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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 597 to 599/JP/2017
निर्धारण वर्ष/Assessment Year : 2009-10 to 2011-12

M/s Rajasthan Fort & Palace Pvt. Ltd. 312, 3rd Floor Ganpati Plaza, Jaipur.	बनाम Vs.	The DCIT, Central circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCR8826Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

सुनवाई की तारीख/ Date of Hearing : 22/11/2017
उदघोषणा की तारीख/Date of Pronouncement: 24/01/2018

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These appeals by the assessee are directed against three separate orders of the ld. CIT(A) dated 26.05.2017, 09.05.2017 & 26.05.2017 for the assessment year 2009- 10 to 2011-12 respectively. The assessee has raised the common grounds in these appeals as under:-

> *"1. On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming assessment completed u/s 143(3) r.w.s. 153A of the Income Act Act, 1961 when no incriminating paper whatsoever was found as a result of search*

pertaining to the year under appeal, and the additions were made by Ld. AO without referring to any single material found during search thus the consequent order passed deserves to be quashed.
1.1 On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in sustaining the additions made to the income which already stood assessed u/s 143(1)(a) of the income Tax Act, 1961 and the time limit to issue notice u/s 143(2) stood expired. Thus, the order passed without referring to a single paper/ incriminating material seized during the course of search, when no assessment proceedings were pending as on the date of survey, deserves to be held bad in law and the consequently additions deserves to be deleted."

2. The assessee is a private limited company. A search and seizure operation u/s 132 of the Act was carried out in case of MRS group on 17.07.2013, and the assessee is part of the said group. Thereafter the AO issued notice u/s 153A of the I.T. Act and in response the assessee filed its return of income u/s 153A of the Act declaring the same income as declared in the original return. The assessment for these 3 years were completed u/s 143(3) r.w.s. 153A of the Income Tax Act whereby the Assessing Officer has made disallowances u/s 40(a)(ia) and 36(1)(va) of the Act. The assessee challenged the action of the AO before the ld. CIT(A) and objected the disallowance made by the AO without referring to any incriminating material found and seized during

the course of search and seizure action. However, the ld. CIT(A) has confirmed the action of the AO while passing the impugned order.

3. Before us, the ld. AR of the assessee has submitted that the Assessing Officer has completed the impugned assessment U/s 153A of the I.T. Act without referring to any material or papers whatsoever found/seized during the course of search and accordingly, disallowance/ addition made by the AO in respect of the expenses which the assessee legitimately claimed is unwarranted. He has further contended that when no incriminating material found indicating any undisclosed income pertaining to the years under consideration then, the Assessing Officer cannot make addition in the return of income declared by the assessee. In support of his contention, he has relied upon the decision of Hon'ble jurisdiction High Court in case of Jai Steel India V ACIT 259 CTR 281 as well as decision of Hon'ble Delhi High Court in case of CIT v. Kabul Chawla 380 ITR 573 and submitted that the Hon'ble High Court has held that in case where nothing incriminating material is found though section 153A would be triggered an assessment or reassessment to ascertain total income is required to be done, the same would not result any addition and the assessment made earlier may have to be reiterated. Harmonious construction of the provisions of section 153A of

the Act would lead to an irresistible conclusion that the word 'assess' has been used in the context of abated proceedings and 'reassess' has been used for completed assessment proceedings which do not abate as they are not pending on the date of initiation of search or making of requisition and can be tinkered with only on the basis of incriminating material found during the course of search or requisition of documents. Therefore, the Hon'ble High Court has held that it is not open to the assessee to seek deduction or claim relief not claimed by it in the original assessment which already stands completed in an assessment u/s 153A in pursuant to search or requisition. Hence, the ld. AR has submitted that in view of the various decisions on this point and when no proceedings in respect of the assessment years under considerations were pending before the AO then, the AO did not have jurisdiction to make an addition without referring to any incriminating material seized during the course of search.

4. On the other hand, ld DR has relied upon the authorities below and submitted that once a search u/s 132 is carried out, it is incumbent upon the AO to assess or reassess the income of the assessee in respect of 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or

requisition is made. The AO had no discretion but to assess or reassess the total income of the assessee as per the provisions of Section 153A of the Act.

5. We have considered the rival submissions as well as relevant material on record. A search and seizure action was carried out in case of the assessee's group on 17.07.2013. The original return of income for this 3 assessment years were filed u/s 139(1) and the last day of issuing notice section 143(2) was expired before the date of search i.e. 17.07.2013. The details of the returns filed u/s 139 and the last date of issuing notice are as under:-

A.Y.	U/s 139(1)	
	Date of filing return of income	Last date of issuance of 143(2)
2009-10	30.09.2009	30.09.2010
2010-11	30.09.2010	30.09.2011
2011-12	30.09.2011	30.09.2012

Thus, it is clear that the last date of issuing the notice u/s 143(2) for the assessment year 2011-12 was expired on 30.09.2012 and therefore, none of these assessment years were pending on 17.07.2013 i.e. the date of search. As per section 153A of the Act once a search and seizure action is carried the AO has to assess or reassess the total income of the assessee in respect of 6 years immediately preceding the

