

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos.1562 & 1563/Del/2023**

**[Assessment Years : 2014-15 & 2015-16]**

Parveen Tayal, C/o-H.No.111/E 1, Sector-11, Faridabad, Haryana-121006. <b>PAN-AGRPT5617P</b>	vs	DCIT, Central Circle-II, Faridabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Deepesh Garg, Adv.	
<b>Respondent by</b>	Shri Dharambir Singh, CIT DR	
<b>Date of Hearing</b>	10.04.2024	
<b>Date of Pronouncement</b>	26.04.2024	

**ORDER**

**PER KUL BHARAT, JM :**

Both appeals filed by the assessee are directed against the orders passed by Ld.CIT(A)-3, Gurugram dated 29.03.2023 and 27.03.2023 for the assessment years 2014-15 and 2015-16 respectively. Since the similar grounds have been raised, both appeals of the assessee were taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

**ITA No.1562/Del/2023 [Assessment Year : 2014-15]**

2. First, we take up the appeal of the assessee in the Assessment Year 2014-15 with ITA No. 1562/Del/2023. The assessee has raised following grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in assuming jurisdiction u/s 153A and the consequent*

*assessment proceedings in the case are bad in law and against the facts and circumstances of the case and void-ab-initio and basic jurisdictional conditions and pre-requisites under section 153A were not met.*

2. *That in any case and in any view of the matter, the assessment framed under section 153A of the Act, is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in in confirming the action of the Ld. A.O. in making addition of Rs. 70,000/- u/s 68 of the Act, on account of cash deposits into the bank account and that too without any incriminating material found as a result of search and without proper appreciation of facts on record and by recording incorrect facts and findings, and making allegations without any basis, material and merely on the basis of surmises and conjectures and without observing the principal of natural justice.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs.70,000/- is bad in law and against the facts and circumstances of the case.*
5. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. A.O. in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical without application of mind and is no approval in the eyes of law.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the action of Ld. A.O. in charging interest, more so when such interest could not be levied under the law.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate*

*opportunity of being heard and in gross violation of principles of natural justice.*

8. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Facts giving rise to the present appeal are that a search action was carried out u/s 132(1)(A) of the Income Tax Act, 1961 (“the Act”) on 06.06.2018 at SRS Group of Companies. Certain documents were seized. Thereafter, a notice u/s 153A(1)(a) of the Act was issued and served upon the assessee, calling him to file return of income for Assessment Year 2014-15. In response to the statutory notices, the assessee filed return of income, declaring income of INR 5,62,610/- under the head “*income from salary*”. The AO thereafter, issued notice u/s 143(2) and 142(1) of the Act alongwith questionnaire. After considering the submissions of the assessee, the AO treated the income declared in the return of income as income from undisclosed sources. Further, he made addition of INR 70,000/- as undisclosed cash deposits in the bank account of the assessee. Further, the AO treated 1% commission i.e. INR 6,300/- of the debit entries on INR 6,30,000/- in the bank account i.e. and made income from unexplained source of INR 5,62,610/-. Thus, he assessee the income of assessee at INR 6,38,910/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) deleted the addition related to salary income and the amount treated as commission, rest of the addition was sustained. Thus, he confirmed the addition related to bank deposits amounting to INR 70,000/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that the assessment order framed by the Assessing Officer ("AO") is contrary to law, laid down by Hon'ble Supreme Court in the case of ***Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399*** and Hon'ble Delhi High Court in the case of ***CIT v. Kabul Chawla [2016] 380 ITR 573 [Del.]***. The assessment so framed is not based on any incriminating material collected during the search.

7. On the other hand, Ld. CIT DR for the Revenue opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT DR did not controvert the fact that the AO has not made addition on the basis of any incriminating material during the course of search. Hon'ble Supreme Court in the case of *Pr. CIT v. Abhisar Buildwell (P.) Ltd. (supra)* has held as under:-

11. *"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. 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. As per sub-section (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. 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. 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. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search 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. 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.*

12. *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. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. 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. 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. 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 assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.*

13. *For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya*

*Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

14. *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.”*

8.1. Hon’ble Delhi High Court in the case of *CIT vs Kabul Chawla (supra)* has held as under:-

*“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs “in which both the disclosed and the undisclosed income would be brought to tax”.*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with*

*the AO which can be related to the evidence found, it does not mean that the assessment “can be arbitrary or made without any relevance or nexus with the seized material. Obviously an ITA Nos. 707, 709 and 713 of 2014 of assessment has to be made under this Section only on the basis of seized material.”*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.”*

9. Ld.CIT DR for the Revenue fairly conceded the facts that impugned additions are not made on the basis of incriminating material. Therefore, in the light of the above-mentioned binding precedents, we hereby quash the assessment being bad in law. Accordingly, legal ground raised by the assessee is allowed. Since we have quashed the assessment on the ground that the AO has not made addition on the basis of incriminating material.

The other grounds raised by the assessee on merit of addition, have become academic. We are not expressing any opinion and is kept open.

10. In the result, the appeal of the assessee is partly allowed.

**ITA No.1563/Del/2023 [Assessment Year : 2015-16]**

11. Now, we take up the appeal of the assessee in the Assessment Year 2015-16 with ITA No. 1563/Del/2023. The assessee has raised following grounds of appeal:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in assuming jurisdiction u/s 153A and the consequent assessment proceedings in the case are bad in law and against the facts and circumstances of the case and void-ab-initio and basic jurisdictional conditions and pre-requisites under section 153A were not met.*
2. *That in any case and in any view of the matter, the assessment framed under section 153A of the Act, is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in in confirming the action of the Ld. A.O. in making addition of Rs. 41,210/- u/s 68 of the Act, on account of cash deposits into the bank account and that too without any incriminating material found as a result of search and without proper appreciation of facts on record and by recording incorrect facts and findings, and making allegations without any basis, material and merely on the basis of surmises and conjectures and without observing the principal of natural justice.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs.41,210/- is bad in law and against the facts and circumstances of the case.*
5. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. A.O. in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical without application of mind and is no approval in the eyes of law.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the action of Ld. A.O. in charging interest, more so when such interest could not be levied under the law.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard and in gross violation of principles of natural justice.*
8. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

12. Facts in this case are also identical and similar as in ITA No.1562/Del/2023 [AY 2014-15] except figures. Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal.

13. We have heard Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical to the **ITA No.1562/Del/2023 [AY 2014-15]** except figures. Ld. Representatives of the parties have adopted the same arguments in respect of

grounds of appeal. Therefore, for the same reasoning, we hereby quash the assessment being bad in law. Accordingly, legal ground raised by the assessee is allowed. Since we have quashed the assessment on the ground that the AO has not made addition on the basis of incriminating material. The other grounds raised by the assessee on merit of addition, have become academic and same are kept open.

14. In the result, the appeal of the assessee is partly allowed.

15. In the final result, both appeals of the assessee in **ITA No.1562 & 1563/Del/2023** for the **Assessment Years 2014-15 & 2015-16** are partly allowed.

Order pronounced in the open Court on 26<sup>th</sup> April, 2024.

**Sd/-**

**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI