeals are common, for the sake of convenience, these are being disposed of by way of this consolidated order.

3. The common ground that arises from all these appeals is ground No.1 which is extracted for ready reference:-

> "1. That having regard to the facts and circumstances of the case, the ld.CIT(A) has erred in law and on facts in confirming the action of the ld.AO in framing the impugned assessment order u/s 153A/143(3) and making the impugned addition therein, more so when no incriminating material was found as a result of search and in any case impugned addition is outside the purview of section 153A of the Act."

4. The fact that no incriminating material whatsoever was found or seized during the course of search, based on which the above additions or disallowances were made and the fact that none of the assessments for these assessment years have abated, is not in dispute. This is evident from para 7.1 of the ld.CIT(A)'s order.

5. On these factual background, the jurisdictional High Court in the case of CIT, Central-III vs. Kabul Chawla in ITA No.707/2014 vide judgment dated 20th April, 2015 at para 37 and 38 has held as follows:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

> vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.
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> Conclusion
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> 38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

6. Respectfully following the proposition laid down by the jurisdictional High Court in all these cases, the addition made in all these assessments are deleted for the sole reason that they are not based on any incriminating material found or seized during the course of search.

7. In the result, all the appeals of the assessee are allowed.

The order pronounced in the open court on 30.10.2015.

Sd/-

[J.SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dated, 30th October, 2015.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.