

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING
AT INCOME TAX APPELLATE TRIBUNAL : PUNE BENCHES : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GD PADMAHSHALI, ACCOUNTANT MEMBER

I.T.A.Nos.60 & 61/NAG./2018
Assessment Years 2009-2010 & 2010-2011

The ACIT, Central Circle-1(1), Room No.205, 2 nd Floor, Aayakar Bhavan, Nagpur. PIN – 440 001.	vs.	Shri Sanjay Gaurishankar Agrawal, Flat No.101, Om Mansion, Plot No.158, Ramdaspath, Nagpur. PIN – 440 012 PAN AEDPA0105K
(Appellant)		(Respondent)

For Revenue :	Shri Kailash Kanojiya, Sr. DR
For Assessee :	Shri Mukesh Agrawal, C.A.

Date of Hearing :	29.08.2023
Date of Pronouncement :	27.09.2023

ORDER

PER BENCH :

These Revenue's twin appeals I.T.A.Nos.60 & 61/
NAG./2018, for assessment years 2009-2010 & 2010-2011,
arise against the CIT(A)-3, Nagpur's separate Order
Nos.CIT(A)-3/277 & 278/2016-17, both dated 29.01.2018,
involving proceedings u/s.143(3) r.w.s. 153A of the Income Tax
Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. It emerges during the course of hearing that the first and foremost common legal issue herein that arise for our apt adjudication is that of validity of the impugned assessments itself wherein the CIT(A) has held that the same are not sustainable in law since not based on any incriminating material found or seized during the course of search. We make it clear that the impugned twin assessment years before us are assessment years 2009-10 and 2010-11. The assessee had duly filed sec.139(1) returns on 26.10.2009 and 23.03.2011; respectively, followed by departmental search action dated 02.12.2014. This is an instance of “unabated” assessments as on the date of search which could result in additions based on the incriminating material found or seized thereof, as per hon’ble apex court’s recent landmark decision in Pr. CIT vs. Abhisar Buildwell (P.) Ltd., [2023] 459 ITR 212 (SC).

3. Learned counsel representing assessee next invited our attention to the CIT(A)'s corresponding detailed discussion deciding the instant legal issue against the department as under :

“6.6. A perusal of the assessment order also shows that no incriminating material was found in the case of the appellant during the course of search proceedings showing that the transaction entered into by the appellant was Sham transaction. The, appellant has submitted that it

had filed return of income u/s 139 of the I.T. Act on 26/10/2009 declaring total income of Rs.32,10,720/-. The appellant has also submitted the AO had passed assessment order u/s 143(3) on 27/12/2011 accepting the returned income. The appellant accordingly submitted that the assessment in the appellant's case was unabated/completed assessment and therefore any addition in the appellant's case could be made only on the basis of incriminating material found during the course of search. The appellant relied on various judicial pronouncements including one in the case of CIT Vs. Kabul Chawla (2016) 380 ITR 573 (Del), in which it has been held that :

“Completed assessments can be interfered with by the Assessing Officer 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. [Para 3 7], ”

6.7. *It is noted from the record of the appellant that the regular assessment for A.Y. 2009-10 has been framed*

u/s 143(3) by Asst. Commissioner of Income Tax, Circle-1, Nagpur vide order dated 27/12/2011 accepting the returned income. I also find that no incriminating material has been found during the course of search. The AO has not made this addition on the basis of any incriminating material found during the course of search. Therefore, I find that the appellant is covered by the following judicial pronouncement :

- i) (2016) 380 ITR 0573 (Delhi) CIT vs. Kabul Chawla*
- ii) (2015) 374 ITR 0645 (Bom.) CIT vs. Continental Warehousing Corporation*
- iii) (2016) 384 ITR 0543 (Delhi) Pr. CIT vs. Ms. Lata Jain*
- iv) (2013) 023 ITR 0766 (Mum.) ACIT vs. Pratibha Industries Ltd.*
- v) (2016) 47 CCH 0159 (Del.) (Trib.) Best Infrastructure (India) Pvt. Ltd. & Ors. vs. ACIT & Ors.*
- vi) Hon'ble High Court of Delhi order in ITA No. 13/2017 in the case of Best Infrastructure (India) Pvt. Ltd. vide order dated 01/08/2017.*

6.8. I find that in the facts of present case, the AO has not relied upon any incriminating material found during the course of search to make addition as is evident from perusal of assessment order. Ratio laid down by the aforesaid decision squarely support the submission made

by the appellant and addition made by the AO is unjustified and unreasonable.

6.9. *Considering the totality of facts and circumstances in case of appellant and following the aforesaid judicial precedents, I am of the considered view that the addition made by the AO is unjustified and unsustainable. The assessment in appellant's case had been framed u/s 143(3) vide order dated 27/12/2011. Therefore, the appellant's case remained unabated/completed as a result of the search. Therefore, relying on judicial pronouncements stated above, any addition in appellant's case could only be made on the basis of some incriminating material found during the course of search. I find that the AO has not relied on any incriminating material found during the course of search to make these additions. Therefore, I find that the addition made by the AO u/s 68 of the I.T. Act is unjustified and unsustainable. The AO is accordingly directed to delete the addition of Rs.1,80,00,000/-. Ground Nos. 1 and 2 are accordingly allowed."*

4. Suffice to say, it has come on record that the department has not been able to pinpoint any incriminating material found or seized during the course of search against the assessee. We thus see no merit in it's common instant

legal ground in both these assessment years. Rejected accordingly.

5. These Revenue's twin appeals I.T.A.Nos.60 & 61/NAG./2018 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 27.09.2023.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 27th September, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-3, Nagpur.
4.	The PCIT concerned, Nagpur.
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.