

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
and
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA Nos.1354, 1355 & 1357/Del./2020
(ASSESSMENT YEARS : 2010-11, 2011-12 & 2012-13)**

Shri Pawan Kumar Agarwal,
A - 4/2, Rana Pratap Bagh,
New Delhi - 110 007.

vs. Pr.CIT - 12,
Delhi.

(PAN : ADUPA9815A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satish Agarwal, CA
REVENUE BY : Shri T. Kipgen, CIT DR

Date of Hearing : 17.02.2022
Date of Order : 17.02.2022

ORDER

PER AMIT SHUKLA, JM :

Aforesaid appeals have been filed by the assessee against the separate impugned order of even date 09.06.2020, passed by the Id. Pr. CIT - 12, Delhi in his revisionary jurisdiction under section 263 of the Income-tax Act, 1961 (for short 'the Act') for the assessment years 2010-11, 2011-12 & 2012-13.

2. In all the years, the issues raised are common arising out of identical set of facts, therefore, same were heard together and are being disposed off by way of this consolidated order.

3. In various grounds of appeal, the assessee besides challenging the impugned order u/s 263 of the Act has stated that Id. Pr.CIT could not have revised the assessment order by setting aside on the issues which are not arising out of any incriminating material found during the course of search of the assessee. The points which have been raised by the Ld. PCIT in his show-cause notice as well as in the impugned order are not based on incriminating material, therefore, such an order cannot be sustained as all the three assessment years had attained finality much prior to the date of search.

4. The brief facts and the background of the case are that the assessee is proprietor of M/s. Supreme Gold which was engaged in sale and purchase of bullion, from the premises 301-305/1185, 3rd Floor, Kucha Mahajani, Chandni Chowk, Delhi-110006. A survey was conducted at the same premises on 20.07.2015, which was converted to search action under section 132 and cash of Rs.4.75 crores out of total cash found of Rs.4,78,50,000/- at the above premises was seized. Admittedly, as per the original assessment records, the search action did not yield any incriminating material. Thereafter, in pursuance of such notices issued u/s 153A, the assessments were completed u/s 153A /143(3) of the Act. Later on, the assessee's income of above three assessment years after subject to rectification order dated 23.02.2018 in the following manner :-

Assessment Year	Income Returned (Amt. in Rs.)	Income assessed u/s 153A (Amt. in Rs.)	Income after rectification (Amt. in Rs.)
2010-11	97,61,380/-	10,51,31,345/-	6,09,12,936/-
2011-12	2,57,01,482/-	62,37,29,550/-	32,87,07,501/-
2012-13	3,27,32,750/-	101,38,03,038/-	54,50,04,679/-

5. Before us, it has been pointed out that assessments for the above assessment years had attained finality as they were completed u/s 143(3) for the assessment years 2011-12 & 2012-13 and for AY 2010-11, return income stood finally assessed. At the time of search on 20.07.2015, none of the assessments of these assessment years were pending. It has also been brought on record that the assessee had preferred an appeal before the Ld. CIT (A) who vide his order dated 19.12.2018 has quashed the assessments for AYs 2010-11, 2011-12 & 2012-13 on the ground that none of the additions were based on any incriminating material and after relying upon the decisions of Hon'ble Delhi High Court in the case of **CIT (C)-III v. Kabul Chawla (Delhi) [2015] 380 ITR 573** and **Pr. CIT, Central 2, New Delhi vs. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals 2017 (5) TMI 1224 – Delhi High Court**. Thus, the additions which were made by the AO stood deleted.

6. Thereafter, the ld. Pr.CIT in its revisionary jurisdiction u/s 263 in the above assessment years passed the impugned order on the following points:-

“2 On perusal of case record and from Individual Transactions Statement (ITS), it has been found that the assessee during F.Y 2009-10 relevant to A.Y. 2010-11, has made the following transactions but not disclosed in the Income Tax Return. Assessing Officer has also not made any enquiry and verification of these transactions.

- (i) The transactions in commodity through national/Multi Commodity exchange of Rs.4160 Crores, were made during the F.Y 2009-10 relevant to A.Y 2010-11.**
- (ii) The transaction in shares of Rs.27,52,65,805/- were made during the year through Share India Securities limited.**

- (iii) As per ITS (individual transaction-statement), interest of Rs.4,62,75,542/- was accrued/received but interest of Rs.4,42,20,409/- was disclosed in ITR. The balance amount of Rs.20,55,133/- (4,62,75,542/- minus 4,42,20,409/-) was not disclosed.
- (iv) The following bank accounts were run and operated but transactions of these accounts were not been disclosed in the ITR :-

Bank name	Bank account no.	Total deposits (Rs.)
ICICI Bank Ltd.	521500164	1,52,33,010/-
ICICI Bank Ltd.	25505000150	6,00,000/-
ICICI Bank Ltd.	35305000974	5,70,000/-
ICICI Bank Ltd.	18601512155	2,00,000/-
ICICI Bank Ltd.	In various bank accounts	80,00,09,890/-
Total deposits		81,66,12,900/-

3 As per bank statement of M/s M S Enterprises, the following payments of Rs.7,41,03,321/- were received by M/s M S Enterprises from M/s Supreme Gold.

Date	Amount
22.01.2010	56,25,000/-
29.01.2010	44,55,700/-
09.02.2010	98,50,000/-
17.02.2010	93,00,000/-
31.03.2010	4,48,72,621/-
Total	7,41,03,321/-

3.1 However, these payments were not disclosed in the ITR. The AO has made addition of Rs.1,45,32,880/- u/s 69A of the Act on account of advance of money to M/s M S Enterprises. But the payment of remaining amounts of Rs.5,95,70,441/- (7,41,03,321-1,54,32,880) has not been enquired by the AO.”

7. Before Id. Pr.CIT, the assessee has raised this legal issue and submitted that, first of all, all the transactions of derivatives were duly disclosed in the books of account and disclosed in the profit & loss account and have been treated as part of sale and turnover of the assessee. The entire reply in response to the showcause notice had been incorporated in the impugned appellate order. Besides this, the assessee has also challenged that the points which have been raised in the show-cause notice are not based on any incriminating material and the decisions of Hon'ble Delhi High Court in cases of **Kabul Chawla** and **Meeta Gutgutia Prop. M/s. Ferns 'N' Petals** (supra) were referred to and relied upon. However, the Id. Pr.CIT said that these judgments are not related to proceedings u/s 263 of the Act. Finally, he held that order passed by the AO without making enquiries should have not been made and his observations made in the impugned order is as under :-

“8 In regard to commodity transactions through exchange, the assessee has submitted that net gain from these transactions of Rs.66,25,170/- was included in the sale and duly accounted for.

8.1 On this issue it is submitted that

a) The assessee has not submitted any documents or profit and loss account which shows that profit of Rs.66,25,170/- was earned from commodity transactions through commodity exchange.

b) Profit/loss in transactions in commodity through exchange needs to be reported separately because there is no income tax guidelines/provision or CA institute guideline which state that net gain/loss are to be clubbed in the sale of other items.

c) As per income tax Act, total sale and purchase are to be reported in the relevant columns of Income Tax return. As per guidelines of CA institute for Tax audit purpose, the total positive and negative of each transaction are to be

considered as sale for tax audit purpose. But the assessee neither follows the income tax provision nor the guideline of the CA institute.

d) Without prejudice to the above, even if it has been accepted that the net profit has been included in the sale, than the GP ratio, as determined in the assessment order dated 31.12.2017 by AO is to be recomputed as under because profit from transactions in commodity through exchange is separate from trading of bullion.

		Amount in Rs.
Sale		5291247476
Less credit from HHEC	2083397	
Gain from derivative transactions	6625170	8708567
Net Sale		5282538909
GP 0.40% as assessed by the AO		21130156
GP disclosed		12830816
Addition on account of enhancement of GP ratio (21130156 minus 12830816)		8299340
Net Gain on commodity transactions		6625170
Credit from HHEC		2083397
Total addition to be made (instead of Rs.84,79,929 on account of GP)		17007907

8.1.1 In view of above, the reply of the assessee is not accepted and rejected on this issue. The issue needs detailed enquiry and verification.

8.2 In regard to allegation of non-disclosure of Interest of Rs.20,55,133/-, the assessee has submitted that interest income of Rs 20,55,133/- has been included and clubbed with the currency premium charges. The breakup of accounting head of currency premium charge will be duly enclosed in our submission.

8.2.1 On this issue, it is submitted that the assessee has not provided the ledger account of currency premium charges. It has also been found that the assessee has disclosed the amount of interest received of Rs.4,42,20,409/- in his ITR separately. The interest paid is also claimed separately. Thus, the assessee's submission that interest income was clubbed with the currency premium charges is not credible. When the assessee is showing the interest income separately, why the undisclosed amount of interest as reported in the notice issued u/s 263, was included in the currency premium account? Hence, the assessee's reply is not accepted on this issue and rejected. The issue needs detailed enquiry and verification.

8.3 In regard to deposit in various bank accounts, as reported in the ITS, the assessee has stated that account no.25505000150, 35305000974, 18601512155 do not pertain to him. The transactions of Rs.80,00,09,890 was made in various accounts pertaining to him, as he has made transactions for more than Rs3.00 cr.

8.3.1 On this issue, it is submitted that the assessee has admitted that transactions of Rs.80,00,09,890/- was made in various bank accounts but assessee has not provided a single instance to show that the transactions have been recorded in the books of accounts. Hence the assessee's view is not acceptable and rejected. The issue needs to be verified by calling information from banks and the assessee.

8.4 The assessee has not submitted any reply on this issue of payment of Rs.5,95,70,441/- (7,41,03,321-1,54,32,880) to M/s. M S Enterprise and stated that the issue is subject matter of appeal. It shows that assessee has no explanation for the same.

8.5 In regard to initiation of penalty u/s 271AAB(1)(c) instead of 271(1)(c) of the Act, the assessee has not given any reply on this issue. Hence it shows that the assessee has not any objection on this issue.

9 The above facts show that the AO has not made any enquiry and verification on this issue. The AO has not even made enquiry and verification on the issues mentioned above.

9.1 Thus, It is absolutely clear that during the assessment proceedings for A Y 2010-11, AO has not made proper enquiry and verification of the issue mentioned above. There was no application of mind on issues in hand as narrated above. The assessment order passed u/s 153A1143(3) of the Act dated 31.12.2017 for AY 2010-11 is both erroneous & prejudicial to the interest of revenue. This has rendered assessment order "erroneous". If due to an erroneous order of the AO the revenue is losing tax lawfully payable by a person, it would be certainly prejudicial to the interest of revenue, as held in the case of CIT Vs Leisure Wear Exports Ltd. (2012) 341 ITR 166 (Del.). In case of Malabar Industrial Co. Ltd. Vs CIT (2000) 243 ITR 87 (SC) Hon'ble Apex Court held that there was no material to support the claim of appellant & yet AO accepted the entry in the statement of account in absence of any supporting material and without making any inquiry. It is incumbent on the officer to investigate the facts stated in the return. The order becomes erroneous if such enquiry has not b n made as held in case of Duggal & Co. Vis CIT (1996) 220 ITR 456 (Del.)."

8. Ld. PCIT has also invoked Explanation 2 to section 263 in his order and accordingly, he set aside the assessment to make the assessment de novo.

9. Before us, ld. counsel for the assessee had submitted point-wise reply of the issues referred to in the show-cause notice and the directions of the order passed u/s 263 by the ld. Pr.CIT and the grounds for all the assessment years which for the sake of ready reference is reproduced hereunder :-

Issues referred in the notice issued u/s 263	Direction in the order passed u/s 263	Basis of direction /order
The following transactions were made but not disclosed in ITR, further AO has not		In para 2 of notice PCIT stated that transactions in para 2(i) to para 2(iv) of notices as narrated in table were not disclosed in ITR and AO has