assessment year relevant to the previous year in which a search is conducted or requisition is made. In case the assessment is pending on the date of search the same shall be abated as per proviso to U/s 153A(1) of the Act and the AO is free to assess the income of the assessee as regular assessment. However, in case of completed assessment and not abated due to initiation of search u/s 132 or making of requisition u/s 132A the AO has to reassess the total income of the assessee and therefore, the assessment already completed can be tinkered with or distrusted until and unless incriminating material is found and seized during the course of search or requisition as case may be indicating undisclosed income of the assessee. Therefore, the scope and jurisdiction of the AO to reassesse the total income of the assessee u/s 153A is limited only to the extent of the income disclosed by the incriminating material found and seized during the search and seizure action. The Assessing Officer has reassessed the income of the assessee by making the disallowance u/s 40(a)(ia) as well as u/s 36(1)(va) of the Act without making any reference to any incriminating material found. Therefore, the disallowance/addition made by the AO for these 3 assessment years completed u/s 153A is undisputedly not based on any incriminating material found or seized during the course

of search and seizure action u/s 132 of the Act. Once, the Assessing Officer has completed the reassessment u/s 153A without any reference to the incriminating material found then, no addition cannot be made to the returned income of the assessee. The Hon'ble Jurisdiction Delhi High Court in case of CIT v. Kabul Chawla (supra) vide while considering an identical issue has held in para 37 and 39 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.*

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

A similar view has been taken by the Hon'ble jurisdiction High Court in case of Jai Steel India v ACIT (supra) as held in para 22 to 30 as under:-

*"**22.** In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:*

(a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;

(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and

(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made.

Though such a claim by the assessee for the first time under Section 153A of the Act is not completed, the case in hand, has to be considered at best similar to a case where in spite of a search and/or requisition, nothing incriminating is found. In such a case though Section 153A of the Act would be triggered and assessment or reassessment to ascertain the total income of the person is required to be done, however, the same would in that case not result in any addition and the assessments passed earlier may have to be reiterated.

***23.** The reliance placed by the counsel for the appellant on the case of Anil Kumar Bhatia (supra) also does not help the case of the assessee. The relevant extract of the said judgment reads as under:—*

"19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given

the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

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 to the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub-section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

21. Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub-section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but

also the 'total income' of the assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub-Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in case where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made." (Emphasis supplied)

24. *The said judgment also in no uncertain terms holds that the reassessment of the total income of the completed assessments have to be made taking note of the undisclosed income, if any, unearthed during the search and the income that escaped assessments are required to be clubbed together with the total income determined in the original assessment and assessed as the total income. The observations made in the judgment contrasting the provisions of determination of undisclosed income under Chapter XIVB with determination of total income under Sections 153A to 153C of the Act have to be read in the context of second proviso only, which deals with the pending assessment/reassessment proceedings. The further observations made in the context of de novo assessment proceedings also have to be read in context that irrespective of the fact whether any incriminating material is found during the course of search, the notice and consequential assessment under Section 153A have to be undertaken.*

25. *The argument of the learned counsel that the AO is also free to disturb income, expenditure or deduction de hors the incriminating material, while making assessment under Section 153A of the Act is also not borne out from the scheme of the said provision which as noticed above is essentially in context of search and/or requisition. The provisions of Sections 153A to 153C cannot be interpreted to be a further innings for the AO and/or assessee beyond provisions of Sections 139 (return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263 (revision of orders) of the Act.*

26. *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.

27. *The Allahabad High Court in Smt. Shaila Agarwal's (supra) has held as under:—*

"19. The second proviso to Section 153A of the Act, refers to abatement of the pending assessment or re-assessment proceedings. The word 'pending' does not operate any such interpretation, that wherever the appeal against such assessment or reassessment is pending, the same along with assessment or reassessment proceedings is liable to be abated. The principles of interpretation of taxing statutes do not permit the Court to interpret the Second Proviso to Section 153A in a manner that where the assessment or reassessment proceedings are complete, and the matter is pending in appeal in the Tribunal, the entire proceedings will abate.

20. There is another aspect to the matter, namely that the abatement of any proceedings has serious causes and effect in as much as the abatement of the proceedings, takes away all the consequences that arise thereafter. In the present case after deducting bogus gifts in the regular assessment proceedings, the proceedings for penalty were drawn under Section 271(1)(c) of the Act. The material found in the search may be a ground for notice and assessment under Section 153A of the Act but that would not efface or terminate all the consequence, which has arisen out of the regular assessment or reassessment resulting into the demand or proceedings of penalty." (Emphasis supplied)

The said judgment which essentially deals with second proviso to Section 153A of the Act also supports the conclusion, which we have reached hereinbefore.

28. *It has been observed by the Hon'ble Supreme Court in K.P. Varghese v. ITO [1981] 131 ITR 597/7 Taxman 13 that "it is well recognized rule of construction that a statutory provision must be so construed, if possible that absurdity and mischief may be avoided."*

29. *The argument of the counsel for the appellant if taken to its logical end would mean that even in cases where the appeal arising out of the completed assessment has been decided by the CIT(A),*

ITAT and the High Court, on a notice issued under Section 153A of the Act, the AO would have power to undo what has been concluded up to the High Court. Any interpretation which leads to such conclusion has to be repelled and/or avoided as held by the Hon'ble Supreme Court in the case of K.P. Varghese (supra).

***30.** Consequently, it is held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because a assessment under Section 153A of the Act in pursuance of search or requisition is required to be made."*

Accordingly, in the facts and circumstances of the case when the reassessment completed u/s153A without any reference to the incriminating material as well as binding precedents as sited above the addition made by the AO u/s 40(a)(ia) as well as 36(1)(va) are not sustainable, the same are deleted.

In the result, the appeals of the asessee are allowed.

Order pronounced in the open court on 24/01/2018

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल राव)
(Vikram Singh Yadav)	(Vijay Pal Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 24/01/2018.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s Rajasthan Fort & Palace Pvt. Ltd., Jaipur.
2. प्रत्यर्थी/ The Respondent- DCIT, Central Circle-3, Jaipur.

3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 597 to 599/JP/2017}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar