

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.2044 to 2046/Del/2021  
Assessment Year: 2006-07, 2007-08 & 2007-08

<b>ACIT Circle -16 (1) Delhi</b>	<b>Vs.</b>	<b>MDPL Ltd. 3<sup>rd</sup> Floor, 11 Masjid Moth Greater Kailash, Part-II, Delhi-110048 PAN No.AADCM3323Q</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	None

Date of hearing:	08/01/2024
Date of Pronouncement:	08/01/2024

**ORDER**

**PER N. K. BILLAIYA, AM:**

ITA No.2044/Del/2021 to 2046/Del/2021 are three separate appeals by the revenue preferred against the three separate orders of the CIT(A)-37, New Delhi dated 21.09.2020 pertaining to A.Y. 2006-07, 2007-08 and 2008-09.

2. Since common grievances are involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance reads as under :-

*“1. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is justified in holding that in the absence of any incriminating material found/seized during the course of search u/s 132 of the Act, the assumption of jurisdiction u/s 153C of the Act by the AO was not justified and the addition / disallowances of expenses made by the AO in the assessment order cannot be sustained ignoring the facts that the SLP in the case of CIT vs Kabul Chawla was dismissed due to low tax effect by the Apex Court and the matter relating to additions in assessment order in the absence of incriminating material in respect of assessments made u/s 153A/153C has been pending with the Supreme Court for adjudication on merits. Several SLPS on this matter has been admitted before the Hon'ble Supreme Court and tagged with lead case as CIT vs Divine Infracon Pvt Ltd. (SLP (c) no. 8091/2016).*

*2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is justified in not adjudicating the issues involving additions on merits.”*

4. A perusal of the ground show that the revenue has no case as much as the assessment are devoid of any incriminating material found at the time of search, therefore, there is no error in the findings of the CIT(A) wherein he has followed the binding decision of

the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573.

5. This issue has now been finally set at rest by the Hon'ble Supreme Court in the case of Abhisar Buildwell 454 ITR 212 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 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.”*

6. In the result, all the appeals filed by the revenue are dismissed.
7. Decision announced in the open court on 08.01.2024.

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

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:- .01.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI