

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.49/JAB/2018  
Assessment Year:2014-15

|   |     |                                   |
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| Kalyanika Infra Mega Ventures Pvt. Ltd.,<br>23-24 Dixit Enclave,<br>Narmada Road, Jabalpur.<br>PAN:AAQCS7582Q | Vs. | Dy.C.I.T. (Central),<br>Jabalpur. |
| (Appellant)   |     | (Respondent)                      |

I.T.A. No.50/JAB/2018  
Assessment Year:2014-15

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| Tarun Devcon (P) Ltd.,<br>23-24 Dixit Enclave,<br>Narmada Road, Jabalpur.<br>PAN:AAECT5367N | Vs. | Dy.C.I.T. (Central),<br>Jabalpur. |
| (Appellant)   |     | (Respondent)                      |

|                       |                                   |
|-----------------------|-----------------------------------|
| Appellant by          | Shri Pawan Ved, Advocate          |
| Respondent by         | Smt. Garima Chaudhary, CIT (D.R.) |
| Date of hearing       | 21/11/2023                        |
| Date of pronouncement | 23/11/2023                        |

**Order u/s 255(4) of the I.T. Act**

**PER YOGESH KUMAR U.S.:J.M.**

The Hon'ble President of the Tribunal has referred the above appeals in I.T.A No.49/JAB/2018 and I.T.A.No.50/JAB/2018 (assessment year 1014-15) u/s 255(4) of the I.T. Act (hereinafter referred to as the "Act") to the

Third Member, consequent upon the difference of opinion having arisen between the Accountant Member and the Judicial Member to decide the respective questions framed by the Members.

2. The Hon'ble Third Member vide order dated 09/10/2023 decided the respective questions framed by the Judicial Member and the Accountant Member as under:

*"31. Having heard the parties and having considered the material on record, at the outset, I find the matter to be covered by the decision of the Supreme Court in the case of Pr. CIT Vs Abhisar Buildwell P. Ltd." judgement dated 24.04.2023, passed in Civil Appeal No. 6580 of 2021 and other connected appeals. Therein, their Lordships of the Supreme Court have held that prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961; that the erstwhile scheme of block assessment under Section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income; that secondly, the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113, whereas income other than 'undisclosed income' was required to be assessed under the regular assessment procedure and was taxable at the normal rate; that therefore, Section 153A came to be inserted and brought on the Statute; that under the Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax, as against at any special rate; that thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years; that search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961; that the very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in the ordinary course of regular assessment;*

*that thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search; that on a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same; that 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; that 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; that as per subsection (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; that 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; that 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; that therefore, on a true interpretation of Section 153A of the Act, 1961, if in case of a search under Section 132 or a requisition under Section 132A, 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; that 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; that 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; that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act; that 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; that 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; that 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 assessment; that it does not provide that all completed/unabated assessments shall abate; that if the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153A and sub-section (2) of Section 153A would be redundant and/or it would amount to re-writing the said provisions, which is not permissible under the law.*

*32. While holding as above, their Lordships observed that they were in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of "Commissioner of Income Tax, Central-III Vs Kabul Chawla" (2015) 61 taxmann.com 412 (Del), dated 28.08.2015 and that in the case of "Pr. Commissioner of Income Tax-4 Vs Saumya Construction" (2016) 387 ITR 529 (Guj) and the decisions of the other High Courts taking the view that no addition can be made*

*in respect of completed assessments in absence of any incriminating material.*

*32.1 As such, their Lordships concluded ;*

*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.*

*33. It was in view of the conclusion so arrived at, that the appeals and Review Petition filed by the Department were dismissed by the Hon'ble Supreme Court in "Abhisar Buildwell P. Ltd.". 34. In view of the above detailed reasoned judgement rendered by the Hon'ble Supreme Court in "Abhisar Buildwell P.Ltd." (supra), Question No. 1 raised before us, i.e., as to whether the AO was justified in passing the assessment orders u/s 143(3) and not u/s 153C of the Act is answered in the negative and Question No.2, as to whether the assessment orders passed u/s 143(3) are invalid and bad in law is answered in the affirmative. Both these Questions, thus, are answered in favour of the assessee and against the Department, by agreeing with the view taken by the Id. Judicial Member.*

*35. For the above, Question Nos. 3 and 4 are rendered infructuous. Also, nothing was argued with regard thereto.*

*36. Ordered accordingly."*

3. In view of the order dated 09/10/2023 by the Third Member, the appeal in I.T.A.No.49/JAB/2018 (assessment year 2014-15) and the appeal in I.T.A.No.50/JAB/2018 filed by the assessee are allowed and the addition made by the Assessing Officer, which was confirmed by learned CIT(A), is hereby deleted and both the appeals of the assesseees are allowed.

(Order pronounced in the open court on 23/11/2023)

**Sd/.**  
**(DR. B.R.R. KUMAR)**  
**Accountant Member**

**Sd/.**  
**(YOGESH KUMAR U.S.)**  
**Judicial Member**

Dated:23/11/2023  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar