

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T. A. Nos. 161 to 163/Asr/2022**

Assessment Years: 2014-15, 2015-16 & 2019-20

Sh. Tarsaim Singh Jamwal,  
H. No. 73, Sector-B,  
Sainik Colony, Jammu  
(J&K)-180015  
[PAN: ACIPJ 8277A]  
**(Appellant)**

**V.** Deputy Commissioner of  
Income Tax, Central Circle,  
Aayakar Bhawan, Railhead  
Complex, Panama Chowk,  
Jammu  
**(Respondent)**

Appellant by : Sh. Joginder Singh, CA

Respondent by : Sh. S. R. Kaushik, CIT- DR

Date of Hearing : 27.04.2023

Date of Pronouncement : 12.05.2023

**ORDER**

**Per Bench:**

These three appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated 21.07.2022 in respect of Assessment Years 2014-15, 2015-16 and 2019-20.

2. The assessee has raised the following grounds of appeal in ITA No. 161/Asr/2022:

- "1. That on the facts and circumstances of the case, the order passed by the Ld. CIT(A)-5, Ludhiana is bad both in the eye of law and on facts.*
- 2. That on the facts and in the circumstances of the case, the Ld. CIT(A)-5 Ludhiana has confirmed the additions made by the Ld. AO in the Assessment Order passed in absence of seizure of any incriminating document belonging to the appellant. Neither any addition or disallowance was made on the basis of alleged seized documents nor any reference to seized material was made in connection with additions/ disallowances and also ignored the judgment of Hon'ble Delhi High Court in the case of Kabul Chawla (2016) 380-ITR-573 (Del).*
- 3. That on the facts and in the circumstances of the case, the Ld. CIT(A)-5, Ludhiana has erred in confirming the addition of Rs.7,40,000/- on merit as complete source of cash deposit have been explained.*
- 4. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal."*

3. Grounds of appeal in ITA No. 162/Asr/2022

- "1. That on the facts and circumstances of the case, the order passed by the Ld. CIT(A)-5, Ludhiana is bad both in the eye of law and on facts.*
- 2. That on the facts and in the circumstances of the case, the Ld. CIT(A)-5 Ludhiana has confirmed the additions made by the Ld. AO in the Assessment Order passed in absence of seizure of any incriminating document belonging to the appellant. Neither any addition or disallowance was made on the basis of alleged seized documents nor any reference to seized material was made in connection with additions/ disallowances and also ignored the judgment of Hon'ble Delhi High Court in the case of Kabul Chawla (2016) 380-ITR-573 (Del).*

3. *That on the facts and in the circumstances of the case, the Ld. CIT(A)-5, Ludhiana has erred in confirming the addition of Rs.17,10,000/- on merit as complete source of cash deposit have been explained.*
4. *That on the facts and circumstances of the case, the Id. CIT(A)-5, Ludhiana has erred in confirming the addition of Rs.6,00,000/- on merits as complete source of cash investment in the purchase of agricultural land have been explained.*
5. *The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.”*

#### 4. Grounds of appeal in ITA No. 163/Asr/2022

- “1. *That on the facts and circumstances of the case, the order passed by the Ld. CIT(A)-5, Ludhiana is bad both in the eye of law and on facts.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A)-5 Ludhiana has confirmed the additions made by the Ld. AO in the Assessment Order passed in absence of seizure of any incriminating document belonging to the appellant. Neither any addition or disallowance was made on the basis of alleged seized documents nor any reference to seized material was made in connection with additions/ disallowances and also ignored the judgment of Hon'ble Delhi High Court in the case of Kabul Chawla (2016) 380-ITR-573 (Del).*
3. *That on the facts and in the circumstances of the case, the Ld. CIT(A)-5, Ludhiana has erred in confirming the addition of Rs.2,50,000/- on merit as complete source of cash deposit have been explained.*
4. *The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.”*

5. The appellant has filed following common and specific Additional Legal Ground in all the three captioned appeals, duly supported with an affidavit dated 25.04.2023 as under:

*"1. On the facts and circumstances of the case and in law the assessment order made u/s 153C of the Act is illegal and void ab-initio and thus liable to be quashed on the ground that the additions made by the Ld. AO in the assessment order passed u/s 153C and confirmed by the Ld. CIT(A) are not based on any incriminating documents/ papers seized during the course of search operation of searched person which belongs to the assessee. Held by the Hon'ble Supreme Court in the recent judgment dated 24.04.2023 in the case of PCIT, Central-3 v/s Abhisar Buildwell Pvt. Ltd. Civil Appeal No.6580 of2021.*

