

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

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

ITA No. 1474/CHD/2017
Assessment Year : 2008-09

Sh. Dinesh Dua, Vs. The DCIT, Central Circle-1,
A-103, Narang Colony, Chandigarh
Janakpuri West,
Delhi-110058

PAN No. AADPD0227D

*(Appeal against the order of CIT(A) -3, Gurgaon dated 4.8.2017 in civil
appeal No. 311/CIT(A)-3/GGN/2013-14)*

ITA No. 1476/CHD/2017
Assessment Year: 2011-12

Sh. Dinesh Dua, Vs. The DCIT, Central Circle-1,
A-103, Narang Colony, Chandigarh
Janakpuri West,
Delhi-110058

PAN No. AADPD0227D

*(Appeal against the order of CIT(A) -3, Gurgaon dated 4.8.2017 in civil
appeal no. 312/CIT(A)-3/GGN/2013-14)*

ITA No. 1475/CHD/2017
Assessment Year : 2008-09

Sh. Dinesh Dua, Vs. The DCIT, Central Circle-1,
A-103, Narang Colony, Chandigarh
Janakpuri West,
Delhi-110058

PAN No. AADPD0227D

*(Appeal against the order of CIT(A) -3, Gurgaon dated 11.8.2017 in civil
appeal No. 307/CIT(A)-3/GGN/2013-14)*

Appellant by : Sh. S.K. Bhasin, CA
Respondent by : Sh. Manoj Mishra, CIT-DR

Date of Hearing : 19.07.2018
Date of Pronouncement : 07.09. 2018

1,32,533/- u/s 24(b) on the ground that the same was not claimed at the time of filing return u/s 139(1).

3 The sole issue raised in this appeal is regarding disallowance of deduction from the income of the assessee while making assessment u/s 153A of the Income-tax Act, 1961 (in short 'the Act') pursuant to the search action carried out u/s 132 of the Income-tax Act, 1961 (in short 'the Act').

4. We have heard the rival submissions of the parties. So far as the law relating to the validity of the addition made into the income of the assessee in the assessment proceedings carried out u/s 153A of the Act is concerned, the issue is no more res integra in the light of the various case laws and decisions of Hon'ble High Courts of the country wherein the Hon'ble High Courts have been unanimous to hold that in the absence of any incriminating material found during the search action, when there was no pending assessment which can be said to have abated on the date of search, the additions cannot be made. Reliance in this respect can be placed on the decisions of Hon'ble Bombay High Court in the case of 'CIT Vs. Murli Agro Products Pvt Ltd' ITA No.36 of 2009, 'CIT Vs. Continental Warehousing Corporation' ITA No. 523 of 2013 reported in (2015) 279 CTR 0389 (Bombay), 'CIT Vs. Kabul Chawla' 234 Taxman 300 (Delhi) and subsequent decision in the case of 'Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals (supra)'.

However, in this case the assessee has not agitated the additions made by the Assessing officer in the assessment proceeding

u/s 153A in the absence of any incriminating material found during search action, rather, the assessee has claimed that he may be allowed deduction u/s 24(b), which was not claimed in the original return filed u/s 139(1) of the Act. Admittedly, the assessment year involved in this case is 2008-09. The return u/s 139(1) of the Act was filed by the assessee on 29.7.2008 and the date of issuance of notice u/s 143(2) had expired on 30.09.2009 whereas the search action u/s 132 of the Act was carried out on the premises of the assessee on 17.9.2010, which means the assessment for the assessment year under consideration stood completed and not abated as on the date of search. Hence, as laid down by the Hon'ble High Courts of the Country, the Assessing officer could not have made addition into the income of the assessee in respect of any aspect relating to which no incriminating material was found under the search action.

5. In our view, if the Assessing officer could not touch or look into any other aspect in the absence of any incriminating material and he has precluded to make any addition in the absence of the recovery of any incriminating material relating to that issue during the search action carried out u/s 132 of the Act, then that proposition will also have to be applied reversely also debarring the assessee to make claim of any deduction or exemption or otherwise, which issue cannot be looked into by the Assessing officer in the absence of any incriminating material found during the search action. The proposition of law laid down by the various High Courts in this respect is to be applied to both the parties i.e. Revenue as well to

the assessee. 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).

6. So far as the reliance of the Ld. counsel on the decision of Coordinate Bench of the Tribunal in the case of Mr. A. Srinivas Rama Raju, Hyderabad Vs. DCIT , ITA No. 975/Hyd/2015 order dated 19.8.2016, we find that in the said case, the assessment year involved was 2010-11 and the return was filed on 31.7.2010, whereas the search action was carried out on the premises of assessee on 17.9.2010, which means that the assessment for the assessment year 2010-11 stood abated on the date of search and, hence, it was open before the Assessing officer to look into each and every aspect relating to the assessment of the income of the assessee. However, in the case in hand, the original assessment had since been completed on the date of search and not abated, hence, as per the settled law, it was not open to the Assessing officer either to make any addition or

to allow claim of any deduction to the assessee on an issue in the absence of any incriminating material in that respect found during the search action. So, in the light of various decisions of Hon'ble High Courts as discussed above, there is not merit in the appeal of the assessee and the same is accordingly dismissed.

In the result, the appeal of the assessee is hereby dismissed.

ITA No. 1476/Chd/2017

7. The assessee has taken the following grounds of appeal:-

1. *That the order of Ld. CIT(A), Gurgaon is bad and against the facts and law.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the order of Ld. Assessing officer, disallowing deduction of Rs. 33,55,054/- u/s 54 on the ground that the same was not claimed at the time of filing return u/s 139(1).*

8 The brief facts of the case are that a search action was carried out u/s 132 of the Income-tax Act, 1961 (in short 'the Act') at the premises of the assessee on 17.9.2010. In response to the notice u/s 142(1) of the Act, the assessee revised his return of income and voluntarily disclosed interest income of Rs. 3,89,655/- being income under the head 'income from other sources' and long term capital gain of Rs. 33,55,054/- on sale of residential house property. Further, the assessee had claimed exemption u/s 54 of the Act with respect to the said Long Term Capital Gain of Rs. 33,55,054/- on the sale of residential house property since he had invested the amount of capital gain in the purchase of another residential house

within the stipulated time period as per the requirements of the Act. The Ld. Assessing officer, however, disallowed exemption u/s 54 of the Act from the said capital gain on the ground that the same was not claimed at the time of filing return u/s 139(1) and the said Long Term Capital Gain of Rs. 33,55,054/- was added back in computation of total income of the assessee.

9. We have heard the rival submissions of both the parties. In the case in hand, the assessment year involved is 2011-12. The assessment proceedings in relation to the original return filed by the assessee u/s 139(1) of the Act stood abated on the date of search. Hence, it was open to the Assessing officer to look into and examine each and every aspect relating to the income of the assessee in the assessment proceedings carried out u/s 153A of the Act. Admittedly, no incriminating material was found in relation to the income declared by the assessee in his return of income filed u/s 153A of the Act. The return filed by the assessee u/s 153A declaring the additional income at the most can be said to be a revised return of income and the Assessing officer was required to look into each and every aspect of the income of the assessee including the exemptions or deductions as available to the assessee under the relevant provisions of the Act. The assessment year under consideration is not a year relating to which the assessment stood completed, rather it was a year in relation to which the pending assessment, if any, stood abated on the date of search action. In view of this, the assessee is legally entitled to claim deduction as available to him under the

relevant provisions in relation to the income declared in the return filed u/s 153A of the Act.

10. The assessee has claimed deduction u/s 54 of the Income-tax Act. However, the lower authorities have denied the deduction on the ground that the investment in the new residential house was made prior to the date of sale of the asset in question. At this stage, the Ld. Counsel for the assessee has made a statement at Bar that the assessee had made the payment in installments to a builder for house to be constructed / under construction. The Ld. Counsel has stated that the assessee will be satisfied if he may be allowed deduction u/s 54 / 54F of the Act in respect of investment / payments made after the date of sale of the asset. We accordingly direct the Assessing officer to allow the assessee the deductions as may be available to the assessee under the provisions of sections 54 / 54F in respect of investment made / payments made to the builder / developer after the date of sale of asset in question.

In the result, the appeal of the assessee is treated as partly allowed.

ITA No. 1475/CHD/2017 and ITA Nos. 378, 379 & 395/CHD/2016

11. Since the issue involved in these appeals is identical, these have been heard together and are being disposed of by this common order. For the sake of convenience, the **ITA No. 1475/Chd/2017** is taken as a lead case for discussion.

12. The brief facts relating to the issue are that assessee had shown certain additional income in the return filed u/s 153A of

the Act pursuant to the search action carried out at the premises of the assessee u/s 132 of the Act. Admittedly, no incriminating material was found during the search in respect of income declared by the assessee voluntarily in the return filed u/s 153A of the Act. In view of this, it cannot be said that it is a case of furnishing of inaccurate particulars of income or concealment of income on the part of the assessee. In our view, it is not a fit case of levy of penalty and the same is accordingly ordered to be deleted.

These appeals of the assessee are hereby allowed.

14. To sum up, the appeals of the assessee are decided as under:-

1. ITA No. 1474/Chd/2017 – dismissed.
2. ITA No. 1476/Chd/2017 – partly allowed.
3. ITA No. 1475/Chd/2-017 – Allowed.
4. ITA Nos. 378, 379 & 295/Chd/2016 – Allowed.

Order pronounced in the Open Court on 07.09.2018

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Dated : 07.9.2018
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*