

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.996/Ind/2019
(Assessment Year:2008-09)

Smt. Meha Jain 40, Jay Nagar, Jilha Peth jalgaon Maharashtra (Appellant / Assessee)	vs.	DCIT(Central) Bhopal (Respondent/ Revenue)
PAN: AEIPJ 3170 N		
Assessee by	Shri P.D. Nagar, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	18.05.2023	
Date of Pronouncement	24.05.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 29.07.2019 of Ld. Commissioner of Income Tax (Appeals) (in short Ld. CIT(A)-3, Bhopal for Assessment Year 2008-09.

2. There is a delay of 30 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee. The Ld. AR of the assessee has submitted that in the case of the assessee regular assessment was completed u/s 143(3) on 29.12.2010 and thereafter the assessment was reopened u/s 148 of the Act on 22.03.2013. The reassessment proceedings were pending and in the meantime there was a search and seizure action u/s 132(1) of the Income Tax Act carried out at the residence of the assessee on 16.05.2013

which was concluded on 31.05.2013. Due to the search and seizure action the reassessment proceedings were also centralized along with assessment u/s 153A of the Act. The reassessment proceedings were completed on 19.02.2014 by DCIT (Central) Bhopal and thereafter the Pr. CIT (Central) Bhopal vide its order dated 3rd July 2015 passed u/s 127 of the Act transferred the case of the assessee to DCIT(Central) Jabalpur. The assessment u/s 153A r.w.s. 143(3) for the block period A.Y.2008-09 to A.Y.2013-14 was finalized by the DCIT (Central) Jabalpur on 15.03.2016. In the meantime the assessee preferred an appeal against the order passed u/s 143(3) r.w.s. 147 before the Ld. CIT(A), Bhopal. The hearing was attended by authorized representative of the assessee and the order was passed by the Ld. CIT(A) on 29.07.2019. The Ld. AR has further submitted that there were various proceedings scattered at various jurisdictions at different locations and there were more than one authorized representative attending the assessments and appeal proceedings at different places. This created a difficulty in communication and coordination between the assessee and the authorized representatives. He has thus pleaded that due to the fact that multiple assessment proceedings as well as appeal proceedings were pending at different places the assessee could not immediately gather the requisite documents lying at different places for the purpose of filing an appeal before this Tribunal against the impugned order passed by the Ld. CIT(A). 'A' considerable time has elapsed in this process and this has cause a delay of 30 days in filing an appeal. He has pleaded that the delay in filing the appeal is neither intentional nor wilful but due to facts and circumstances as explained. Hence the AR has prayed that the delay in filing the appeal may be condoned and the appeal of the assessee is decided on merits.

3. On the other hand, Id. DR has fairly submitted that he has no objection if delay in filing the appeal is condoned.

4. We have considered rival submissions as well as relevant material on record. We have also gone through the contents of the affidavit filed by the

assessee wherein the assessee has explained cause of delay in filing the present appeal and given the relevant details of multiple proceedings pending at different jurisdiction and locations. There is no dispute that the assessee was facing multiple proceeding of assessment u/s 143(3) r.w.s. 147 of the Act as well as proceeding u/s 153A r.w.s. 143(3) of the Act. Simultaneously, the assessee filed the appeal against the order passed u/s 143(3) r.w.s. 147 before the Ld. CIT(A) and at the same time assessment proceeding u/s 153A of the Act were also going on and jurisdiction of the assessee was also transferred from the DCIT, Bhopal to DCIT(Central) Jabalpur vide order dated 3rd July 2015 passed by the Pr. CIT u/s 127 of the Act. Thus, it is clear that the assessee was facing multiple proceedings of assessment and also pursuing the appellate proceedings before the Ld. CIT(A) and therefore, we are satisfied that the assessee was having a reasonable cause being time consumption in collecting relevant documents lying with different authorized representative at different locations for a delay of 30 days in filing the present appeal. Accordingly, in the facts and circumstances of the case and in the interest of justice the delay of 30 days in filing present appeal is condoned. The assessee has raised following grounds of appeal:

“1. The learned CIT(A) failed to consider and adjudicate upon the additional ground raised by the appellant that under the facts and circumstances of the case and in law, the impugned order passed u/s 147 r.w.s. 143(3) is in contravention of the provisions of sec. 153A which stipulate that the pending assessment proceedings on the date of initiation of search stand abated and hence the assessment is void-ab-initio.

2.The learned CIT(A) failed to appreciate that the reopening is unwarranted and is bad in law as no new tangible material came in the possession of the Assessing Officer so as to form a belief that income has escaped assessment. Further, the appellant had disclosed fully and truly all material facts necessary for the assessment, during the course of the assessment proceedings u/s 143(3).

3.The learned CIT(A) erred in upholding the reassessment which was framed without first disposing of the objections raised by the appellant challenging the reasons to believe.

4.The learned CIT(A) erred in upholding the denial of loss of Rs. 6,36,138/- from trading in shares / derivatives and addition of deemed gross profit on alleged suppressed sales amounting to Rs. 1,58,802/-

5.The learned CIT(A) failed to appreciate the fact that the loss from trading in shares and derivatives Rs. 6,36,138/- claimed by the appellant in the return of income has been duly accounted by the appellant in her books of accounts and hence the denial of such loss simply because it was not debited to profit and loss account is without any basis and blatantly false.

6.The learned CIT(A) erred in upholding the contention of the 1,40,431 Assessing Officer that the loss from trading in shares / derivatives is a speculation loss and since the same was not claimed as speculation loss in the return of income (although claimed as a non-speculative loss), the same is not allowed to be carried forward.

7.The learned CIT(A) erred in upholding the addition of Rs. 1,58,802/- equivalent to estimated gross profit on alleged suppressed sales. The learned CIT(A) erred in concluding that the sales are suppressed on account of difference in sales amount as per sales register and as per trading account despite the fact that the appellant had duly reconciled the difference with the help of supporting documents.

8.The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing.”

5. Ground No.1 is regarding validity of the assessment order passed u/s 147 r.w.s. 143(3) as the assessment proceeding pending on the date of search and seizure action on 16.05.2013 stood abated in view of 2nd Proviso to section 153A(1) of the Act and consequently the assessment order passed u/s 143(3) r.w.s. 147 on 19.02.2014 is invalid and liable to be quashed. He has referred to the notice issued u/s 148 on 22.03.2013 and submitted that thereafter a search and seizure action u/s 132(1) was carried on 16.05.2013 when the reassessment proceedings were pending and consequently the same stood abated and merged with the assessment proceedings u/s 153A of the Act. The assessee raised this ground before the Ld. CIT(A) and contended that the AO did not have power and jurisdiction to pass an order u/s 143(3) r.w.s. 147 when the notice u/s 153A for the same assessment year was already issued. However, the Ld. CIT(A) did not adjudicate this ground while passing the impugned order.

6. On the other hand, Ld. DR has not disputed the relevant facts including the fact that the reassessment proceedings u/s 147 of the Act were pending on the date of search i.e. 16.05.2013, however, he has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as relevant material on record. The relevant facts emerging from records are that the original assessment in case of assessee for the assessment year 2008-09 was completed on 29.1.2010. Thereafter the assessment was reopened by the AO by issuing notice u/s 148 on 22.03.2013. Further, there was a search and seizure action u/s 132(1) of the Act in the case of the assessee on 16.05.2013. Thus, it is clear that on the date of search i.e. 16.05.2013 the reassessment proceedings initiated vide notice u/s 148 dated 22.03.2013 were pending. The reassessment proceedings were completed u/s 147 r.w.s. 143(3) on 19.02.2014 against which the assessee filed an appeal before the Ld. CIT(A). The notice u/s 153A was issued by the AO on 01.10.2015. In response to said notice the assessee filed return of income on 07.01.2016. The assessment order u/s 153A r.w.s. 143(3) was passed on 15.03.2016. Since appeal against the order passed u/s 147 r.w.s. 143(3) was pending before the Ld. CIT(A) which was decided by the Ld. CIT(A) vide impugned order dated 29th July 2019. The above stated facts are not in dispute and therefore it is clear that reassessment proceedings initiated vide notice u/s 148 dated 22.03.2013 were pending on the date of search i.e. 16.05.2013. Accordingly, reassessment proceedings pending on the date of search stood abated by virtue of 2nd proviso to section 153A(1). For the sake of completeness section 153A(1) with proviso is quoted as under:

Notwithstanding 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 under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer 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 falling within six assessment

years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other 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 Assessing Officer 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 section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless

(a) the Assessing Officer has in his possession books of account or de documents or evidence which reveal that the income, represents the form of asset, which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years, (b) the income referred to in clause (a) or part thereof has e assessment for such year or years; and (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.-For the purposes of this sub-section, the expression 'relevant assessment year' shall mean an assessment year preceding the assessment relevant to the previous year in which search is conducted or requisition is m which falls beyond six assessment years but not later than ten assessment yea from the end of the assessment year relevant to the previous year in which set is conducted or requisition is made.

Explanation 2-For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities and advances, deposits in bank account.]

8. There is no quarrel on the point that the pending assessment as on the date of search got abated and the jurisdiction of the AO to make original assessment and assessment u/s 153A merges into one. As per the new/amended regime of block assessment u/s 153A only one assessment shall be made separately for each of the six assessment years on the basis of the findings of search and any other material existing or brought on record of the AO. The assessments or reassessments which stand abated in terms of 2nd proviso of section 153A(1) of the Act are required to be made by the AO as his original jurisdiction to frame the assessment. In the provision of section 153A(1) the term 'assess' has been used in the context of an abated assessment proceedings and 'reassess' has been used for completed assessment proceedings which would not abate by virtue of search as they are not pending on the date of initiation of the search. The assessment or reassessment pending on the date of search shall abate and total income for such assessment year shall have to be computed by the AO as a fresh exercise. In another words there will be only one assessment order in respect of each of the six assessment years "in which both disclosed and undisclosed income would be brought to tax". Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment u/s 153A merges into one and consequently only one assessment shall be made. Therefore, a mandate is cast upon the assessing officer as per the first proviso to section 153A(1) that the assessing officer shall assess or reassess the total income in respect of each assessment years falling within such six assessment years and the assessment or reassessment as the case may be relating to the assessment years pending on the date of search u/s 132 or requisition u/s 132A shall abate and consequently those pending assessment proceedings gets merged with the proceedings u/s 153A of the Act. Sub-section (2) of section 153A of the Act provides that if any proceedings or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal proceedings then the assessment or reassessment relating to the assessment years which is abated under 2nd proviso would stand revived.

9. Therefore, in the case on hand the pending reassessment proceedings u/s 147 of the Act got abated by virtue of 2nd proviso to section 153A(1) and scope and ambit of assessment proceedings u/s 153A would cover the assessment as could have been passed u/s 147 of the Act because the proceedings u/s 147 will merge with the scope and ambit of the assessment u/s 153A of the Act. Thus, the jurisdiction of the AO to make the original assessment and assessment u/s 153A of the Act, so far as pending assessment are concerned, merges into one and consequently only one assessment shall be made on the basis of the finding of the search and any other material existing or brought on record of the AO. This proposition has been confirmed by the Hon'ble Supreme Court in case of Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. 149 taxman.com 399 in para 11 to 14 as under:

11. As per the provisions of [Section 153A](#), in case of a search under [Section 132](#) or requisition under [Section 132A](#), the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to [Section 153A](#), the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under [Section 132](#) or making of requisition under [Section 132A](#), as the case may be, shall abate. As per sub-section (2) of [Section 153A](#), if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or [section 153](#), the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of [Section 153A](#) of the Act, 1961, in case of a search under [Section 132](#) or requisition under [Section](#)

132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

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 costs.

10. Thus, once the reassessment proceedings initiated vide notice u/s 148 dated 22.03.2013 stood abated by virtue of search and seizure action u/s 132(1) carried out on 16.05.2013 then the reassessment order dated 19.02.2014 passed by the AO u/s 147 r.w.s. 143(3) is illegal and *void-ab-initio* and liable to be quashed. We order accordingly.

11. Since we have quashed the assessment order being illegal and void-ab-initio therefore, we do not propose to go to the other grounds of appeal which become infructuous.

12. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 24.05.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 24.05.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore