

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1153/Del/2018 : Asstt. Year: 2008-09

Anshu Prithani, Brahmaputra House, A-7, Mahipalpur, New Delhi-110037	Vs	DCIT, Central Circle-17, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AKDPP5664L		

Assessee by : None

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 14.07.2021

Date of Pronouncement: 14 .07.2021

ORDER

Per Amit Shukla, Judicial Member:

The present appeals have been filed by the assessee against the orders of Id. CIT (A)-35, New Delhi dated 17.11.2017.

2. The assessee has filed its original return of income u/s 139(1) in December 2008 declaring total income of Rs.1,29,244/-.

3. Later on, a search and seizure operation was carried u/s 132A on 28.09.2010 and accordingly, a notice u/s 153A was issued. At the time of search the assessment for the assessment year 2008-09 has attained finality and accordingly in terms of second proviso to section 153A such an assessment is to be treated as unabated and without any reference to any seized

material or incriminating evidence found during the course of search. In the impugned proceedings, we find that the additions made by the Assessing Officer on account of valuation of the property are not based on any material found and seized during the course of search and seizure action. The fact of which has not been disputed by the revenue.

4. Before us, none appeared on behalf of the assessee and the matter is being adjudicated on hearing the arguments of Id. DR and based on the record available before us. On perusal of the record, we find that it is an admitted fact that no addition has been made in any of the years which was based on incriminating material or evidence was found during the course of search.

5. Thus, no addition can be twined in the present proceedings u/s 153A. We have examined the findings of the AO and Ld. CIT(A) and find that it is an undisputable fact that the addition made by the AO is not based on seized material / documents found during the course of search. In such a situation, addition is beyond the scope of section 153A and we rely upon the following judgments for adjudicating the matter:

- *PCIT Vs. Meeta Gutgutia [2017] 82 taxmann.com 287 (Delhi)*
- *CIT Vs. Kabul Chawla [2016] 380 ITR 573 (Delhi)*
- *CIT Vs. Lancy Constructions [2016] 237 Taxman 728 (Karnataka).*
- *DCIT Vs. Kurele Paper Mills Pvt. Ltd. in ITA No.3761/Del/2011.*
- *Pr.CIT vs. Kurele Paper Mills Pvt. Ltd. in ITA No.369/2015 (Del HC).*
- *Pr. CIT VS. Kurele Paper Mills Pvt. Ltd. [2016] 380 ITR 65 (SC)*

➤ *CIT Vs. Saumya Construction P. Ltd. [2016] 387 ITR 529 (Guj)*

6. On the other hand, the Id. DR though could not controvert the contention that there is no incriminating material found at the time of search, but he submitted that, once notice u/s 153(3) is issued to the assessee then it is incumbent upon the assessee to file the return of income and AO has all the powers to assess and reassess the total income for the year and same cannot be restricted to the seized material. He relied upon the judgment of Hon'ble High Court in the case of CIT vs. Anil Kumar Bhatia.

7. After considering the aforesaid submissions and on perusal of the orders before us, we find that it is an admitted fact that the time for completion of original assessments has ended and the assessment proceedings attained finality at the time of search for these years. It is also undisputed that additions made by the AO is not based on incriminating material found during the course of search, albeit it is based on the assessment record only.

8. In such a situation, additions made are beyond the scope of 153A proceedings. This proposition of law has been well settled and reiterated by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla reported in [2016] 380 ITR 573 (Delhi) and has been reiterated in the case of Pr. CIT vs. Meeta Gutgutia reported in [2017] 152 DTR 153 (Delhi).

9. In the case of CIT vs. Kabul Chawla (supra), the Hon'ble High Court, after discussing various judgments and analyzing section 153A, have laid down the following legal proposition:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(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 153A 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."

10. The Hon'ble High Court has also taken note of the judgment of their earlier judgment in the case of CIT vs. Anil Kumar Bhatia reported in [2013] 352 ITR 493 (Del) and observe that this was not the issue before the Court. Again in the case of Pr. CIT Vs. Meeta Gutgutia's (supra), their Lordships have again reiterated the same principle and have also considered the case of Smt. Dayawanti Gupta reported in 390 ITR 496.

11. The relevant observations made by their Lordships are as under:

"56. Section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to Section 132 which deals with 'search and seizure'. Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to reopen at least six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under Section 132 incriminating material justifying the re-opening of the assessments for six previous years is found that the invocation of Section 153A qua each of the AYs would be justified.

57. The question whether unearthing of incriminating material relating to any one of the AYs could justify the reopening of the assessment for all the earlier AYs was considered both in Anil Kumar Bhatia (supra) and Chetan Das Lachman Das (supra). Incidentally, both these decisions were discussed threadbare in the decision of this Court in Kabul Chawla {supra}. As far as Anil Kumar Bhatia (supra) was concerned, the Court in paragraph 24 of that decision noted that "we are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We therefore express no opinion as to whether Section 153A can be invoked even under such situation".

That question was, therefore, left open.

12. As far as case law Chetan Das Lachman Das is concerned, in para 11 of the decision it was observed:

"11. Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section 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 Assessing Officer which can be related to the evidence found. This, however, does not mean that the assessment under Section 153A 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."

13. In *Kabul Chawla (supra)*, the Court discussed the decision in *Filalex India Ltd. (supra)* as well as the above two decisions and observed as under:

"31. What distinguishes the decisions both in CIT v. Chetan Das Lachman Das (supra), and Filatex India Ltd. v. CIT-IV (supra) in their application to the present case is that in both the said cases there was some material unearthed during the search, whereas in the present case there admittedly was none. Secondly, it is plain from a careful reading of the said two decisions that they do not hold that additions can be validly made to income forming the subject matter of completed assessments prior to the search even if no incriminating material whatsoever was unearthed during the search. 32. Recently by its order dated 6th July 2015 in ITA No. 369 of 2015 (Pr. Commissioner of Income Tax v. Kurele Paper Mills P.

Ltd.), this Court declined to frame a question of law in a case where, in the absence of any incriminating material being found during the search under Section 132 of the Act, the Revenue sought to justify initiation of proceedings under Section 153A of the Act and make an addition under Section 68 of the Act on bogus share capital gain. The order of the CIT (A), affirmed by the ITAT, deleting the addition, was not interfered with."

14. In *Kabul Chawla (supra)*, the Court referred to the decision of the Rajasthan High Court in *Jai Steel (India) v. Assn. CIT* [2013] 36 taxmann.com 523/219 Taxman 223. The said part of the decision in *Kabul Chawla (supra)* in paras 33 and 34 reads as under:

"33. The decision of the Rajasthan High Court in Jai Steel (India), Jodhpur v. A CIT (supra) involved a case where certain books of accounts and other documents that had not been produced in the course of original assessment were found in the course of search. It was held where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration while computing the total income under Section 153A of the Act."

15. The Court then explained 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."

16. Thus, the Hon'ble High Courts after detail analysis concluded that, whence there is no incriminating material qua each of the assessment year roped in under section 153A, then, no addition can be made while framing the assessment under section 153A.

17. The aforesaid principle and ratio are clearly applicable on the facts of the present case also, as admittedly no incriminating material relating to these assessment years or as a matter of fact for any of the assessment years were found during the course of search.

18. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 14/07/2021.

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 14/07/2021

Subodh

Sd/-

(Amit Shukla)
Judicial Member