

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 1090/DEL/2020 [A.Y. 2007-08]

M/s AGR Steel Strips Pvt Ltd
403 Nirmal Tower
Barakhamba Road, New Delhi

Vs.

The Dy. C.I.T
Central Circle -II
Faridabad

PAN: AABCA 3495 R

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv
Ms. Supriya Mehta, CA

Department By : Shri Zafarul Haque Tanweer, CIT-DR

Date of Hearing : 26.10.2023

Date of Pronouncement : 27.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 3, Gurgaon dated 06.09.2019 pertaining to Assessment Year
2007-08.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in confirming the addition made by the Assessing Officer which is devoid of any incriminating material found during the course of search making the assessment order bad in law.

3. Briefly stated, the facts of the case are that a search and seizure operation was conducted at the residential as well as office premises of M/s Asian Colour Coated Ispat Ltd group of cases on 28.01.2011. Accordingly, notice u/s 153A of the Income-tax Act, 1961 [the Act, for short], was issued and served upon the assessee, who filed its return of income.

4. The impugned A.Y is an unabated A.Y as the date of search is 28.01.2011 and, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell* 454 ITR 212 squarely apply wherein it has been held that assessment u/s 153A of the Act can be framed only on the basis of incriminating material found at the time of search.

5. Addition is based upon the statement of Shri Sahil Sharma, who admitted that he issued bogus bills to the assessee in lieu of commission earned by him. The entire addition is based upon the purchases made from M/s GGL Steel and Strips Pvt Ltd. As can be seen from the assessment order, there is no reference to any incriminating material found at the time of search and the entire addition is based upon the statement of Shri Sahil Sharma,

6. We find that this Tribunal in appeal by parent group Asian Colour Coated Ispat Ltd in ITA No. 2840 to 41/DEL/2015 has considered the issue of purchases made from M/s GGL Steel and Strips Pvt Ltd and deleted the entire addition based upon the statement of Shri Sahil Sharma drawing support from the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573.

7. Now this issue has attained finality by the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell [supra] wherein the Hon'ble Supreme Court has held 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 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.

15. Insofar as the aforesaid Civil Appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under [Section 143\(1\)\(a\)](#) or 143(3) of the Act, 1961 and to re-assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original

assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs."

8. Respectfully following the decision of the Hon'ble Supreme Court and the co-ordinate bench [supra] we direct the Assessing Officer to delete the impugned addition.

9. In the result, the appeal of the assessee in ITA No. 1090/DEL/2020 is allowed.

The order is pronounced in the open court on 27.10.2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th October, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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