आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

श्री शक्तिजीत दे,न्यायिक सदस्य **एवं**

श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE SHRI SAKTIJIT DEY, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

आकरअपीलसं./I.T.A. No.541/Mum/2017

(**निर्धारणवर्ष** / Assessment Year: 2009-10)

Deputy Commissioner of Income Tax Central Circle-2(1) Room No.804,8th Floor Old CGO Building, Annex M.K.Road,Mumbai-400 020	**बनाम**/ Vs.	**United Stock Exchange of India Ltd. (since merged with BSE Limited)** 25th Floor (West Wing), P.J. Towers Dalal Street, Fort Mumbai-400 001
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No.AABCU-0464-G**		
(पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

Cross Objection No.103/Mum/2018

(**निर्धारणवर्ष** / Assessment Year: 2009-10)

United Stock Exchange of India Ltd. (since merged with BSE Limited) 25th Floor (West Wing), P.J. Towers Dalal Street, Fort Mumbai-400 001	**बनाम**/ Vs.	**Deputy Commissioner of Income Tax Central Circle-2(1)** Room No.804,8th Floor Old CGO Building, Annex M.K.Road,Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No.AABCU-0464-G**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Revenue by	:	Vidisha Kalra, Ld. CIT DR
Assessee by	:	Vijay Mehta, Ld. AR

सुनवाई की तारीख/ **Date of Hearing**	:	30/07/2018
घोषणा की तारीख / **Date of Pronouncement**	:	12/09/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 contest the order of the Ld. Commissioner of Income Tax (Appeals)-48 [CIT(A)], Mumbai, *Appeal No.CIT(A)-48/I.T-187/DCCC-2(2)/2015-16* dated 22/11/2016. The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax, Central Circle -2(1), Mumbai [AO] u/s 143(3) read with Section 153A of the Income Tax Act, 1961* on 27/03/2015 wherein the expenses of Rs.135.08 Lacs as claimed by the assessee has been disallowed in terms of Section 3 of the Income Tax Act, 1961. During impugned AY, the assessee being *resident corporate assessee* was engaged in providing *exchange platform for trading in currency derivatives.* The effective sole ground raised by revenue reads as under:-

> *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.1,35,08,000/- made in order u/s 153A r.w.s. 143(3) stating that in the absence of any incriminating material on issue, addition so made was beyond the scope and ambit of an assessment envisaged u/s 153A of the I.T.Act, 1961.*

The assessee, in cross objections, has supported the stand taken by Ld. CIT(A) in the following manner:-

> *On the facts and circumstances of the case and in law, the Hon'ble CIT (A) has correctly deleted the addition of Rs.1,35,08,000/- on account of absence of any incriminating material on issue.*

2. The assessee was assessed u/s 153A pursuant to search action u/s 132(1) upon assessee on 30/03/2012 by the investigation wing of the

department. In response to notice u/s 153A, the assessee offered original return of income filed by the assessee on 07/05/2010 declaring loss of Rs.3.50 Lacs. It was noted that the assessee started business operations from 20/09/2010 and therefore, there was no business carried out by the exchange in the impugned AY. In view of the same, the assessee, in the opinion of Ld. AO, was not at all entitled to claim any expenditure before setting up of the business in terms of Section 3 of the Income Tax Act, 1961. Consequently, the expenditure of Rs.135.08 Lacs as claimed by the assessee was treated as capital expenditure and disallowed in the hands of the assessee.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 22/11/2016 wherein after due consideration, the matter was concluded in the following manner:-

> *7. I have given a careful consideration to the appellant's contention. Section 153A of the Act postulates the assessment in cases of search or requisition under section 132 or 132A of the Act respectively. The said section envisages that the AO shall assess or reassess the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted. The second proviso to section 153A(1) of the Act also prescribes that assessment or reassessment, if any, relating to any assessment year falling within the period of six years referred to in this sub-section pending on the date of initiation of search u/s. 132 or making of requisition u/s. 132A of the Act as the case may be shall abate.*
>
> *7.1 The chronologies of events relating to status of assessment of the impugned assessment year are that a search action u/s.132(1) of the Act was conducted on the appellant on 30/03/2012. Prior to that, the appellant had filed the return of income u/s. 139 of the Act, on 07/05/2010. It is the case of the assessee that assessment/reassessment was not pending prior to the date of initiation of search. Subsequent to search action, the AO issued notice u/s. 153A(1)(A) for A.Y.2009-10 on 26/09/2013, in response thereof the assessee vide letter dtd. 0810/2013 requested the AO to consider its original return of income filed on 07/05/2010 and total loss of Rs.*

(-)3,50,107/-, being the same as declared earlier in the original return of income. The assessment u/s. 143(3) r.w.s, 153A was completed on the total income of Rs.1,35,08,000/- on 27/03/2015. whereby he made the following addition:

Sr.No.	Nature of additions	Amount Rs.
1	Disallowance of expenditure	1,35,08,000

7.2 From the above, it is evident that the assessment for AY.2009-10 had attained finality as the assessment / reassessment was not pending and further the AO had lost his jurisdiction to issue a notice ufs.143(2) of the Act on the date of initiation of search on 30/03/2012. Accordingly, the assessment for the A.Y.2009-10 does not get abated in view of the second proviso to section 153A. The relevant provisions of section 153A reads as under:

> *"Not withstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A after the 31st day of May, 2003, the AO shall—*
>
> *(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year failing within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such oilier particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*
>
> *(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:*
>
> *Provided that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*
>
> *Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in This sub-section pending on the date of initiation of the search under section 132 or making of requisition u/s 132A, as the case maybe, shall abate: ....."*

7.3 From the perusal of the aforesaid provision, it is evident that, where search has been initiated u/s.132 or requisition has been made u/s.132A, it is incumbent upon the AO to issue notices requiring the person searched to file return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year in which search is conducted. The AO has to assess or reassess the total income in respect of each assessment year falling within six assessment years. Thus, it is a statutory mandate upon the AO to assesses or reassess the total income on which a person can be said to be assessable under the provisions of the Act. The first proviso covers the income which is to be assessed i.e. emanating not only, from the declared sources but also from any material found during the course of search. However, if the assessment has already been made or finalized before the date of

search, then the AO can reassess the total income on the basis of material found or gathered during the course of search over and above the income which already stood assessed. However, the second proviso carves out exception/limitation that, pending assessment or reassessment relating to any assessment year following within the period of six years on the date of search, gets abated. In other words, the assessments which have not attained finality and are pending on the date of search, then the same gets abated. The assessments which have abated, fresh determination of total income would be required which can be made on the basis of material already on record as well as material gathered during the course of search. However, the assessments which have already attained finality and does not get abated, then they have to be assessed on the basis of the incriminating material found during the course of search. The reason being that the assessments which are pending and get abated, the entire income has to be determined which includes material already on record and also the material found as a result of search. However, statute has carved out the exception to those assessments which have attained finality, because those assessments do not get abated. In such a situation, the income which has already been assessed, the same cannot be disturbed unless some incriminating information or material is found suggesting that the income which already stood assessed requires to be reassessed on the basis of new material found. This proposition has been upheld and clarified by the Hon'ble jurisdictional High Court in the case of M/s. Murli Agro Products Limited.

7.4 Thus on a plain reading of section 153A of the Income-tax Act, it becomes clear that on initiation of the proceedings under section 153A, it is only the assessment / reassessment proceedings that are pending on the date of conducting search under section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/ reassessments already finalized for those assessment years covered under section 153A of the Act. By a Circular No. 8 of 2003 dated 18/09/2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalized assessment I reassessment shall not abate. It is only because, the finalized assessments / reassessments do not abate, the appeal revision or rectification pending against finalized assessment / reassessments would not abate. Therefore, the argument of the AO, that on initiation of proceedings under section 153A, the assessments / reassessments finalized for the assessment years covered under section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A(1) what stands revived is the pending assessment/ reassessment proceedings which stood abated as per section 153A(1).

7.5 In the present case. I find that there is nothing on record to suggest that any material was found in the course of search which would show any connection on disallowance of expenses amounting to Rs.1,35,08000/- made by AO with the seized material which is the subject matter of dispute in assessment order. Nothing is found contrary to the stated position of the assessee. In the instant case the AO disallowed expenses incurred by the assessee prior to the commencement of business, even

though the same had not been claimed since the appellant itself made disallowance thereof in its computation of income except the expenses claimed at Rs.3,50,107/-. On these aspects, I find that there is no material referred to by the AO to say that any incriminating material was unearthed during the search. Therefore, in the factual background, I do not find any justification for the AO to make the impugned additions/disallowance in an assessment finalized u/s 153A of the Act in the absence of any incriminating material having been found during the course of search, qua the impugned disallowances/ additions made in assessment order. I may categorically mention that on the date of initiation of search, qua the A.Y.2009-10 under consideration, assessment was not pending on the date of initiation of search u/s.132(1) of the Act, and accordingly, the assessment for this year did not abate in terms of the second proviso to section 153A(1) of the Act. Therefore, the ratio of the judgment of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Seva) (120 DTR 89) (Bom) is clearly attracted and the impugned additions should not have been made in respect of an unabated assessment which had become final in the absence of any incriminating material having been found in the course of search, qua the impugned addition relating to disallowance of expenses. Thus, I direct the AO to delete the addition of Rs.1,35,08,0000/- made on account of disallowance of expenditure as the same are beyond the scope and ambit of an assessment envisaged u/s. 153A of the Act. Accordingly, ground no.1 is ***allowed.***

Aggrieved, the revenue is in further appeal before us.

4. The Auhtorized Representative for Assessee [AR], *Shri Vijay Mehta,* submitted that the issued stood squarely covered in assessee's favor by the cited judgment of Hon'ble Bombay High Court. The same has been controverted by Ld. CIT-DR, *Ms. Vidisha Kalra,* who submitted that the matter has not yet attained finality since *Special Leave Petition* against the aforesaid judgment is under consideration by Hon'ble Apex Court. The Ld. CIT-DR, by way of written submissions, agitated the stand of Ld. CIT(A), which as a matter of record are extracted here-in-below:-

NOTE ON SECTION 153A: LEGAL ISSUES

Three Issues need to be addressed: -

1) Conceptual difference between 143(1)(a) intimation and 143(3) assessment.

2) Harmonious Construction of the section 153A as a 'whole' and its overall congruency with other sections should be there, so as to ensure that

interpretation of any one 'word' or 'sub-section' or 'clause' or 'provision' does not result in illogical conclusion or Dis-harmony.

3) Interpretation of statute should not lead to absurdity and illogical conclusion.

Issue Number-1

1. Conceptual Difference between 143(1) and 143(3): ACIT v/s Rajesh Jhaveri (Supreme Court)161 Taxman 316: *Hon'ble Supreme Court in the landmark judgment in the case of ACIT v/s Rajesh Jhaveri Stock Brokers (F) Ltd. 161 Taxman 316(SC) has given detailed expositions regarding nature of 143(1)(a) processing and has categorically and emphatically upheld that 143(1)(a) intimation is not assessment at all. To quote from the order as below:*

"With effect from 1-4-1989, the provisions underwent substantial and material changes. A new scheme was introduced and in the new substituted section 143(1) prior to the subsequent substitution with effect from 1-6-1999, in clause(a), a provision was made that where a return was filed under section 139 or in response to a notice u/s 142(1), and any tax or refund was found due on the basis of such return after adjustment of tax deducted at source, any advance tax or any amount paid otherwise by way of tax or interest, an intimation was to be sent without prejudice to the provisions of section 143(2) to the assessee specifying the sum so payable and such intimation was deemed to be a notice of demand issued u/s 156.

What were permissible under the first proviso to section 143(1) (a) to be adjusted were that, (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return and similarly (iii) those claims which were on the basis of the information available in the return, prima facie inadmissible, were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the face of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief.

The intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from 1-4-1989 to 31-3-1998, the section proviso to section 143(1)(a) required that where adjustments were made under the first proviso to section 143(1)(a) , an intimation had to be sent to the assessee, notwithstanding that no tax or refund was due from or to him after

making such adjustments. With effect from 1-4-1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till 1-6-1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between 1-4-1998 and 31-5-1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word 'intimation' as substituted for 'assessment' that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed after accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to section 143 by the Finance (No.2) Act of 1991 with effect from 1-10-1991 and, subsequently, with effect from 1-6-1994, by the Finance Act, 1994, and ultimately omitted with effect from 1-6-1999, an intimation sent to the assessee under section 143(1) was deemed to be an order for the purposes of section 246 between 1-6-1994 and 31-05-1999, and under section 264 between 1-10-1991 and 31-5-1999. The expression 'intimation' and 'assessment order' have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. The assessment is used as meaning sometimes 'the computation of income', sometimes 'the determination of the amount of tax payable' and sometimes 'the whole procedure laid down in the Act for imposing liability upon the tax payer'. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment….

…… Under the first proviso to the newly substituted section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not given by any Assessing Officer, but mostly by ministerial staff. No assessment can be done by them. The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provisions. [Para 13]

…. In view of the conceptual difference between section 143(1) and section 143(3). Thus, the appeal was to be allowed.

Therefore, a plain reading clearly establishes that in undisputed terms, ***Hon'ble Supreme Court has held that 143(I)(a) intimation is not assessment at all****. Subsequently. Supreme Court in Dy. CIT v. Zuari Estate Development and Investment Co. Ltd. [2015] 373 ITR 661 further settled the legal position that where the return had been processed under section 143(1) of the Act, there was no 'assessment'.*

2. ***Order of Supreme Court in Rajesh Jhaveri not discussed in any case:***

In Perusal of various decisions namely Kabul Chawla, Anil Kumar Bhatia, Chetandas Lachmandas, Canara Housing. Filatex India Ltd. and Continental Warehousing, it is seen that conceptual difference between 143(1)(a) intimation and 143(3) assessment as brought out by Hon'ble Supreme Court has not been discussed in any of these cases. In fact, ***issue of intimation vs assessment has not been touched in any of these cases and has escaped discussion at all****. Hon'ble High Courts have not dwelled upon this issue.*

3. ***Indulata Rangwala v/s DCIl 384 ITR 337 Delhi High Court (2016)****:* ***Admission regarding incorrect legal position in earlier cases***

In this case while dealing with Sec. 147, for the A.Y. 1999-2000, the decisions of Hon'ble Supreme Court in case of Rajesh Jhaveri (supra) and DCIT v/s Zuari Estate Development &Investment Co (2015) were brought to the kind notice of Delhi High Court in an argument by Revenue that intimation u/s 143(1) is not an Assessment. Hon'ble Delhi High Court categorically admitted that this distinction between 143(1) and 143(3) was overlooked in some decisions of High Courts including Delhi High Court. To quote from paras 25 and 35.9 of the order:

> ***"……25. It appears that the above distinction drawn between the object of provision of Section 14(1) and Section 143(3) of tire Act was overlooked in some of the decisions of the High Courts, including this Court.....***
>
> ***"…..35.9 The decisions of this Court and other Courts to the extent inconsistent wills the above decisions of the Supreme cannot be said to reflect correct legal position."***

In view of above categorical admission by a subsequent Delhi High Court order regarding incorrect legal position of the earlier orders in view of expositions of Hon'ble Supreme Courts, the mistake in these orders of high Courts is apparent.

Issue No. 2:

Resulting noncompliance of letter and spirit of Sec,153A in many situations: *The High Court decisions have created situations which lead to obvious noncompliance of letter and spirit of Sec. 153A in following ways: -*

1. ***No 'Assessment' at aft in many cases –***

If intimation 143(1)(a) and assessment u/s 143(3) are equated and 143(1)(a) is held as assessment, then it will lead to situation which are apparently and basically against the basic law as per 153A. Legislature in its wisdom has made assessment mandatory for 6 assessment years irrespective of any discovery of incriminatory evidences. By restricting the powers of AO and equating 143(1)(a) to assessment, in a large number of assessment years: practically no assessment will take place if apparently incriminating evidence is not found in search. Obviously, such cases are not being covered under re-assessment as reassessment presumes assessment" on the earlier occasion. Since there has not been any assessment earlier, assessment u/s 153A as per sub section (1) clause(b) is mandatory. In fact, the legislature has overemphasized its intent by again mentioning in 1st proviso to section 153(1) that AO shall assess or reassess the total income in respect of each A.Y. falling within such six AYs. Therefore, it is logical and lawful to hold that in cases where only intimation u/s 143(1)(a) has been issued prior to date of search, assessment as defined in Sec. 143(3) is mandatory as per Sec. 153A. In such cases, there cannot be any fetters on the power of AO limiting additions on the basis of seized material alone, such fetters can, at best be, only where assessment u/s 143(3) has been completed prior to search and now AO cannot revisit the settled issues. He can only reassess the income on the basis of seized material. This view is based on the Harmonious Interpretation of the statute which is the cardinal guiding principle of any law including income tax law.

2. ***No expression as 'Abated Assessment' v/s 'Non-Abated Assessments' in Income Tax Act****: Technically, it would also be relevant to point out here that in Sec. 153A expression Abated assessment and Non-Abated Assessments has not been used in the statute. Such expression categorises the assessments u/s 153A in two distinct categories. However, such categorization from the scratch is against the basic law on which the entire super structure of Scope of Assessment has been later built. The second proviso to Sec. 153A only mentions that in case assessment or reassessment is pending on the date of initiation of search, such assessment or reassessment shall abate. The purpose is to frame the assessment order after issuance of notice u/s 153A There is no category of Non-Abated Assessment as per the Statute. Such imported expression distorts the harmonious interpretation of the section and leads to illogical conclusion. Assessment in any case is mandatory u/s 153A and assessment order will have to be passed in all circumstances. Thus it is fair and logical to conclude that assessment-unfettered -will have to be passed by AO mandatorily if no earlier assessment is done - 143(1)(a) not being an assessment.*

3. ***Repeated usage of Assessment or Reassessment in Section 153A:***

Throughout the section 153A, expression Assess or Reassess has been used by legislature in its wisdom. Either Assessment or Reassessment must be done. There cannot be a situation the neither assessment is done nor reassessment. Such a situation will be contrary to spirit and letter of the statute. Equaling 143(1)(a) to 'assessment' and limiting the hands of AO would lead to 'assessment' and limiting the

hands of AO would lead to results which are contradictory to statute. Thus it is fair and lawful to hold that where no 143(3) assessment has taken place earlier, 'Assessment without any fetters' must take place in 153A proceedings. In fact, it would be fair and lawful to argue that even where 143(3) assessment has been done prior to search, no incriminating evidence is found in search. AO has full powers to visit the earlier assessment and assess' or 'reassess' such income. This would be most harmonious interpretation of 153A.

4. ***Limited significance of 2nd proviso to Sec. 153A(1):*** *The second proviso to section 153A has apparently very limited significance in so far as to restrict number of assessment orders to be only one, where proceedings are 'already on' before search. It is in this spirit that sub-section (2) of 153A speaks of 'Revival of 'abated assessment' to avoid multiplicity of assessment orders. In fact, there cannot be any harmonious interpretation of provisions of section 153A as a 'whole' if hands of AO are tied while 'assessing' a 'reassessing' income for six years. 'Assessment' and Reassessment' order u/s 153A is always supposed to have comprehensive, all-encompassing jurisdiction - 'original as well as based on search findings (which may or may not be there) without such interpretation, sub section 2 and its proviso cannot be understood and do not harmoniously fit into first Subsection.*

Issue No.3

Raison-d'etre of 153A/153C is defeated: *Such interpretation of section 153A defeats the very raison-d'etre of the section 153A - If assessment is to be limited to incriminating material found in search, then AO already had such power u/s 148 and such interpretation will render section 153A relevant and worthless. There cannot be any statute which is irrelevant. The interpretation of section 153A has to be such that it remains relevant and serves a specific purpose which is not embedded in other sections.*

Absurd interpretation: Such Limited interpretation of section 153A not only defeats the very Raison-d'etre of section 153A and renders it irrelevant, but it also leads to absurdity and contradiction of entire search and seizure operations

Search and seizure operation u/s 132 are intrusive and investigative to extreme in the sense that personal space of assessee and his family members is violated to unearth unaccounted income. The investigation team enters and searches the entire residences of the concerned assessee including each and every nook and corner of residence.

Thus, principle behind 132 operations is to explore, examine and investigate 100% details of an assessee. Return of income filed for six years' u/s 139 are very much part of such details. It would be blatantly absurd and illogical if all other business and personal spaces including residences are searched and investigated and returns of income filed u/s 139 for six years are not verified, merely 143(1) processing does not allow such investigation and verification of return of income. By interpreting law in such a way that in search and seizure cases, returns of income (which is the most basic document related to taxable income) is not subjected to scrutiny ever, would he biggest absurdity and illogical interpretation of law.

Since no law can be interpreted in such a way as to lead absurdity, assessment u/s 143(3) is to be done mandatorily in all 153(3) cases of returns filed u/s 139.

5. We have carefully perused the order of lower authorities and submissions made by respective representatives, in this regard. Upon perusal, we find that it is undisputed fact that the assessment for impugned AY was *non-abated* assessment since no proceedings were pending for the same on the date of search i.e. 30/03/2012. The original return of income was filed by the assessee on 07/05/2010 and the time limit for issuance of *scrutiny assessment* notice u/s 143(2) had already expired which was a statutory requirement to *scrutinize* the return of income of the assessee. It is also undisputed fact that the impugned additions are not based on any incriminating material found during the search operations since the expenditure as claimed by the assessee has been disallowed by placing reliance on Section-3 since Ld. AO opined that the business was not set-up by the assessee during impugned AY. However, it is noteworthy that the genuineness of the expenditure is also not in question since Ld. AO himself has treated the same as capital expenditure. Another point to be noted is that impugned order record a finding that majority of these expenditure have already been disallowed by the assessee while filing the original return of income which could not be controverted by the revenue.

6. The aforesaid factual matrix, as rightly noted by Ld. CIT(A), is squarely covered by the decision of Hon'ble Bombay High Court rendered in *CIT Vs. Continental Warehousing Corporation [2015 374 ITR 645].*

Similar view has been taken by Hon'ble Delhi High Court in *CIT Vs. Kabul Chawla [380 ITR 573].* Further, upon perusal of *SLP No. 18560 of 2015 dated 12/10/2015* admitted by Hon'ble Supreme Court against the decision of Hon'ble Bombay High Court rendered in *CIT Vs. Continental Warehousing Corporation [supra]*, we find that Hon'ble apex court has only admitted SLP against the ruling of the Hon'ble Bombay High Court's finding that no addition can be made in respect of assessments which have become final if no incriminating material is found during search or during 153A proceedings. However, it is seen that the Hon'ble Apex Court has not stayed or suspended the operation of the decision of the Hon'ble Bombay High Court in any manner and therefore, at the moment, the decision of jurisdictional High Court is binding on us and we are bound to follow it. Respectfully following the binding judicial precedent, we upheld the conclusions drawn by Ld. CIT(A) and dismiss revenue's appeal which makes assessee's cross-objections *infructuous.*

7. Resultantly, the appeal as well cross objection stand dismissed.

Order pronounced in the open court on 12th September, 2018.

Sd/-	Sd/-
(Saktijit Dey)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य **/ Judicial Member**	लेखा सदस्य **/ Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12.09.2018
Sr.PS:- Thirumalesh

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT- concerned
5. विभागीय प्रतिनिधि मुंबई ,आयकर अपीलीय अधिकरण ,/ DR, ITAT, Mumbai
6. गार्ड फाईल /Guard File

आदेशानुसार/ BY ORDER,

उपसहायक पंजीकार/ (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण ,मुंबई **/ ITAT, Mumbai**