

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

Sl. No	ITA/CO No(s)	Asst. Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	ITA No.7442/Del/2018	2010-11	Divya Exim Pvt. Ltd. C/o. Kapil Goel, Adv. F-26/124, Sector – 7 Rohini, New Delhi-85	DCIT Central Circle – 25 New Delhi
2.	ITA No.5952/Del/2018	2014-15	Renu Jain C/o. Kapil Goel, Adv. F-26/124, Sector – 7 Rohini, New Delhi-85	-do-
3.	ITA No.5957/Del/2018	-do-	Nisha Jain C/o. Kapil Goel, Adv. F-26/124, Sector – 7 Rohini, New Delhi-85	-do-

Assessee by	Shri Kapil Goel, Adv.
Revenue by	Shri T. James Singson, CIT-D.R.

Date of hearing:	08.01.2024
Date of Pronouncement:	15.01.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned three appeals arise from the order of the Commissioner of Income Tax (Appeals)-29, New Delhi in respective assessment orders passed by the Assessing Officer tabulated hereunder:

Sr. Nos.	ITA/CO Nos.	CIT(A) Order dated	Assessment Order dated	Remarks
1.	ITA No.7442/Del/2018	CIT(A)-29, New Delhi order dated 22.10.2018	Assessment order dated 29.12.2017	Assessment Order under section 153A/143(3) of the Income Tax Act, 1961.

2	ITA No.5952/Del/2018	CIT(A)-29, New Delhi order dated 18.07.2018	-do-	-do-
3.	ITA No.5957/Del/2018	-do-	-do-	-do-

2. In the captioned appeal, the assessee raised a common ground whereby the assessee has challenged the jurisdiction usurped by the Assessing Officer (AO) under section 153A of the Act towards additions/disallowances made.

3. In view of the preliminary objections of the assessee which seeks to put question mark over the legitimacy of additions/disallowances made under section 153A of the Act, we deem it expedient to dispose of the aforesaid preliminary ground as it strikes the root of the matter.

4. Briefly stated, a search and seizure operation under section 132 of the Income Tax Act, 1961 (The Act) was carried out on Shri Sajan Kumar Jain and Shri Pradeep Kumar Jindal group of cases including the captioned assessee(s) on 18.11.2015. Consequently, notice under section 153A of the Act was issued seeking to assess the income of the assessee under the provisions of section 153A of the Act. Assessments were carried out in the captioned appeals under section 153A read with Section 143(3) of the Act and certain additions/disallowances were made. The action of the AO was confirmed by the CIT(A) in the first appeal. The assessee has knocked the door of the Tribunal against the impugned first appellate orders in respective appeals captioned above.

5. When the matter was called for hearing, the learned Counsel for the assessee, at the outset, submitted that all the three captioned appeals stood concluded /completed at the time of search and consequently, the respective assessment in all the three captioned appeals remains unabated and stood concluded prior to search. In this backdrop, the learned Counsel submitted that the additions/disallowances made in all

the three appeals has no rational connection or live link with material found in the course of search action carried out under section 132 of the Act. The learned Counsel submitted that assessment under section 153A of the Act has been framed in these appeals solely on the basis of statement recorded under section 132(4) of the Act of other person namely; Shri Pradeep Kumar Jindal who was also simultaneously searched under section 132 of the Act. Mr. Jindal is stated to have made certain adverse averment towards providing accommodation entries to various beneficiaries including the captioned assessee(s) herein. The learned Counsel assertively reiterated that there is no reference to any seized material adverse to the assessee which has any connection or bearing with the impugned additions in any of the three appeals. The learned Counsel quipped that the adjustments made to the returned income by the AO in the instant appeals are either subject matter of regular assessment or probably can be assessed under section 153C of the Act but however certainly do not resonate with the scheme of search assessment under section 153A of the Act *de-horse* reference to any incriminating material found in the course of search from the premises of the assessee with reference to such additions. The learned Counsel thus emphasized that the statement of a third party cannot be construed as incriminating material found in the course of search in respect of the instant assessee to enable the AO to made additions/disallowances in search assessment under section 153A of the Act. The statement of third party in an altogether separate proceedings cannot be construed any incriminating material *per se*. The learned Counsel thus asserted that in the absence of any incriminating material emanating from search in the case of assessee, no adjustment to the returned income is permissible under the umbrella of section 153A of the Act in such unabated assessments.

5.1 The learned Counsel reiterated that the respective assessments stood concluded by operation of law and were not pending for assessment at the time of search. Therefore, such assessment concluded prior to search survives and do not get abated. The learned Counsel submitted that in these facts, it is not permissible for the AO to

invoke authority vested under section 153A of the Act to indulge in making routine examination of various items of income and expenditure filed or various credit entries recorded in the books declared in the respective returns which has no correlation to incriminating material found in the course of search. The learned Counsel referred to the judgement delivered by Hon' ble Delhi High Court in the case of *CIT vs. Anand Kumar Jain HUF and others* 432 ITR 384 where in the context of same search and in the same fact situation, the Hon' ble High Court observed that additions on the basis of statement recorded in a separate search action in the case of a third person is not permissible in section 153A proceedings. The Hon' ble High Court observed that the statement of third person cannot be construed as an incriminating material belonging to or pertaining to the person other than the person searched. In other words, the statement of Pradeep Kumar Jindal or his employee etc. in the course of search carried out in his case cannot be regarded as any incriminating material found in the course of search of other assessee i.e. captioned assessee(s) herein. The learned Counsel also referred to the decision of Co-ordinate Bench in the case of *Rumneek Bawa vs. ACIT in ITA No.3083/Del/2012* order dated 23.10.2023 to support the proposition. It was submitted that the Co-ordinate Bench has applied the principles laid down in *Anand Kumar HUF (supra)* in this case in similar facts. The learned Counsel thus submitted that the ratio of landmark judgment rendered in the case of *Pr. CIT vs. Abhisar Builwell (P.) Ltd [2023] 149 taxman.com 399* would squarely apply to the facts of the case and the scope of assessment under section 153A is restricted to the incriminating material found in the course of search of the respective assessee owing to the fact that such assessments stood concluded/ completed and thus do not get abated by operation of law.

6. Per contra, learned DR for the Revenue relied upon the observations made in the first appellate order and submitted that when proceeding under section 153A has been validly initiated, the jurisdiction under other provisions of the Act stood ousted

and the AO is entitled to make reference and rely upon the incriminating statement recorded in a parallel search took place simultaneously.

7. We have carefully perused the orders of the authorities below and examined the merits of legal conditions raised on behalf of the assessee and counter raised on behalf of the Revenue.

7.1 It is the case of the assessee that additions/disallowances could not be made in the assessment framed under section 153A of the Act *de-horse* reference to any incriminating material found in the course of search in the hands of the assessee. It is further case of the assessee that any adverse statement of a third party (Pradeep Kumar Jindal in the instant case recorded under section 132(4) of the Act) cannot be read as incriminating material found in the course of search in the case of these assessee(s). Thus, the statement recorded in the course of search in that case cannot be imported in the case of the captioned assessee(s) for the purposes of salutary condition of existence of incriminating material at the time of search in the hands of assessee(s). The statement of third person thus has no nexus whatsoever with any material of incriminating material found in the course of search at the premises of the assessee which is the genesis of proceedings under section 153A of the Act as held in *Abhisar Builwell (supra)*.

7.2 The appeal of the assessee thus hinges around one pertinent legal point as to whether, while making assessment under section 153A, the Revenue is entitled to interfere with unabated assessment which stood concluded either under section 143(1) or under section 143(3) and not pending at the time of search in the absence of any incriminating material unearthed as a result of search in the case of assessee.

8. As pointed out on behalf of the assessee, there is a total absence of reference to any incriminating material which may have any bearing to the impugned

additions/disallowances except some statement of witness Mr. Pradeep Kumar Jindal adverse to assessee in an all together different search proceedings. The Hon' ble Delhi High Court has observed in identical fact situation that statement of Pradeep Kumar Jindal extracted in his search cannot be construed to be incriminating material in the case of assessee herein. As a corollary, it is manifest that additions/disallowances have been made without reference to any specific incriminating material/document found as a result of search and seizure action under section 132 of the Act and such additions are solely based on deposition made by a witness against the assessee in the course of search in that case. Besides, the integrity of confession obtained is unknown. No cross examination of the witness was provided to the assessee either and consequently, such statement is unworthy of reliance.

9. Guided by the principles laid down in *Abhisar Buildwell (P.) Ltd. (SC)* (supra) and *Ananad Kumar Jain (HUF)* (Delhi High Court), we find force in the legal plea raised on behalf of the assessee. Hence, in the absence of any incriminating material in an unabated assessment additions/disallowances made by AO in all captioned appeals requires to be quashed. In this view of the matter, we do not consider it necessary to adjudicate other legal and factual aspects concerning additions/disallowances.

10. In the result, all the captioned appeals of the assessee are allowed.

Order was pronounced in the open court on 15.01.2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 15.01.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI