

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
 (समक्ष) Before श्री ए. टी. वर्की, न्यायिक सदस्य एवं/and श्री एम. बालागणेश, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

**I.T.A. No. 2281/Kol/2014**  
**Assessment Year: 2010-11**

Assistant Commissioner of Income-tax, Central Circle-3(4), Kolkata.	Vs.	Bijay Kumar Garodia (PAN: ACCPG4986F)
Appellant		Respondent

&

**I.T.A. No. 2230/Kol/2014**  
**Assessment Year: 2010-11**

Bijay Kumar Garodia	Vs.	Deputy Commissioner of Income-tax, Central Circle-XXV, Kolkata.
Appellant		Respondent

Date of Hearing	14.06.2017
Date of Pronouncement	16.08.2017
For the Revenue	N o n e
For the Assessee	Shri Harsh Vardhan Bhardwaj, FCA

### **ORDER**

**Per Shri A.T.Varkey, JM**

Both these cross appeals filed by the revenue and the assessee against the order of Ld. CIT(A, Central-III, Kolkata dated 31.12.2014 for AY 2010-11. None appeared on behalf of the revenue. After hearing the Ld. AR and considering the material available on record, we dispose of the appeal ex parte qua the revenue.

2. At the outset itself, the legal issue has been raised by the Ld. AR of the assessee which has been admitted in the light of the Hon'ble Supreme Court decision in the case of National Thermal Power Corporation Ltd. Vs. CIT reported in (1998) 229 ITR 383 (SC). The Ld. AR Shri Harsh Vardhan Bhardwaj, FCA brought to our notice that a search was conducted on 18.09.2012 on the premise of the assessee, therefore, according to him, the

assessment for the relevant year under consideration i.e. 2010-11 got abated on the date of search i.e. on 18.09.2012. *As per section 153A of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), where a search is initiated u/s. 132 or books of account, other documents or any assets are requisitioned under section 132A after 31.05.2003 the assessment can be done only under this provision of the Act.* As per the second proviso to section 153A (1) of the Act, the assessment or reassessment, if any, relating to any assessment falling within the period of six assessment years preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and which is pending on the date of initiation of the search u/s. 132 of the Act or making or requisition u/s. 132A of the Act, as the case may be, **shall abate**. In the light of the aforesaid prescription of law and since the search has happened on 18.09.2012 and the assessment year under consideration AY 2010-11 was pending on the date of search (which culminated in the assessment u/s. 143(3) of the Act on 26.02.2013) stood abated and the assessment for the relevant assessment year could have been framed only u/s. 153A of the Act. In the light of the second proviso to section 153A(1) of the Act, the assessment for AY 2010-11 which was undisputedly pending on the date of search i.e. on 18.09.2012 and by operation of law stood abated on the date of search. Therefore, we have no hesitation in holding the assessment framed u/s. 143(3) of the Act by order dated 26.02.2013 is non est in the eyes of law and, therefore, it stands quashed.

3. Since we have quashed the assessment framed u/s. 143(3) of the Act, which goes to the root of the matter, the appeal of the revenue need not be adjudicated and, therefore, the same is dismissed.

4. In the result, the appeal of assessee is allowed on the legal issue raised before us and the other grounds raised is academic which we are not inclined to adjudicate and that of the revenue is dismissed.

Order is pronounced in the open court on 16.08.2017

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 16th August, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, C.C-XXV/ACIT, Central Circle-3(4), Kolkata
2. Respondent – Shri Bijay Kumar Garodia, CF-366, Salt Lake City, Sector-1, Kolkata-700 064.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary