

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 607, 608 & 609/JP/2015  
निर्धारण वर्ष/Assessment Year : 2006-07, 2007-08 & 2008-09.

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|---|-------------|--|
| Shri Ram Swaroop Meena<br>855, Akaron Ka Rasta,<br>Kishanpole Bazar,<br>Jaipur. | बनाम<br>Vs. | JCIT,(OSD)<br>Central Circle-3,<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. ABYPM 3113 H                                 |             |  |
| अपीलार्थी /Appellant  |             | प्रत्यर्थी / Respondent                    |

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (C.A)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 18.09.2017.  
घोषणा की तारीख / Date of Pronouncement : 26/10/2017.

आदेश / ORDER

**PER SHRI KUL BHARAT, JM.**

These three appeals by the assessee in ITA Nos. 607/JP/2015, 608/JP/2015 & 609/JP/2015 are directed against the orders of the Ld. CIT (A)- 4, Jaipur dated 27.04.2015 pertaining to A.Y. 2006-07, 2007-08, 2008-09.

These appeals were decided vide order dated 28/02/2017. Subsequently, the assessee filed a miscellaneous application on the ground that the additional ground that raised in these appeals, was not decided. It is noticed that this additional ground raised before this Tribunal was not before the Ld. CIT(A). However, this being the legal ground is admitted for adjudication. Accordingly, finding the mistake, these appeals were fixed for hearing and adjudication of the additional ground.

**ITA No. 607/JP/2015**

2. First we take up Assessee's appeal in ITA No. 607/JP/2015 pertaining to the Assessment Year 2006-07.

The assessee has raised the Additional Grounds of this appeal that reads as under:-

**Additional Ground of Appeal No. 03**

On the facts and in the circumstances of the case the Ld. Assessing Officer has grossly erred in completing the assessment u/s 143(3) rws153A/153C of the Income Tax Act, 1961 even when no incriminating paper whatsoever was found as a result of search pertaining to the year under appeal, and the addition has been made by Ld. AO without referring to any single material found during search thus the consequent order passed deserves to be quashed.

**Additional Ground of Appeal No. 3.1**

That the Ld. AO has further erred in making additions u/s 143(3) r.w.s. 153A/153C to the returned income of assessee without referring to a single paper / incriminating material seized during the course of search particularly when no assessment proceedings were pending before the Ld. AO as on the date of search, therefore, the order of Ld. AO deserves to be held bad in law and the consequent additions deserve to be deleted.

3. At the time of hearing, Ld. Counsel for the assessee submitted that the impugned assessment order has been framed u/s 153A/143(3) of the Income Tax Act, 1961. Ld. Counsel submitted that the Assessment has not been framed on the basis of the incriminating material. The assessment has been framed without referring to any single paper/ incriminating material seized during the course of search. Ld. Counsel for the assessee relied upon the Judgment of the Hon'ble Delhi High Court in the case of **Commissioner of Income Tax vs. Kabul Chawla 234 Taxman 300(Delhi)**.

4. Ld. Counsel further reiterated the submissions as made in the written brief. The submissions of the Ld. Counsel for the assessee are in short is that, in view of the Judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Kabul Chawla 234 Taxman 300(Delhi)(Supra), the Impugned Assessment Order is unsustainable in the eyes of the law. He contended that the assessment is not based upon any seized material or any material which found during the course of search.

5. Per contra Ld. Departmental Representatives supported the Assessment Order and submitted that the search was not conducted. The assessee would not have disclosed income related to income from hiring vehicles.

6. We have heard the rival contentions, perused the material available on record. The Assessing Officer in para 3 of his order as observed as under:-

*"3. A search was conducted on 18.03.2010 in the case of M/s Narayanji Gajakwale Group, Jaipur to which the assessee belongs. The group deals in manufacturing/trading to Gajak, Namkeens and sweets. Various assets/books of accounts and documents have been found and seized as per Annexure prepared during the course of search. Accordingly notice u/s 153A was issued on 18.05.2010 for the A.Y. 2004-05 to 2009-10 which was served upon the assessee on 19.05.2010. In compliance to notice u/s 153A of the IT Act, 1961 return declaring income of Rs. 99,146/- was filed on 16/08/2011."*

It is contended by the Ld. Counsel for the assessee that the assessment u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 is made without referring to any incriminating material during the course of search, particularly, with no assessment proceedings were pending before the Assessing Officer as on the date of search. It

is not disputed by the Revenue that no assessment proceeding was pending at the time of search. The Revenue has not demonstrated that any incriminating material was found on the basis of which the Assessment is framed and Assessing Officer has also not referred to any material seized during the course of search was used for the purpose of the framing the Assessment. The Hon'ble Delhi High Court under the identical facts rendered in the case of CIT vs. Kabul Chawala (Supra) held as under:-

*"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.*

**Conclusion**

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.***

39. *The question **framed by the Court is answered in favour of the Assessee and against the Revenue."***

Further reliance is placed upon the Hon'ble Jurisdictional High Court in the case of Jai Steel (India) vs. ACIT 259 CTR (raj.) 281 wherein it is held as under:-

*"The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. **The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.**"*

Under these undisputed fact the ratio laid down by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Kabul Chawla (Supra) and the Hon'ble Jurisdictional High Court in the case of Jai Steel (India) vs. ACIT (Supra) is squarely applied on the facts of the present case. Therefore, respectfully following the same, hereby quashed the assessment order. The additional grounds raised in this appeal are allowed. The Assessment Order as framed is hereby quashed.

7. In the result, appeal of the assessee in ITA No. 607/JP/2015 is allowed.

### **608 & 609/JP/2015**

8. Now, we take up ITA Nos. 608/JP/2015 & 609/JP/2015 pertaining to the A.Y. 2007-08 & 2008-09.

8.1 The facts involved in these two appeals are identical to ITA No. 607/JP/2015 pertaining to the AY 2006-07. The Respective Representatives of the parties have

adopted the same argument as were addressed in ITA No. 607/JP/2015. For the same reasoning given in ITA No. 607/JP/2015, we find no reason to take a different view in these cases. We therefore, allow additional grounds raised in both the assessee's appeals in ITA No. 608 & 609/JP/2015, and hereby quashed the impugned assessment order.

9. In the combined result, appeals of the assessee are allowed.

Order is pronounced in the open court on Thursday, the 26th day of October 2017.

Sd/-  
( भागचन्द )  
( BHAGCHAND )  
लेखा सदस्य / Accountant Member  
Jaipur

Sd/-  
( कुल भारत )  
( KUL BHARAT )  
न्यायिक सदस्य / Judicial Member

Dated:- 26/10/2017

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Ram Swaroop Meena, Jaipur.
2. The Respondent – JCIT, (OSD), Central Circle-3, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA Nos. 607,608 & 609/JP/2015.)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar