

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'E' NEW DELHI]**

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 3782/DEL/2014 (A.Y. 2007-08)

Manjeet Kaur Saran. B-53, B-1 Community Centre, Janakpuri, New Delhi PAN No. AVCPS8638P (APPELLANT)	Vs.	ACIT Central Circle-4 New Delhi (RESPONDENT)
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Assessee by :	Ms. Gunjan Jain, CA
Department by:	Ms. Sarita Kumari, CIT DR

Date of Hearing	31.05.2023
Date of Pronouncement	13.06.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 31/12/2013 passed by the CIT(A)-XXXIII, (hereinafter referred to 'CIT(A)') New Delhi for assessment year 2007-08.

2. The assessee has raised the following ground of appeal :-

1. *“Under the facts and circumstances of the case, the addition of Rs.14,25,000/- on account of unexplained cash shortages made by the Ld. Assessing Authority and confirmed by Id. First Appellate Authority is grossly injudicious and bad at law.*
2. *Under the facts and circumstances of the case, the assessment made u/s 153A of the Act is injudicious and not in accordance with the provisions of the Income Tax Act, 1961 as the case of the appellant for the relevant year is a completed assessment case and during the course of search operation conducted u/s 132 of the Act, the appellant was not found to be in possession of any undisclosed money or other valuables nor any incriminating documents were found which could form the basis for the assessment of undisclosed income of Rs. 4,25,000/- in the case of the assessee.*
3. *Under the facts and circumstances of the case, the allegation of the ld. first appellate authority that no return u/s 139 was filed by the appellant and the only return filed by the assessee was under section 153A of the Act, is against the facts of the case and without verification of complete records.*
4. *Under the facts and circumstances of the case, the ld. first appellate authority has grossly erred in concluding that the case of the appellant for the relevant year is not a completed assessment case.*
5. *Under the facts and circumstances of the case, the ld. first appellate authority has grossly erred in alleging based on incriminating documents found in the cases of other assessees belonging to HBN group that the use of unaccounted income for source of unexplained cash credit in appellant’s hands cannot be ruled out, without pointing out any incriminating document in the case of appellant which could form the basis of addition of 214,25,000/- in the case of the appellant.”*

3. Brief facts of the case as per the records, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out in HBN Group on 20-11-2009. The group was engaged in diverse businesses ranging from dairy development and marketing of dairy products; real estate development, home loan finance, and running a broadcast channel under the brand 'CNEB', through various companies. The group was mainly controlled by Sh. Harmender Singh Saran, who was the Chairman of HBN group. Assessee is the wife of Sh. Harmender Singh Saran. Search & seizure proceedings u/s 132 of the Act were initiated against the assessee also. Notice u/s 153A of the Act was issued on 02-06-2010 requiring the assessee to file her return of total income. In response thereto, return declaring income of Rs. 2,76,980/- was filed on 22/11/2010. During the year assessee declared income from salary received from M/s HBN Dairies & Allied Ltd. On 16-12-2011, the AR of the assessee filed a copy of personal cash book of the assessee before the A.O. Unexplained shortage of cash in the cash book has been worked out at Rs. 14,25,000/- on 12-12-2006. Thus, the A.O. made addition of Rs. 14,25,000/- to the total income of the assessee on account of income from undisclosed sources vide Assessment order dated 23/12/2011 u/s 153A of the Act. Aggrieved by the assessment order dated 23/12/2011, the assessee preferred an appeal before the CIT(A), the Ld.CIT(A) vide order dated 31/12/2012 dismissed the Appeal filed by the assessee.

4. As against the dismissal of the Appeal by the CIT(A), the assessee preferred the present appeal on the grounds mentioned above. The Ld. Counsel for the assessee argued on the ground No. 2 and contended that there is no incriminating material found during the search and the addition made by the A.O. which has been sustained by the CIT(A) in the absence of any incriminating material found during the search, invoking the provisions of Section 153A for the year under consideration is illegal. Further Ld. AR relied on the judgment of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax Vs. Abhisar Build Well Pvt. Ltd. Civil Appeal No. 6580/Del/2021 dated 24/04/2023.

5. Per contra, the Ld. DR vehemently contended that the order of the CIT(A) is well reasoned which requires no interference.

6. We have heard both the parties, perused the material available on record and gave our thoughtful consideration.

7. During the assessment proceedings while making the addition the Ld. A.O. has not referred to any incriminating material found during the search, the addition has been made based on the cash books produced by the Assessee during the assessment proceedings which reads as follows:-

“A search and seizure operation u/s 132 of the I.T Act, 1961 was carried out in HBN Group on 20-11-2009. The group is engaged in diverse businesses ranging from dairy development and marketing of dairy products; real estate development, home loan finance, and

running a broadcast channel under the brand 'CNEB', through various companies. The group is mainly controlled by Sh. Harmender Singh Saran, who is the Chairman of HBN group. Assessee is the wife of Sh. Harmender Singh Saran. Search & seizure proceedings u/s 132 of the Act were initiated against the assessee also.

2. Notice u/s 153A was issued on 02-06-2010 requiring the assessee to file her return of total income. In response thereto, return declaring income of Rs. 2,76,980/- was filed on 22/11/2010. During the year assessee has declared income from salary received from M/s HBN Dairies & Allied Ltd.

3. On 16-12-2011, the AR of the assessee filed a copy of personal cash book of the assessee. Unexplained shortage of cash in the cash book has been worked out at Rs. 14,25,000/- on 12-12-2006. I therefore made an addition of Rs. 14,25,000/- to the total income of the assessee on account of income from undisclosed sources.”

8. The Ld.CIT(A) while dismissing the Appeal has observed as under:-

”3.3.Decision

“I have perused the assessment order, written submission of Ld. AR along with the paper book and her arguments. The main argument in nutshell is that the addition be made u/s 153A without any incriminating materials gathered during the search and seizure operation u/s 132 as no notice u/s 143(2) was issued within the prescribed period of 12 months, on original return filed u/s 139. Therefore, the assessment proceedings, u/s 143(3) comes to an end and matter becomes final and hence cannot be reopened u/s 153A unless incriminating material is found during the search and seizure

operation. I have perused the paper book which contains the copy of acknowledgments of return of income filed. The date was filing of such return of income is as under-

<i>Sr. No.</i>	<i>A.Y</i>	<i>Date of filing of Return of Income</i>
<i>1.</i>	<i>2005-06</i>	<i>22.11.2010</i>
<i>2.</i>	<i>2006-07</i>	<i>22.11.2010</i>
<i>3.</i>	<i>2007-08</i>	<i>22.11.2010</i>
<i>4.</i>	<i>2008-09</i>	<i>22.11.2010</i>
<i>5.</i>	<i>2009-10</i>	<i>22.11.2010</i>
<i>6.</i>	<i>2010-11</i>	<i>31.03.2011</i>

Ld. AR has filed acknowledgement of Return of Income in support of its claim that return for various Assessment years. These are the returns filed subsequent to issuance of return u/s 153A. The Ld.AR during the appellate proceeding has not filed any evidence of filing original/belated return of income u/s 139. Therefore, it cannot be established that the appellant has filled return & the same was processed u/s 143(1) & no notice u/s 143(2) was issued. Therefore, the same may be treated as closed assessment. In written submission, the Ld.AR has only claimed that return of Income filed was processed u/s 143(1) & no notice was issued u/s 143(2). Ld. AR has not mentioned even date of filing of return of income & date of processing of return u/s 143(1) in absence of any evidence of filing when of original/belated return & out incising yen the day in written submission, it is concluded that the appellant has not filed original/belated return. Therefore, the claim that the assessment was closed before the search proceeding not substantiated.

Without submitting any evidence for earlier returns filed or assessment proceeding, Ld AR has claimed that closed assessment has been reopened u/s 153A of I.T. Act Assessment year 2010-11 is the search assessment year where the assessment has been made

u/s 153A r.w.s. 143(3). Being search assessment year the assessment was to be framed u/s 143(3). For this A.Y. Ld. AR has not taken the stand that no notice u/s 14(2) was issued.

Therefore, in absence of any evidence in support of the claim, arguments of Ld. AR that the assessment for A.Y. 2005-06 to 2009-10 were closed cannot be accepted. Therefore, on the basis of present facts, the reliance of various judicial pronouncements is completed misplaced. In all following cases relied by the Ld. AR, it has been held that the in case of closed assessment addition cannot be made without incriminating material.

1) All cargo Logistics Ltd. Vs. DCIT (2012) 23 Taxman 103 (Mum Trib)

2) LMJ International Ltd. Vs. DCIT (2008) 2008 JOT 315

3) Anil Kumar Bhatia Vs. ACIT (2010) ITR 484 (Delhi Trib)

4) Sun city Alloys (P) Ltd. Va. ACIT (2009) 124 TTJ Jodh 674

It is evident that judicial pronouncements of these judgments does not applies to the facts of the case, as appellant has not proved that as prior to search, the returns were filed and assessment was completed.

Without prejudice to the above findings, it may be mentioned here that lot of incriminating documents were found and seized as a result of search and seizure operation u/s 132 of I.T. Act in HBN group of cases which suggested generation and investment of unaccounted money in various property/advances and generation of unaccounted money by way of Purchase and Sale of properties. Unexplained cash of Rs. 26,99,500/- was also seized from locker no. 506 located at HDFC Bank Ltd., B-1, Community Centre,

Janakpuri. The Chairman of the group Sh. H.S. Saran has made disclosure of Rs. 140.05 Crores for the entire group, u/s 132(4) in various names. The disclosure was revised to Rs. 73 crores for the entire group in the name of various persons. Of course, in appellant's name to disclosure was made. But use of unaccounted income for source of unexplained cash credit in appellants hand cannot be ruled out as the entire HBN Group of companies are run and controlled by the family members of Sh. H.S. Saran and individuals are closely related to Sh. H.S. Saran. Under these circumstances, nexus deposit of unexplained cash deposit in bank accounts or other assets and evidences' with seized material gathered during search and seizure operation cannot be ruled out."

9. Thus, it is evident from the above that the addition made by the A.O. which was sustained by the CIT(A) is without their being any incriminating material found during the search and the addition has been made only based on the personal cash book produced by the AR of the Assessee during the assessment proceedings. The judgment of the Hon'ble Supreme Court in the case of *Abhisar Build Well (Supra)* is squarely applicable to the present case wherein the Hon'ble Supreme Court has concluded as under:-

"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 case any incriminating assessments, the AO would assume the jurisdiction to material 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 fulfillment 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. In view of the above, we find merit in the Ground No. 2 of the assessee and addition made by the A.O. in the absence of any incriminating material found during the search operation conducted u/s 132 of the Act is liable to be deleted. Accordingly, the Ground No. 2 of the assessee is allowed and the addition made by the A.O. which has been sustained by the CIT(A) is hereby deleted. Accordingly, the appeal filed by the assessee is partly allowed.

11. Since, we have allowed the Ground No. 2 and deleted the addition other grounds requires no adjudication.

Order pronounced in the open court on : **13 /06/2023.**

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated : 13 /06/2023
R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI