

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA Nos.483, 484 & 485/Chd/2014**

(Assessment Years : 2003-04, 2005-06 & 2006-07)

Sh.Sanjeev Bhardwaj,  
553/1/F. Gill Road,  
Miller Ganj, Ludhiana.

Vs.

The A.C.I.T.,  
Circel-V,  
Ludhiana.

PAN: ABJPB9835E  
(Appellant)

(Respondent)

Appellant by : Shri Tej Mohan Singh, Proxy Counsel  
Respondent by : Shri Surinder Meena, JCIT

Date of hearing : 25.05.2018

Date of Pronouncement : 11.07.2018

**ORDER**

**Per Sanjay Garg, Judicial Member :**

The above captioned appeals have been filed by the same assessee against the separate orders of the Commissioner of Income Tax (Appeals)-II Ludhiana [hereinafter referred to as CIT(Appeals)] dated 20.1.2014, 17.1.2014 & 17.1.2014 in Appeal Nos. 482/IT/CIT(A)-II/Ldh/2010-11, 484/IT/CIT(A)-II/Ldh/2010-11 and 485/IT/CIT(A)-II/Ldh/2010-11 relating to assessment years 2003-04, 2005-06 and 2006-07 respectively, passed u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act').

Earlier these appeals were dismissed vide order dated 25.3.2015 for want of prosecution, however, the said order was recalled vide order dated 9.10.2015 passed in MA.Nos.51, 52 & 53/Chd/2015 and the matter was heard afresh.

2. As the facts, circumstances and issues raised in all the appeals are identical, therefore, these have been heard together and are being decided by the common order for the sake of convenience. ITA No. 483/CHD/2014 is taken as lead case for narration of facts.

**ITA No.483/Chd/2014:**

3. The assessee in this appeal has raised the following grounds of appeal :

*"1. That the appellate order passed by the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana, was served upon the appellant on 16.04.2014. Therefore, appeal filed is within time.*

*2. That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana, has erred in holding that there was no infirmity in the provision initiated u/s 153C of the Income Tax Act, 1961 by the Assessing Officer, without considering the reply filed by the appellant and without giving any reasons in his appellate order.*

*3. That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana, has erred in sustaining the order passed by the Assessing Officer u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961.*

*4. That the order dated 27.12.2010 passed by the Assistant Commissioner of Income Tax, Circle-V, Ludhiana u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 is against the Law & facts and is without jurisdiction.*

*5. That the Ld. Assistant Commissioner of Income Tax, Circle-V, Ludhiana, has erred in the assumption of jurisdiction u/s 153C of the Income Tax Act, 1961. The mandatory conditions for invoking the provisions have not complied with. Therefore, order passed by the Assistant Commissioner of Income Tax, Circle-V, Ludhiana, is against Law and is void abinitio.*

*6. That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana, has erred in confirming the addition of Rs.3 Lac made by the Assessing Officer on account of difference between assets and liabilities without giving any reason. Whereas, the*

*details of Rs.3 Lac was explained to the Assessing Officer in detail. Therefore addition of Rs. 3 Lac confirmed by the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana, is illegal, being uncalled for and may be deleted.”*

4. The brief facts relating to the issue are that a search action u/s 132(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) was conducted at the residential premises of Shri Ved Prakash & Others on 12.10.2006. During the course of search action, some incriminating documents relating to the assessee (Sanjeev Bhardwaj) were also found and seized. Accordingly, notice u/s 153C of the Act was issued to the assessee for filing the return within 7 days of service of notice. In response to the said notice u/s 153C of the Act, the assessee filed return of income declaring the income at Rs.40,000/-. The said return was identical/same to her original return of income u/s 139 of the Act prior to the date of search. However, the AO vide impugned assessment order framed u/s 143(3) read with Section 153C of the Act, made the impugned additions.

5. In appeal, the Ld.CIT(Appeals) confirmed the addition made by the Assessing Officer

6. Being aggrieved of the order of the CIT(A) on this issue, the assessee, thus, has come up in appeal before us.

7. At the outset, ld. counsel for the assessee has submitted that the impugned additions have not been made by the Assessing Officer on the basis of any alleged incriminating material found during the course of search at the premises of Shri Ved Prakash & Others. That the original assessment

proceedings for the assessment year under consideration had already attained finality as on the date of search/issue of notice to the assessee and that even the limitation period for issuance of notice u/s 143(2) of the Act for initiation of scrutiny assessment proceedings had expired. He, therefore, has contended that no additions were warranted on any issue other than based on any incriminating material found and seized during search action on the basis of which the assessment was opened/carried out in the case of the assessee u/s 153C of the Act. He, in this respect, has relied upon the decision of the Hon'ble Bombay High Court in the case of "All Cargo Global Logistics Ltd." 120 DTR 89 and of the Delhi High Court in the case of "CIT Vs. Kabul Chawla" 234 Taxman 300 (Delhi) and in "Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals", ITA 306/2017 and others decided vide order dated 25.5.2017.

8. The ld. DR on the other hand has submitted that original assessment proceedings were not completed u/s 143(3) of the Act rather the returns filed by the assessee were processed u/s 143(1) of the Act and under the circumstances, the Assessing Officer was empowered to examine and look into the issue as the same were not looked into while processing the return u/s 143(1) of the Act. He, therefore, has relied upon findings of the CIT(Appeals). However, the ld. DR has been fair enough to admit that the additions in this case have not been made on the basis of any incriminating material found during the search action at the premises of Shri Ved Prakash

& Others as referred to by the Assessing Officer on the basis of which assessment proceedings in the case of the assessee u/s 153C were initiated. He has also not disputed that the original assessments for the assessment year under consideration stood completed and not abated as on the date of search i.e. 12.10.2006 and on the date of subsequent issue of notice u/s 153C of the Act.

9. We have heard the rival submissions and perused the material on record. The issue relating to the validity of assessment made under section 153A without having any incriminating material found during the search action u/s 132 of the Act in case of completed assessments, even where the original return was processed under section 143(1) of the Act, has come into consideration before the co-ordinate Mumbai Bench of the Tribunal in the case of "The ACIT Cent. Cir. 33, Mumbai vs. Shri Jayendra P. Jhaveri" ITA Nos.2141, 2142, 2143 & 2144/M/2012 & CO Nos.248, 249, 250 & 251/M/2013 decided on 20.02.2014 (One of us being party to that order). The Tribunal has discussed the issue in detail and has made the following observations:

*"8. The learned DR has also filed written submissions. To stress his point that the return processed u/s. 143(1) cannot be said to be an assessment but a mere intimation, he has relied upon the judgment of Hon'ble Supreme Court in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (2007) 291 ITR 500 (SC). His contention has been that in the case in hand the assessment was not done originally u/s. 143(3) hence the estimation in question has been rightly made u/s. 153A of the Act by the AO. He has further contended that the principal laid down by the Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd." 137 ITD 287 can be applied to the case where the original assessment*

*was completed u/s. 143(3) of the Act and not to the case where the return was processed u/s. 143(1) of the Act.*

*9. We have considered the submissions of the learned DR. So far so the reliance placed by him in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra) is concerned, we may observe that the issue before the Hon'ble Supreme Court in that case was regarding the reopening of the assessment u/s. 147 of the Act. The Hon'ble Supreme Court held that the proposition of law laid down by the Hon'ble Gujarat High Court in the case of "Adani Exports v. Deputy CIT", (1999) 240 ITR 224 (Guj) was not applicable in that case. In the case of "Adani Exports" (supra), where the assessment was made u/s. 143(3) of the Act, and the AO did not hold any belief that income had escaped assessment on account of erroneous computation, the re-opening u/s. 147 made merely on the basis of audit objections was held to be bad in law by the Hon'ble High Court. In the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra), the Hon'ble Supreme Court while interpreting the provisions of section 143(1) and section 143(3) (as were in force during the relevant time period) has held that in case of assessment made u/s. 143(3), the assessment is made by the AO by applying his mind whereas in case of processing of return u/s. 143(1) of the Act, there is no application of mind by the AO and as such, if a new material comes into the knowledge of the AO and the requirements of section 147 of the Act are fulfilled, the AO is free to initiate proceedings u/s. 147 and the failure to take steps u/s. 143(3) will not render the AO powerless to initiate re-assessment proceedings even when intimation u/s. 143(1) had been issued. So the proposition of law laid down in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra) relates to the powers of the AO for re-opening of assessment u/s. 147 in relation to the assessment proceedings conducted under section 143(1) viz-a-viz u/s 143(3) of the Act. (as were in force during the relevant period, since section 143 has been further amended vide Finance Act 2008 w.e.f 01.04.2008.) It is to be noted that powers of the AO to re-open an assessment u/s. 147 is subject to limitation of time period as prescribed u/s. 149 of the Act. So the reasonable conclusion will be that whether the return was processed u/s. 143(1) or u/s. 143(3), if the AO has a reason to believe that any income chargeable to tax has escaped assessment, he can re-open the assessment u/s. 147 by issuing notice u/s. 148 but within the time limit as prescribed u/s. 149 of the Act.*

*10. So far so, the question as to the processing of return u/s. 143(1) viz-a-viz assessment made u/s.*

143(3) is concerned, it may further be observed that after processing of return u/s. 143(1) the same can be assessed u/s. 143(3) by issue of notice u/s. 143(2) subject to its issuance within the limitation period of 12 months from the end of the month in which return is furnished as per the proviso to clause (ii) of section 143(2) [as was existing at the time of relevant assessment year]. Once the limitation period as prescribed vide proviso to clause (ii) of sub section (2) of section 143 is expired, it is not open to the AO to assess the income u/s. 143(3) of the Act and the return filed by the assessee u/s. 139 is deemed to be accepted, which however, can be re-opened u/s. 147 of the Act subject to the fulfillment of ingredients of section 147 and within the time period as prescribed u/s. 149 of the Act, as discussed in the preceding para. So under such circumstances if the return is processed u/s. 143(1) and not u/s. 143(3) and after the prescribed period of limitation, the same cannot be assessed u/s. 143(3) though it may be interpreted as mere intimation assessment or otherwise, but the same shall be deemed to be accepted by the AO and it will not have any different colour other than the return which is processed u/s. 143(3) of the Act. The only distinguishing feature as held by the Hon'ble Supreme Court in the case of "Rajesh Jhaveri Stock Brokers P. Ltd." (supra), would be that if to a set of facts and circumstances, the AO has applied his mind and he was of the belief that there was no escapement of income then for invoking the provisions of section 147 of the Act, he is precluded, on the basis of same facts and circumstances, to say that he has reason to believe that income of the assessee has escaped assessment. Whereas in case of returns processed u/s. 143(1), since the AO does not apply his mind, such a defense is not available to the assessee. However, that proposition of law does not help the revenue in the present case which is a case of assessment/re-assessment u/s. 153A of the Act.

11. Admittedly, in the case in hand, the return was processed u/s. 143(1) of the Act but the same has attained finality due to the expiry of limitation period of twelve months from the end of the month in which the return was filed. Hence, the assessment is deemed to be completed and not pending on the date of search on 14.08.2008. Admittedly, no incriminating material was found from the premises of the assessee during the search u/s. 132 of the Act. The Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd." (supra), has held that assessment u/s. 153A can be made on the basis of incriminating material found during the search. The Hon'ble Rajasthan High Court in the case of "Jai Steel (India) v. ACIT" (2013) 259 CTR 281 has held that in case

*nothing incriminating is found on account of search or requisition, the question of reassessment of the concluded assessment does not arise. Under such circumstances, it is not open to the assessee to seek deduction or claim expenditure which has not been claimed in the original and already concluded assessment, in the case of assessment u/s. 153A in pursuance of search action. Hon'ble High Court rejected the argument of the learned counsel for assessee to the effect that once the notice u/s. 153A is issued, the assessments for six years are at large both for the AO and the assessee. It has been further held by the Hon'ble High Court that the provisions of section 153A to 153C cannot be interpreted to be further innings to the AO and/or assessee beyond the provisions of section 139(return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263(revision of orders) of the Act. The Hon'ble High Court has further observed that the words "assess" or "re-assess" 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 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 on the basis of the incriminating material found during the course of search or requisition of documents. The Hon'ble High Court while reproducing the proposition of law laid down by the Hon'ble Supreme Court in the case of "K P Varghese v. ITO" (1981) 24 CTR 358 "that it is recognized rule of construction that a statutory proviso must be so construed, if possible, that absurdity and mischief may be avoided" has observed that if the argument of the counsel for the assessee was to be accepted, it would mean that even in case where the appeal arises out of the completed assessment has been decided by the CIT(A) or Tribunal and the High Court, on a notice issues u/s. 153A of the Act, the AO would have power to undo what has been concluded by 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).*

*Almost similar proposition of law has been laid down by the co-ordinate bench of the Tribunal Bench of the Tribunal in the case of "M/s Deepa Restaurant & Bar P. Ltd." in ITA No.1336/M/2012 decided on 05.02.2014 (one of us being the party of the said*

order) wherein, it has been observed that where the scrutiny assessment order u/s. 143(3) of the Act was set aside by the higher authorities that, itself, cannot be a ground for re-opening the assessment u/s. 147 of the Act on the plea that since scrutiny assessment has been annulled on the legality of notice u/s. 143(2) of the Act and the case has not been heard at any of the stage hence, there was a reason to believe that the income assessed in this case has escaped assessment. The co-ordinate Bench in the above said case has further held that such an action cannot be allowed under the law as it may amount to defeating one of the statutory provisions in the grab of acting under other provisions of the statute. Once assessment u/s. 143(3) had been annulled by higher authorities on the ground of legality of notice u/s. 143(2) of the Act, re-opening u/s. 147 on that very ground would mean nothing else but the abuse of process of law. Hence, the contention of the learned DR that as the return was processed u/s. 143(1) and it was a mere intimation hence, the AO had reason to believe that income had escaped assessment and it was open to the AO to reassess the income u/s. 153A, even without any incriminating material found during the search action, is not tenable.

12. The learned DR has further relied on the judgment of the Hon'ble Andhra Pradesh High Court in the case of "Gopal Lal Badruka Vs. DCIT", 346 ITR 106 (AP) to stress the point that the AO can use evidence other than that found during the course of search while framing the assessment u/s. 153A of the Act. The said judgment of Hon'ble Andhra Pradesh High Court has been duly discussed by the Special Bench of the Tribunal in the case of "All Cargo Global Logistics Ltd." (supra), holding that the same was distinguishable on the facts. In the case of "Gopal Lal Badruka Vs. DCIT" (Supra), incriminating evidence was found in relation to eight plots of land but no evidence was found in respect of 24 plots. Since incriminating material was found in respect of eight plots, Hon'ble Court held that the AO can estimate the income in respect of all 32 plots. The fact was that incriminating material was found in that case.

The other judgment of the Hon'ble Delhi High Court in the case of "CIT vs. Chetan Dass Lachman Dass" [2012] 211 Taxmann 61, strongly relied upon by the learned DR, is also of no help to the revenue but to the assessee only. In the said case the Hon'ble Delhi High Court, in para 11 of the order, though has held that there is no condition in section 153A that additions should be strictly made on the basis of evidence found during the course of search or other post search material or information available with the AO which can be related to the evidence found and

*that the seized material can be relied upon to also draw inference that there can be similar transactions throughout the relevant period, yet, at the same time it has been further observed that this however, does not mean that assessment u/s 153 A can be arbitrarily made without any relevance or nexus with the seized material.*

*The proposition of law which emerges out in the light of the law laid down by the Rajasthan High Court in the case of "Jai Steel (India) (supra)", Hon'ble Gujarat High Court in the case of "Gopal Lal Badruka" (supra) and also by the Hon'ble Delhi High Court in the case of "Chetan Dass lachman Dass" is that where incriminating material is found during the search action, the AO while making assessment u/s. 153A can take note of other materials on record, which are relevant and connected to the material found during the search and inference can be drawn relating to other transactions of similar nature. However, when no incriminating evidence is found during search, it is not open to the AO to make re-assessment of concluded assessment in the garb of invoking the provisions of section 153A. As observed above, such an action will defeat the other relevant provisions of the Act and also the rights of the assessee accrued therein."*

10. The above decision has also been followed by another co-ordinate bench of the Tribunal in the case of Atul Barot (HUF) vs. DCIT" in ITA No.2889/M/2011 & ors. decided on 26.02.2014. We agree with the view taken by the co-ordinate bench of the Tribunal in the case of 'Shri Jayendra P Jhaveri" (Supra). Further, the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (2016) 380 ITR 573 (Del) followed by the Hon'ble Gujrat High Court in the case of PCIT Vs RSA Digi Prints 2017 (9) TMI 530. Reliance in this respect can also be placed upon decision of Hon'ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation (2015) 374 ITR 645 (Bom.), decision of Hon'ble Calcutta High Court in the case of PCIT Vs Salasor Stock

Broking Ltd. 2016 (8) TMI 1131 and decision of Hon'ble Delhi High Court in the case of 'Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals", ITA 306/2017 and others decided vide order dated 25.5.2017 wherein the Hon'ble High Courts have been unanimous to hold that in relation to the assessments which have already been concluded, the AO is precluded from making additions on any other issue except relating or concerning to the incriminating material found during the search action. The Assessing Officer cannot disturb the assessment order or reassessment order which has attained finality, unless the material gathered in the course of proceedings u/s 153A of the Act establishes that relief granted under the final assessment/reassessment was contrary to the fact unearthed during the course of 153A proceedings.

11. Since the very initiation of assessment proceedings u/s 153C in case of a person other than the searched person are based on the incriminating material/documents found in the premises of the searched person relatable to that 'other person' hence, the above proposition of law can be well applied in relation to the said 'other person' also in whose case assessment proceedings are initiated/carried out u/s 153C of the Act, i.e. the assessee before us. In view of this, aforesaid case laws can be well applied to the case of the assessee. In view of this, we do not find any justification on the part of the lower authorities for making the impugned addition in the already concluded assessments

in the case of the assessee when no additions have been made by the Assessing Officer on the basis of alleged incriminating material found during the search action at the premises of third party.

12. In view of this, the appeal of the assessee in ITA No. 483/CHD/2014 is hereby allowed

**ITA No.484/Chd/2014:**

**&**

**ITA No.485/Chd/2014:**

13. As the facts, circumstances and issues raised in all the appeals are identical, therefore, our findings and decision in ITA No.483/CHD/2014 would apply with equal force to other appeals also. Accordingly, these appeals of the assesseees are also allowed.

14. In the result, all the three appeals of the assesseees are hereby allowed.

Order pronounced in the open court on 11.07.2018.

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

Dated : 11<sup>th</sup> July, 2018

\*Rati\*

Copy to:

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

Assistant Registrar,  
ITAT, Chandigarh