**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER**
**AND**
**SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**I.T.A .Nos. 1767 to 1770/DEL/2012**
**ASSESSMENT YEARS-2000-01 to 2003-04**

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| **Vipin Mantaktala,**<br>**C-1, Street, 6-F,**<br>**Sainik Farms,**<br>**New Delhi.**<br>**AAIPM6900F** | vs | **DCIT,**<br>**Central Circle 13,**<br>**New Delhi.** |

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| **Appellant by** | **Ms. Reema Malik, CA** |
| **Respondent by** | **Shri Ram Bilas Meena, CIT DR** |

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| **Date of Hearing** | **19.01.2016** |
| **Date of Pronouncement** | **21.01.2016** |

**ORDER**

**PER BEENA A. PILLAI, JM**

The present appeals have been filed by the assessee against the orders passed by the ld. CIT(A)'s-1, New Delhi vide his order dated 01.02.2012 for assessment years 2000-01, 2001-02, 2002-03 & 2003-04. The common grounds of appeal raised in all these assessment years are as under:

1. *"That the order of the ld. CIT(A)'s is bad in law and on facts.*
2. *That the ld. CIT(A) has erred in upholding the addition made by the AO in assessing the income under the head 'Income from house property' from the land situated at Punjabi Bagh in spite of the fact that no rent was received during the year and levying the rent on notional basis u/s*

*23 of the Income Tax Act, 1961 is totally improper and unwarranted.*

3. *That the appellant craves leave to alter, amend or add any other ground of appeal either before or during the course of hearing."*

2. The brief facts of the case as recorded by the authorities below are as under:

A search and seizure operation u/s 132(1) of the Act was carried out on 17.01.2006 at the office and residential premises of M/s Goramal Hariram Ltd. The premises of assessee at C-1 Street, 6-F, Sainik Farms, New Delhi was also covered. Accordingly, notice under 153A of the Act was issued on 16th May, 2007 was issued and served upon the assessee. In response to the notice issued u/s 153A assessee filed its return of income on 6th August, 2007 declaring an income of Rs. 2,70,167/-. Notice u/s 143(2) of the Act was thereafter issued and served upon the assessee. The ld. AO sought for various details which were produced by the assessee, vide letter dated 09.12.2008. From the details sought from the assessee the ld. AO observed that assessee is the co-owner of the property at 59, Road No. 77, Punjabi Bagh, New Delhi and has offered Income from House Property, amounting to Rs. 7,500/- per month.

2.1 The ld. AO also noticed that the assessee is a co-owner in property at Kapasehra which has been claimed as self occupied property by the assessee. On ground through the various details filed by the assessee the ld. AO completed the assessment by calculating income from House Property at 3,25,967/-. The ld. AO calculated the notional rent u/s 23 of the Act as under:

| **Particulars** | **2000-01** | **2001-02** | **2002-03** | **2003-04** |
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| Notional Rent u/s 23 of the Act | 55,800 | 61,380 | 60,000 | 17,325 |

3. Aggrieved by the order of the ld. AO the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) decided as under:

> *"4.3 I have considered the submission given by the appellant and it is seen that the assessee has himself offered income from the said property for four months in A.Y. 2002-03 under the head "Income from House Property". At the appellate stage the assessee did not refute this observation of the AO. Further, the brother of the assessee Shri Vinod Kumar who is the co-owner of this property has offered income from this property for the purposes of taxation. Thus, the assessee as well as his brother has admitted of having a house property at this address. It has been held in the case of* ***Nathoo Lal vs. Durga Prasad, AIR 1954 SC 355, 358*** *that what is admitted by a party to be true must be presumed to be true unless the contrary is shown.*
>
> *4.4 Since both the assessee as well as his brother has admitted in the return of income that the said piece of property had generated rental income he cannot later on rely on the sale deed to show that it did not fall under the category of house property and it was just a plot of land. The presumption arising out of the admission of the assessee has not been rebutted by any conclusive evidence, nor has the assessee or his brother have stated that the return filed by them, showing income from House Property, was not correct. Since the income from house property is a notional concept therefore, it has to be taxed whether any income is derived from it or not. As the annual value of the property is a notional one the addition of Rs. 55,800/- made by the AO is upheld. This ground is decided against the appellant."*

4. Aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us now.

5. At the outset, the ld. AR vide application dated 18.11.2015 the assessee has furnished request for admission of additional grounds, in respect of all the assessment years which are as under:

1) *"The ld. AO has proceeded to make addition in respect of notional rent despite the fact that there were no incriminating evidence found during the course of search and the said fact is ascertainable on a bare perusal of the assessment order.*
2) *Hence, the entire assessment is bad in law since u/s 153A, the assessments/additions are confined to additions only on the basis of incriminating documents found during search."*

5.1. It is observed that these additional grounds raised by the assessee are purely legal in nature and, therefore, we are inclined to admit these grounds to be adjudicated upon first.

5.2. The ld. AR submits that there has been no incriminating material that was seized during the search. She submits that all the details in respect of the addition made by the ld. AO are on the basis of the submissions made by the assessee at the time of assessment proceedings as well as from the return of income filed by the assessee for the respective assessment years. She also submits that on the date of search no assessment was pending in respect of any of the assessment years.

5.3. The ld. AR has produced zerox copies of the returns filed by the assessee for the relevant assessment years under consideration. She further submits that only in respect of the A.Y. 2001-02 an intimation u/s 143(1) has been received by the assessee. The ld. AR submits that the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla reported in 61 Taxman.com 412 squarely covers the issue.

4. On the contrary, the other hand submitted that there is no need of finding of incriminating material during the course of search to justify the validity of assessment framed under sec. 153A read with sec. 143(3) of the Income-tax Act, 1961 and the only requirement is that search has been conducted at the premises of the assessee under sec. 132 of the Act. The ld. DR supported the orders of the authorities below. The ld. DR further submits that an SLP has been preferred against the decision of Kabul Chawla (supra) before the Hon'ble Supreme Court.

6. We have perused the records and details filed before us, the orders passed by the authorities below and the decision relied upon by the parties.

6.1. It is observed from the orders passed by the ld. AO that there has been no incriminating material, that has been found at the time of search. It is also observed that there are no assessments or reassessments i.e. pending in respect of the assessment years under consideration as on the date of the search. The ld.DR could not rebut the fact that there was no incriminating material that was found during the course of search and that the assessment u/s, 153 A was based on the return filed by the assessee u/s.139of the Act.

6.2. The Hon'ble jurisdictional High Court while deciding the case of Kabul Chawla (supra) has relied upon the findings by the coordinate bench of the Hon'ble Court in the case of CIT vs. Anil Kumar Bhatia (2012) 211 Taxmann 453 (Del.), while deciding the issue. The relevant para No. 8 & 9 in this regard is being reproduced as under :-

*"8. We are unable to accept the contention advanced on behalf of the Revenue for the reason that if both the pending and completed assessment were to be taken on same pedestal, then there was no need to enshrine second proviso to sec. 153A(1) providing that the pending assessments within the period of six assessment years shall abate. The Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (supra) dealt with a situation in which some incriminating material was found in respect of a non-pending assessment. It was in that background that the Hon'ble High Court held that sec. 153A applies if incriminating material is found even if assessments are completed. The question as to whether any addition can be made in respect of completed assessments when no incriminating material was found, was apparently left open. However, we find that there are sufficient indirect hints given by the Hon 'ble Delhi High Court in the case of Anil Kumar Bhatia (supra) about not making of any addition in respect of an assessment year for which the assessment is already completed unless some incriminating material is found during the course of search. This can be seen from the following observations of the Hon'ble High Court:-*

*"20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search."*

*9. The above extracted observations of the Hon'ble High Court, which are though obiter dicta, make the point clear that where an assessment order has already been passed for a year(s) within the relevant six assessment years, then also the A.O is duty bound to reopen those proceedings and reassess the total income but by 'taking note of the undisclosed income if any, unearthed during the search'. The expression 'unearthed during the search'*

*is quite significant to denote that in respect of completed or non-pending assessments, the Assessing Officer is albeit duty bound to assess or reassess the total income but there is a cap on the scope of additions in such assessment, being the items of income 'unearthed during the search'. In other words, the determination of 'total income' in respect of the assessment years for which the assessments are already completed on the date of search, shall not be influenced by the items of income other than those based on the material unearthed during the course of search. There is not and cannot be any quarrel over the proposition that the Assessing Officer has no option but to determine the total income of the assessee in respect of the relevant six assessment years. However, the scope of such determination of total income is different in respect of the years for which the assessments are pending vis-vis the years for which assessments are non-pending. In respect to the assessment years for which the original assessments have already been completed on the date of search, the total income shall be determined by restricting additions only to those which flow from incriminating material found during the course of search. If no incriminating material is found in respect of such completed assessment, then the total income in the proceedings u/s 153A shall be computed by considering the originally determined income. If some incriminating material is found in respect of such assessment years for which the assessment is not pending, then the 'total income' would be determined by considering the originally determined income plus income emanating from the incriminating material found during the course of search. In the other scenario of the assessments pending on the date of search which would abate in terms of second proviso to sec. 153A( 1), the total income shall be computed afresh uninfluenced by the fact whether or not there is any incriminating material. In fact, this is the position which follows when we read the judgment of the Hon'ble Delhi High Court in Anil Kumar Bhatia (supra) in juxtaposition to the special bench order in the case of All Cargo Global Logistics Ltd. (supra). The other judgment relied by the Ld. DR in the case of Madugulu Venu (supra) also talks*

*about the need for making fresh assessment in respect of the assessment years for which the assessments are not pending on the date of search but does not set out the scope of such assessment, which is the issue before use."*

6.3. We, thus, find that the decision of the Hon'ble Jurisdictional Delhi High Court in the case of Anil Kumar Bhatia (supra) supports the case of the assessee that in absence of incriminating material found during the course of search an addition u/s 153A of the Act cannot be made in the assessment framed thereunder.

7. In view of the above findings, whereby the assessment itself has been held null and void, the other issues raised in other grounds, questioning the validity of the additions made in all the assessment years under consideration, have become infructuous and academic only. Those grounds thus do not require any adjudication, and the same are being disposed off as such.

In result, appeals are allowed.

Order pronounced in the open court on 21.01.2016

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| **Sd/-** | **Sd/-** |
| **(R.S. SYAL)** | **(BEENA A. PILLAI)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Dated: 21.01.2016
*Kavita Arora
Copy forwarded to:

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

By Order

Asstt. Registrar