*2. On the facts and circumstances of the case and in law, the Ld. AO recorded his satisfaction u/s 153C without referring any incriminating material/ documents which pertains to the assessee and the impugned assessment order passed by the Ld. AO are without jurisdiction and void abinitio and thus liable to the quashed.*

**Prayer:**

*The aforesaid ground of appeal is purely on legal issue and facts in relation to the same are already available on record. The additional ground of appeal is being raised by the appellant on being recently advised by the Legal counsel and the omission to raise the aforesaid additional ground of appeal earlier was neither wilful nor deliberate.*

*The additional ground of appeal call for being admitted and adjudicated on merits in view of the discretion vested in your Honour under Rule 11 of the Income tax Appellate Tribunal Rules, 1963, the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited v/s CIT-229 ITR 383 and the decision of the Delhi High Court in the case of DCM Benetton India Ltd. v/s CIT-173 Taxman-283.*

*In view of the aforesaid legal position, it is respectfully submitted that since in the present case, the additional ground raised involve a purely legal issue and facts*

*in relation to the same are already on record, the appellant should not be precluded from raising the ground at this stage.*

*The appellant trusts that its request shall merit sympathetic consideration.”*

## **A F F I D A V I T**

### **E-stamp Certificate No. IN-JK 26506286782054V**

***I Tarsaim Singh Jamwal Son of Late Shri Waryam Singh R/o House No.73, Sector-B, Sainik Colony, Jammu do hereby solemnly affirm and declare as under:-***

1. *That the returns of income were originally filed year after year under the provisions of section 139 of the Income tax Act, 1961.*
2. *That on the basis of search and seizure action u/s 132 of the Income tax Act, 1961 which were conducted in the case of Mrs. Deepshikha Jamwal, being one of the partners of M/s Simula Group on 27.06.2019, certain books of account/ documents were seized and on the basis of satisfaction note it was recorded that the documents seized have a bearing on the determination of the total income and thus notices u/s 153C of the Income tax Act, 1961 were issued for different assessment years on 25.02.2021.*
3. *That the assessments have been completed for different assessment years, without appreciating the fact that no incriminating material/ documents were pertains to me and assessments have been completed u/s 153C of the I.T. Act, 1961 on routine matter, therefore, the assessment made are without any jurisdiction.*
4. *That specific additional ground of appeal is being raised to challenge the validity of assessment made u/s 153C of the Income tax Act, 1961 in absence of incriminating documents, in view of the recent judgment of the Hon'ble Supreme Court in the case of PCIT, Central-3 v/s Abhisar Buildwell Pvt. Ltd. dated 24.04.2023. That assessment made in absence of incriminating material of unabated assessment is liable to be quashed.*

**VERIFICATION:**

*Verified today the 25th day of April, 2023 and that the averments/made in the above affidavit are true and correct to the best of my knowledge and belief and nothing has been kept back or concealed.”*

6. In support of the additional ground of appeal, the counsel rely on the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell P. Ltd. where it has been held vide para 13 and 14, as under:

*“13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of **Kabul Chawla (supra)** and the Gujarat High Court in the case of **Saumya Construction (supra)** and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

*14. In view of the above and for the reasons stated above, it is concluded as under:*

- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) all pending assessments/reassessments shall stand abated;*
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search*

*and the other material available with the AO including the income declared in the returns; and*

- iv) *in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

*The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No. Cost.”*

7. The additional ground raised in these three appeals are being requested to be admitted and adjudicated on merits in view of the discretion vested with the Tribunal under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963, and also in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited v/s CIT-229 ITR 383 and the decision of the Delhi High Court in the case of DCM Benetton India Ltd. v/s CIT-173 Taxman-283. Since, in the present

appeals, the additional ground raised by the appellant involve, purely a legal issue, in relation to the facts on record, and hence, it is accordingly, admitted to be adjudicated first.

8. At the outset, the counsel for the assessee submitted that on the basis of search and seizure action 132 of the Income Tax Act, 1961 was conducted in the case of Simula Group of cases on 27.06.2019, the case was centralized and the jurisdiction of the case was transferred to the Central Circle, Jammu vide order passed u/s 127 of the Act by the Pr. CIT, J&K, Jammu vide order No. Pr. CIT/J&K/JMU/3/2019-20/48 dated 30.04.2020. During search in the case of Mrs. Deepshikha Jamwal, certain books of accounts/ documents were seized and the information contained therein was alleged to be pertaining to the assessee and on the basis of satisfaction note it was recorded that the documents seized have a bearing on the determination of the total income of the appellant assessee. Subsequently notice u/s 153C of the Income Tax Act, 1961 dated 25.02.2021 was received for the assessment year 2014-15. During the course of the assessment proceedings as well as appellate proceedings, it was submitted that no notice u/s 153C can be issued in absence of any incriminating material. It was further submitted that the issue of notice u/s

153C for the year under consideration is totally unjustified particularly when there is no incriminating document/ material as would also be evident from the assessment order also. The assessment was completed vide order dated 15.03.2022 passed u/s 153C of the Income Tax Act, 1961 and as per the said order, the income was assessed at Rs. 13,09,870/- after making addition of Rs.7,40,000/- u/s 69A of the Income Tax Act, 1961 in a routine manner in respect of unabated assessment for Assessment Year 2014-15 without referring to incriminating documents which is illegal and unjustified.

9. Being aggrieved with the assessment orders, the assessee filed appeal before the Ld. Commissioner of Income tax (Appeals)-5, Ludhiana and the Appellant authority vide order dated 21/07/2022 passed in Appeal No.10755/IT/CIT(A)-5/Ldh/2013-14 confirmed the addition made by the Ld. AO and dismissed the appeal of the Appellate without taking cognizance and appreciating the full facts of the case. The Ld. Counsel contended that in view of the recent judgment of the Hon'ble Supreme Court in the case of PCIT, Central-3 v/s Abhisar Buildwell Pvt. Ltd. dated 24.04.2023, in the instant case that assessments made in absence of incriminating material in respect of unabated assessments are liable to be quashed.

10. Per contra, the Ld DR although supported the impugned order, however, he has not filed any documentary evidence or citation in rebuttal to the contention of the counsel.

11. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, there was no incriminating document/ material found and seized against the appellant assessee, as it is further evident from the assessment order itself where addition has been made without referring to any incriminating documents. The Ld. AR contended that during the course of the assessment proceedings as well as appellate proceedings, that no notice u/s 153C can be issued in absence of any incriminating material. In our view, the issue of notice u/s 153C of the Income Tax Act, for the year under consideration is absolutely unjustified in the absence of incriminating document/ material.

12. The Ld. CIT(A) failed to appreciate the facts on record that there was no incriminating document seized and that the assessment was completed vide order dated 15.03.2022 passed u/s 143(3)/153C of the Income Tax Act, 1961, whereby assessing total income at Rs. 13,09,870/- after making addition of Rs.7,40,000/- u/s 69A of the Income Tax Act, 1961 in a routine

manner in respect of unabated assessment without referring to incriminating documents is illegal and unjustified. In our view, the impugned order of the CIT(A) are perverse to the facts on record and bad in law.

13. On similar facts, in the recent Judgement, the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd. (Supra) had observed that in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961.

14. In the latest judgment, the Hon'ble Supreme Court in the case of Dy. Commissioner of Income Tax, Central Circle- 20 vs. M/s U.K Paints (OVERSEAS) LTD. In Civil Appeal No. 6634 of 2021 vide judgement dated April 25, 2023 had observed that as found by the High Court in none of the cases any incriminating material was found during the search either from the Assesse or from third party. In that view of matter, as such,

assessments under Section 153-C of the Act are rightly set aside by the High Court.

15. Respectfully, following the principle laid down by the Hon'ble Apex Court, in the case of M/s U.K Paints (OVERSEAS) LTD (Supra), we hold that the impugned order of the CIT(A) to be perverse to facts on record and bad in law as the assessment order passed by the Ld. AO is without jurisdiction and *void ab initio*. Accordingly, the impugned orders of the revenue authorities are quashed.

16. On parity of fact, our observation and finding given in ITA No. 161/Asr/2022 shall squarely applicable in cases of ITA No. 162/Asr/2022 and 163/Asr/2022 in mutatis mutandis.

17. In the result, all the three appeals of the assessee are allowed.

*Order pronounced in the open court on 12.05.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order