made enquiry and verification of these transactions.		not made verification and enquiries of these transactions. PCIT observations are not based on any incriminating material
The transactions in commodity through national/Multi Commodity exchange of Rs.4160 crores were made during the F.Y 2009-10 relevant to AY 2010-11	The assessee's reply that profit of Rs.66,25,170/- on derivatives transactions in commodity and shares was included in turnover needs detailed enquiry and verification (Para 8.8.1 and 8.1.1 at page 11-13 of the order passed u/s 263)	Information already on record. No incriminating material found in search action nor referred to as such by the PCIT. Merit The transactions of derivatives were conducted on screen based electronic trading on a recognized stock exchange through a recognized stock broker, which were fully disclosed.
The transaction in shares of Rs.27,52,65,805/- were made during the year through Share India Securities limited.	Same as above	Same as above
As per ITS (individual transaction statement), interest of Rs.4,62,75,542/- was accrued /received but interest of Rs.4,42,20,409/- was disclosed in ITR. The balance amount of Rs.20,55,133/- (4,62,75,542/- minus 4,42,20,409/-) was not disclosed.	The Assessee's reply that interest income of Rs.20,55,133/- was included in the account of currency premium charges needs detailed enquiry and verification. (Para 8.2 and 8.2.1 at page 13 of the order passed u/s 263)	Observation of the PCIT on the issue is not based on any incriminating material, it is based on the basis of information already available on record in the form of Individual Transaction statement (ITS). Merit The amount of interest income was duly declared in profit and loss account and thus fully disclosed.
The certain bank accounts were run and operated but transactions of these accounts were not disclosed in the ITR	The Assessee's reply that transactions of Rs.80,00,09,890/- were made in various bank accounts without providing detail needs to be verified from calling	The PCIT observation on the issue is not based on any incriminating material. Merit The assessee replied during proceedings u/s 263 that certain bank accounts stated in the notice u/s 263 as not

	information from banks and assessee (Para 8.3 and 8.3.1 at page 13 of the order passed u/s 263)	disclosed by him did not pertain to him and that all other transactions of Rs.80,00,09,890/- were disclosed in his books of accounts.
As per bank statement of M/s. M S Enterprises, certain payments of Rs.7,41,03,321/- were received by M/s. M S Enterprises from M/s. Supreme Gold but these payments are not disclosed in ITR.	The assessee has not made any reply on the issue (Para 8.4 page 13-14 of the order passed u/s 263)	The PCIT observation on the issue is not based on any incriminating material. The CIT(A) in her order also held that the transactions with M/s. M S Enterprises are not based on any incriminating material. Merit The transactions are duly disclosed in the regular audited books of accounts maintained by the assessee.
Penalty initiated u/s 271AAB(1)(c) instead of u/s 271(1)(c)	No reply from assessee (Para 8.5 page 14 of the order passed u/s 263)	The PCIT observation on the issue is not based on any incriminating material. Merit The direction on the issue of penalty is beyond the purview of provisions of section 263 of the Act.
The following transactions were made but not disclosed in ITR, further AO has not made enquiry and verification of these transactions		In para 2 of notice PCIT stated that transactions in para 2(i) to para 2(ii) of notice which are narrated in table which as per PCIT were not disclosed in ITR and AO has not made verification and enquiries of these transactions. PCIT observations are not based on about any incriminating material.
The transactions in commodity through national/multi-Commodity exchange of Rs.2,05,97,86,270/- were made during the F.Y. 2010-11 relevant to A.Y. 2011-12.	The assessee reply that transactions mentioned in point 2(i) of the notice do not pertain to him is not acceptable. The issue needs to be verified by calling information from exchange and broker. (Para 8 page 11 of	The PCIT observation on the issue is not based on any incriminating material. Merit The assessee replied during proceedings u/s 263 that the transactions stated in the notice u/s 263 as not disclosed by him did not pertain to him.

	the order passed u/s 263.)	
The certain bank accounts were run and operated but transactions of these accounts were not disclosed in the ITR.	The assessee's reply that transactions of Rs.79,75,000/- were made in various bank accounts without providing detail needs to be verified from calling information from banks (Para 8.3 at page 14 of the order passed u/s 263)	The PCIT observation on the issue is not based on any incriminating material. Merit The assessee replied during proceedings u/s 263 that certain bank accounts stated in the notice u/s 263 as not disclosed by him did not pertain to him and that all other transactions of Rs.79,75,000/- were disclosed in his books of accounts.
Certain additions and disallowances at the time of order passed u/s 143(3) of the Act, but no enquiry and verification made in order passed u/s 143(3)/153A of the Act.	No direction in order passed u/s 263.	No direction in order passed u/s 263. However, notice is also not based on any incriminating material
Penalty initiated u/s 271AAB(1)(c) instead of u/s 271(1)(c)	No reply from assessee (Para 8.4 page 14 of the order passed u/s 263)	The PCIT observation on the issue is not based on any incriminating material. Merit The direction on the issue of penalty is beyond the purview of provisions of section 263of the Act.
The interest accrued/ received was of Rs.46,88,05,206/- whereas interest of Rs.46,87,98,359/- was disclosed in ITR during the FY 2011-12 relevant to AY 2012-13. The AO has not made any enquiry and verification for balance interest of Rs.6,847/-.	The assessee has accepted that due to inadvertent error the interest of Rs.6,847/- in declaration of interest income could be added to the income of the assessee. (Para 8 page 8 of the order passed u/s 263.)	The PCIT observation on the issue is not based on any incriminating material.
The assessee has	The PCIT has stated	The PCIT observation on the

<p>claimed hedging loss of Rs.1,82,54,867/- and the same was disallowed by the AO. But, AO has not made any enquiry and verification about amount of investment and source thereof for making hedge transaction.</p>	<p>that reply of the assessee that source of payment for transactions of hedging loss in the personal bank account of the assessee is from M/s. Supreme Gold proprietorship of the assessee is not acceptable due to non-filing of bank statement of Supreme Gold. This issue needs enquiry and verification. (Last sub-para of para 8.3 at page 10 of the order passed u/s 263)</p>	<p>issue is not based on any incriminating material. Merit The transactions of derivatives were conducted on screen based electronic trading on a recognized stock exchange to a recognized stock broker, which were fully disclosed.</p>
<p>Certain addition and disallowances at the time of order passed u/s 143(3) of the Act, but no enquiry and verification made in order passed u/s 143(3)/153A of the Act.</p>	<p>No direction in order passed u/s 263.</p>	<p>No direction in order passed u/s 263. However, notice is also not based on any incriminating material.</p>
<p>Penalty initialled u/s 271AAB(1)(c) instead of u/s 271(1)(c).</p>	<p>No reply from assessee (Para 8.4 page 10 of the order passed u/s 263.</p>	<p>The PCIT observation on the issue is not based on any incriminating material. Merit The direction on the issue of penalty is beyond the purview of provisions of section 263 of the Act.</p>

10. In sum and substance, his core argument is that the order passed under section 263 in the above captioned years, i.e. Assessment Years 2010-11, 2011-12 & 2012-13 was not based on incriminating material found during the course of search as neither in the notice u/s 263 nor in the order passed u/s 263 any incriminating

material has been referred to. Thus, he submitted that the directions given by Pr.CIT are beyond the scope of assessments u/s 153A

11. On the other hand, ld. CIT DR has referred to in various written submissions filed during the course of hearing, however, nowhere he could rebut that any of the documents referred to by the ld. Pr.CIT in his order which can be said to be incriminating or found during the course of search. In sum and substance, this case was that during the course of survey, it was found that assessee has been suppressing sales and has not been disclosing correct profits. He strongly referred to observations of Pr.CIT made in paras 8 to 8.4 as noted above.

12. We have heard the rival submissions and perused the relevant findings given in the impugned order and material referred to before us. In this case, assessment u/s 153A/143(3) was completed wherein AO has made various additions on account of difference of GP rate, addition on account of interest, disallowance on account of currency premium charges etc. Exactly, the same very point has been raised by the ld. Pr.CIT in show-cause notice. Originally, the assessment order passed by the AO was subject to challenge in the first appeal wherein CIT has given a categorical finding that none of the additions made by the AO was on the basis of cross search and post search available with the AO. Certain relevant observations made by the CIT(A) in his order dated 19.12.2018, passed in the assessment years 2010-11, 2011-12 & 2012-13 as under :-

“10.2 The Assessing Officer while passing the impugned assessment orders u/s 153A rejected the books of account of the appellant and made estimated additions to the total income in all three assessment years. The details of the disallowance/ additions are being discussed in this order to find the facts of the case. The AO did not make any addition

on the basis of evidence found in the course of search or other post search material or information available with the AO which can be related to the evidence found. No assessment relating to all the three assessment years was pending as on the date of search.

.....

10.4 The appellant has submitted before me that out of the three assessment years, the AO had accepted book results in the original assessment orders for AYs 2011-12 & 2012-13 with some routine disallowances. The appellant has placed copies of the assessment orders passed u/s 143(3) of the Act, for assessment years 2011-12 and 2012-13 in its paper book filed before me. The appellant has also submitted that no assessment was pending on the date of search for the above three assessment years which could abate in view of the statutory provisions. The appellant also submitted during the course of proceeding before me that the Assessing Officer has not made any addition on the basis of incriminating seized material.

.....

10.7.2 From the above narration, it is discernable that the addition has been made on the basis of some information gathered during survey conducted on 23.07.2014. It may be seen that the addition has no reference to any incriminating seized material found or seized during the course of search & seizure action. It is to be mentioned here that survey dated 23.07.2014 had taken place much before the survey dated 20.07.2015 which was converted into search & seizure action subsequently .

.....

10.14 The jurisdictional High Court is clear on the point that the assessment cannot be arbitrary or made without any relevant or nexus with the seized material. The completed assessments can be reiterated in the absence of any incriminating material and the assessments or reassessments can be made in respect of abated assessments. Completed assessments can be interfered with by the AO while making the assessment u/s 153A only on the basis or some incriminating material unearthed during the course of search or requisition of document 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 assessments.

10.15 Further the jurisdictional High Court has followed the above decision in Pr. CIT vs. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals 395 ITR 526 (Del), The Appellant has informed me that the Hon'ble Supreme Court has not admitted SLP of the department against the judgment of the jurisdictional Delhi High Court in the case of Meeta Gutguua (supra), in view of which the judgment passed by the Delhi High Court has attained finality.

10.16 In view of the above facts and the decisions of the jurisdictional High Court, I hold that the additions / disallowances made by the AO in the impugned Assessment Orders are not sustainable in the eyes of law, Therefore, the additions / disallowances are deleted.”

13. Thus, the fate of the original assessment order at the first appellate stage was that the additions which were made by the AO, *firstly*, on account of difference in GP rate; *secondly*, addition on account of interest in the absence of details; *thirdly*, disallowance on account of currency premium charges; and *fourthly*, addition on account of interest income considered as income from other sources and deemed income u/s 69 of the Act were deleted on the ground that none of these additions were based on any incriminating material found during the course of search and all these assessments have attained finality.

14. Now, on bare perusal of the impugned order, we find that Pr.CIT stated that the assessee should have reported profit from commodity transactions separately and should not have mixed or clubbed with sale of other items and AO should recompute the profit from transactions in commodity through exchange separately from the

trading of bullion. He has further observed that interest income of Rs.20.55 lakhs has been included and clubbed with the currency premium charges and assessee has disclosed interest received of Rs.4.42 crores separately and also the interest paid has been claimed separately, thus, held that interest income clubbed with the currency premium charges was not credible. Finally, he held that with regard to deposits in various bank accounts as reported in ITS as observed in paras 8.3 and 8.3.1 to 8.4, the assessee has no explanation. First of all, nowhere it is pointed out that as to how and why the Assessment order passed by the AO is prejudicial to the interest of Revenue and what are contemplating profits which should have been disclosed separately for the transactions of commodity exchange and trading of bullion; and secondly, the interest received which has been included and clubbed with currency premium charges should have been disclosed and interest received. Insofar as, the deposits of other transactions are concerned, nowhere there is finding of Pr.CIT that it was not disclosed in the books of account which is not part of the turnover by the assessee.

15. In any case, none of these accounts have been rebutted by the Id.CIT DR that these are based on any incriminating material which is the condition precedent for making reassessment or additions in the assessments which have attained finality and are not reckoned as abated assessments in view of second proviso to section 153A. It is now a well settled law in view of decisions of **Hon'ble Delhi High Court in the cases of Kabul Chawla and Meeta Gutgutia Prop. M/s. Ferns 'N' Petals** supra) that in cases of assessments which are unabated, the scope of additions is only when any incriminating material pertained to undisclosed income is found. Otherwise, the

assessed income attains finality and should be assessed income u/s 153A. Precisely for this reason alone, the ld. CIT (A) in the original quantum proceedings has deleted the additions. In case, Ld. Pr.CIT wanted to revise the assessments which are adjudicating upon by the ld. CIT, he should at least point out that there are certain incriminating materials which neither AO nor ld. CIT (A) has looked into. In absence of such findings, he cannot set aside the assessments for making de novo on the points mentioned above which are not known during the course of search. Accordingly, we agree with the contention of the ld. counsel for the assessee that the points raised by the ld. Pr.CIT in the impugned order do not have any legal basis to stand. Accordingly, the order of ld. Pr.CIT is set aside/quashed.

16. In the result, the appeals filed by the assessee are allowed.

Order was pronounced on 17th day of February, 2022.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated: 17.02.2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT-12, Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.