

आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.3436/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s Platinum Holdings Private Ltd. No.2/1, Abu Garden, OMR Road, Navalur, Chennai-600 103.	बनाम/ Vs.	DCIT Central Circle-3(4) Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AADCP-8781-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri P. Murali Mohan Rao (CA)-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Smt. Komali Krishna (CIT)- Ld. DR

सुनवाई की तारीख/Date of Hearing	:	27-02-2024
घोषणा की तारीख /Date of Pronouncement	:	17-05-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2008-09 arises out of order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 01.10.2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 153A of the Act on 27.03.2014. The grounds taken by the assessee read as under:

1. The order of the CIT(A) is bad in law and on facts of the case.
2. The Commissioner (Appeals) overlooked the fact that since the search u/s 132 had been initiated in the case on 21-6-2011, the assessment for the assessment year 2008-09 had concluded and, therefore, any addition to the income returned in the assessment u/s 153A of the Income Tax Act, 1961 for the year could be made only on the basis of incriminating document seized in the course of search of the assessee. The Commissioner

(Appeals), however, confirmed the additions not on the basis of any document seized but by relying on uncorroborated material collected from sources unconnected to the search of the assessee u/s 132. In the case of a concluded assessment, such additions are not permissible. Consequently, the additions are bad in law and deserve to be deleted.

3. The Commissioner (Appeals) failed to appreciate, as held by the courts and Chennai Tribunal, that existence of undisclosed income or incriminating evidence evidenced by a seized document is sine qua non for making additions in the assessment under section 153A in respect of unabated assessments.

4. The material relied upon by the Commissioner (Appeals) to confirm the additions was not found during the course of the search of the Appellant. The said material was already available with the Assessing Officer which had been collected in the course of the search of another entity. The Commissioner (Appeals), therefore, erred in confirming the additions made by the Assessing Officer who relied on the material found in the course of search of another entity earlier while making the assessment u/s 153A of the Appellant which permits use of only incriminating material found in the course of search of the assessee u/s 132. Additions based on any other material or document in respect to a concluded assessment are untenable in law. The additions, therefore, have to be deleted.

5. The Appellant relies on the following decisions in support of the claim that existence of undisclosed income or incriminating material evidenced by a seized document is sine qua non for making additions in the assessment u/s 153A in respect of unabated assessments:

- (i) Jai Steel (India) Ltd. v. ACIT [2013] 36 Taxmann.com 523 (Rajasthan)
- (ii) CIT v. Laney Construction [2016] 237 Taxman 728 (Karnataka)
- (iii) CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 58 Taxmann.com 78 (Bombay)
- (iv) CIT v. Kabul Chawla [2015] 61 Taxmann.com 412 (Delhi)
- (v) Pr. CIT v. Kurele Paper Mills (P.) Ltd. [2017] 81 Taxmann.com 82 (Delhi)
- (vi) CIT v. Raj Kumar Arora [2014] 52 Taxmann.com 172 (Allahabad)
- (vii) Om Shakthy Agencies (Madras) (P.) Ltd. v. DCIT [2016] 66 Taxmann.com 287 (Chennai Tribunal)
- (vii) All Cargo Global Logistics Ltd. v. Dy. CIT [2012] 137 ITD 287/23 Taxmann.com 103 (Mum) (SB).
- (ix) Pr. CIT v. Meeta Gutgutia (2017) 395 ITR 526/82 Taxamann.com 287 (Del)

6. In Pr. CIT v. Meeta Gutgutia [2017] 395 ITR 526 / 82 Taxmann.com 287 (Delhi), it was held that since the purpose of the search is to unearth undisclosed income, discovery of incriminating evidence in the course of search is a requirement for each assessment year to make assessment u/s 153A. The Hon'ble Supreme Court has since dismissed the SLP filed by the revenue against the above decision on merits vide order dated 2nd July 2018. It is reported in Pr. CIT v. Meeta Gutgutia [2018] 96 Taxmann.com 468 (SC).

7. The legal proposition that discovery or seizure of incriminating material relating to an item during the course of search of the assessee is a prerequisite for making addition of the amount relating to such item in the assessment u/s 153A is settled. It is pertinent to be noted that this is not a case where the Supreme Court has simply refused to admit SLP. It admitted the Special Leave Petition and then disposed of the same on merits. Thus, by this decision, the Hon'ble Supreme Court has pronounced the law on the subject and that answer is final. It is in favour of the Appellant.

8. The Commissioner (Appeals) erred not following the ratio of the judgments cited above, more so the judgment of the Hon'ble Supreme Court and the judgment of the

Hon'ble Chennai Tribunal and confirming part of the additions made in the assessment made u/s 153A. Consequently, it is requested that the additions may kindly be deleted.

9. Without prejudice to the grounds No.1 to 7 above

- (a) The Commissioner (Appeals) erred in confirming a sum of Rs.46,25,760/- as proportionate share in 'on money' of Rs.1,73,00,000/- received by Mr. Venkatram Reddy from M/s. Omshakthi Agencies (Madras) P Ltd., despite acknowledging the fact that Mr. Venkatram Reddy has received this money in his individual capacity as broker to Mis. Omshakthi Agencies (Madras) P Ltd. for their land aggregation.
- (b) The Commissioner (Appeals) ought not to have made the addition of Rs.46,25,760/- in the hands of the Appellant when the evidence corroborated that Mr. B. Venkatram Reddy was the recipient of the money, merely because that amount was received by Mr. B. Venkatram Reddy in cash.
- (c) The Commissioner (Appeals) failed to appreciate that the lease agreement was not acted upon following which there was no occasion to account for lease advance of Rs.10,00,000/- as income. The Appellant also produced evidence vide letter dated 17 February 2014 from the prospective lessors stating that they have not received the advance amount. The addition, therefore, is baseless and deserves to be deleted.
- (d) The Commissioner (Appeals) erred in directing the Assessing Officer to verify the details as to the addition of Rs.6,10,000, despite acknowledging the fact that there was no evidence for making this addition and that it was done only on an imaginary ground.

As is evident, in ground nos. 1 to 8, the assessee assails the impugned addition on legal grounds by submitting that in the absence of any incriminating material found during the course of search, no such addition could have been made. In the remaining grounds, the assessee assails quantum addition on merits.

2. The Ld. AR advanced arguments and filed written submissions. The Ld. AR also relied on the recent decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** as well as various other judicial decisions. The copies of the same have been placed on record. The Ld. CIT-DR also advanced arguments supporting the case of the revenue. Having heard rival submissions, the appeal is disposed-off as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in real-estate. It filed its return of income for this year on 11.12.2008 declaring income of Rs.16.50 Lacs. The assessee group was managed by Shri M. Sukumar Reddy (MSR) and Shri B. Venkataram Reddy (BVR) who acted as directors in group companies. Pursuant to search action on the assessee group on 21.06.2011, an assessment was framed against the assessee u/s 153A of the Act. Notice u/s 153A was issued on 14.09.2012 against which the assessee offered original return of income as filed on 11.12.2008. It is quite clear that on the date of issuance of notice u/s 153A, no proceedings for this year were pending against the assessee and this was a case of an unabated year.

3.2 In para-7 of assessment order, Ld. AO referred to another search conducted in the case of Om Sakthy Agencies (Madras) Pvt. Ltd. (OSAPL) on 02.07.2010 wherein it was found that OSAPL inflated expenses on purchase of land from assessee group. A search was also conducted on the assessee on 21.06.2011 wherein it was found that the assessee company along with its sister concerns made land sales to OSAPL through two brokers in financial years 2006-07 and 2007-08 which were alleged to be partly unaccounted. Total land sold by the assessee group was 102.87 acres against sale consideration of Rs.24.01 Crores. Despite search and cross examinations, there was no clarity as to whether the sale figure was correct figures of sales as the books of buyer as well as sellers had been manipulated. Therefore, the assessment was framed based on evidences available on record.

3.3 It was noted by Ld. AO that OSAPL claimed payment of Rs.24.01 Crores whereas brokers claimed to have received Rs.11.9 Crores for payment to assessee group. Both the brokers as well as BVR were produced on 01.07.2011 as witnesses of OSAPL and statement was recorded from executive director Shri N Manigantan. Shri BVR accepted to have received Rs.4.5 Crores through cheques and Rs.1.73 Crores in cash. The cheque was stated to be paid to BVR in his own account whereas the cash was stated to be paid to 4 companies of assessee group. The Ld. AO proceeded to add proportionate on-money in the hands of the assessee. The assessee denied having received any such payment and submitted that the same would have been received by BVR in his individual capacity. However, Ld. AO alleged that the assessee could not escape the responsibilities for the action by its directors.

3.4 The Ld. AO further noted that MSR and BVR were two directors in seven group companies. MSR held 99% of shareholding in these companies whereas BVR was holding remaining 1% share. It was also noted that BVR was cousin of MSR and he had expired in May, 2013. During search proceedings, it was found that over and above the declared sale consideration for land, some on-money was paid by OSAPL to the director for sale of land of the group companies. However, MSR denied receipt of the same.

3.5 During investigation, two undisclosed bank accounts of BVR were discovered. In sworn statement recorded on 07.12.2011, MSR stated that BVR was a business associates and handled the affairs at Chennai. However, in sworn statement dated 21.06.2011, BVR stated that his role was to take care of construction and purchase and sale of land as

directed by Board of directors. On these facts, Ld. AO concluded that BVR merely acted as an executive on behalf of directors and he was more of an employee. The wife and legal heir of BVR also stated that BVR only looked after the affairs of Platinum group of companies and he did not carry out any other business activity. It also transpired that BVR resigned from directorship of these companies in December, 2009 but he continued to work for the companies even after he resigned as a director.

3.6 In the above background, Ld. AO noted that BVR had two undisclosed bank accounts i.e., one with Royal Bank of Scotland and another with State Bank of India wherein certain deposits were made. The wife of BVR, in sworn statement, stated that the monies deposited therein were from land dealings of Platinum group of companies only.

3.7 The Ld. AO alleged that on-money of Rs.623.10 Lacs was received during FY 2007-08 thorough cheques and in cash for sale of land. The cheques were deposited in the above-mentioned undisclosed bank accounts. Therefore, there could be no different source of money. MSR, post-search cross-examination, had accepted the fact of accepting on-money. The Ld. AO also held that BVR acted for and on behalf of the assessee group and he had deposited on-money or money from undisclosed sources in his personal name as they were not to be incorporated into the accounts and were not to be disclosed to the department. The same was also evidenced from the fact the many withdrawals / cheques issued found its way back in to the group companies as credits in some other name. Some of the payments had also gone to persons from whom these companies had purchased land

or had given advances for land purchases. Few of such instances have been recorded by Ld. AO in the assessment order.

3.8 Based on these findings, Ld. AO alleged that all such deposits were to be considered as unaccounted money of the assessee-group. In this year, the amount of Rs.623.10 Lacs was directly attributable to four companies including the assessee company. The proportionate share of the assessee company worked out to be Rs.171.35 Lacs which was added back to the income of the assessee.

3.9 The Ld. AO made another addition of Rs.6.10 Lacs on the ground that sale of 1.22 acres of agricultural land was not accounted for by the assessee in its books of accounts. Another addition of Rs.10 Lacs was made which was stated to be lease advance not recorded in the books of accounts.

Appellate Proceedings

4.1 The assessee raised pertinent legal issue assailing the assumption of jurisdiction u/s 153A. It was submitted that there was no incriminating seized material found and seized during the search to show that any income was concealed. In the absence of any such material, the assessment was liable to be quashed. The impugned additions were based on some material which was collected in the search of another entity much before initiation of search on the assessee. Such material could not form the basis of addition in respect of unabated assessment. For the same, reliance was placed on various judicial decisions including the decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Meeta Gutgutia (96 Taxmann.com 468)** dismissing the Special Leave Petition (SLP) of the revenue.

4.2 The Ld. CIT(A) noted that as per the provisions of Sec.153A, upon initiation of search u/s 132, Ld. AO is mandated to issue notice u/s 153A and required to determine the total income of each of the six assessment years, immediately preceding the year in which the search was initiated. Presence of seized material would not be a pre-requisite for issuing notice u/s 153A. What is required is mere initiation of search u/s 132. Once search is initiated, AO is bound to issue notice u/s 153A for all the stipulated years. The AO is bound to frame the assessment even if no document was unearthed from the assessee.

4.3 The Ld. CIT(A) sought distinction in the cited case law of Hon'ble Delhi High Court in the case of **PCIT vs Meeta Gutgutia (395 ITR 526)** and also in **CIT vs. Kabul Chawla (380 ITR 573)** on the ground that in these decisions, two basic issues were not examined / addressed. Firstly, when presence of seized material is not a pre-requisite for issuance of notice u/s 153A of the act then how presence of such seized material is a pre-requisite condition for conclusion of assessment u/s 153A. This aspect was not addressed. Secondly, once there is an initiation of search u/s 132, AO will lose jurisdiction under all other normal provisions like 143(3) and 147. It is not restricted to abating the pending assessment / reassessment proceedings. The Ld. AO could not resort to Sec. 143(3) or 147 as these provisions would become un-operational. The provisions of Sec.153A are substituted provisions for Sec.143 as well as for 147. In other words, all the powers vested with AO under normal provisions of Sec.143 & 147 are now available with AO u/s 153A upon initiation of search u/s 153A. However, Ld. AO is not permitted to re-visit the already concluded issues, especially in unabated

concluded assessment years and could not require the assessee to prove its claim once again. In all such already concluded assessment years, the assessment of total income should be strictly based on the material evidences and information gathered during search proceedings and / or during the course of 153A proceedings. Finally, Ld. CIT(A) held that in the present case, no assessment was made in any of the AYS prior to search and therefore, these assessment years could not be considered as concluded or assessment years having reached finality. Therefore, presence of seized material would not be a mandatory requirement for determining total income of these years. Accordingly, the legal grounds as urged by the assessee were rejected and Ld. CIT(A) considered the merits of impugned additions.

4.4 On quantum addition of Rs.171.35 Lacs, Ld. CIT(A) observed that that though OSAPL claimed to have made payment of Rs.24.01 Crores to assessee group, the group accounted only Rs.4.88 Crores. Subsequently, OSAPL failed to reconcile the payment of Rs.9.48 Crores and admitted the income to that extent. The balance amount of Rs.11.90 Crores was paid to the three brokers one of whom was BVR. The two brokers were independent broker whereas BVR was director in the assessee company. The two brokers confirmed to have retained amount of Rs.6.20 Crores and stated that the balance of Rs.6.23 Crores was paid to BVR.

4.5 The assessee denied having received any such payment and asserted that the impugned payment would have been received by BVR in his individual capacity. It was also brought to the notice that BVR had independent business interest. The attention was also drawn to the fact

that the bank account held with SBI by BVR was opened in the year 1999. The assessee company was incorporated on 24.04.2006 and Shri BVR was inducted as director only on 24.08.2006. The same would show that Shri BVR had its own business transactions even before the assessee company came into existence. The assessee also submitted that the receipt of on-money by BVR was not in its knowledge.

4.6 The Ld. CIT(A), considering the assessee's submissions and in the light of above stated facts, noted that the amount of Rs.4.50 Crores was credited in personal account of BVR. The perusal of bank account would show that the aforesaid deposits had not been received back by the assessee group. The amounts so deposited were used by BVR for transfer / payment to others which were not related to the assessee group. There was no evidence to show that the impugned amount was received back by the assessee group. The Ld. CIT(A) further noted the decision of Tribunal in the case of M/s Omshakti Agencies (Madras) P Ltd v. DCIT (66 Taxmann.com 287) accepting the fact that Shri B.V. Reddy, along with three other persons namely Shri S. Ashokan, Shri Arvind Srinivasan and Shri R.S.Senthil acted as broker / agent for land aggregation for OSAPL. The Ld. CIT(A) also concurred that the two bank accounts were opened by Shri BVR prior to his joining the assessee-group of companies on 24.08.2006. The impugned income / benefits so earned by nominal shareholder could not be considered as the income of the assessee. Therefore, Ld. CIT(A) held that BVR merely acted as a broker and the amount was more of brokerage rather than on-money portion of sale consideration. The Ld. CIT(A) however, held that the cash portion of Rs.1.73 Crores could be deemed to have been received by the

assessee company. The proportionate share of the assessee therein was Rs. 46.25 Lacs which was to be confirmed as receipt of on-money by the assessee.

4.7 On the issue of lease advance of Rs.10 Lacs, the assessee submitted that though the lease agreement was entered by the assessee and the same was registered, the same was never acted upon. The assessee never paid any such lease advance to prospective sellers. In support, the assessee drew attention to the confirmation from prospective seller as placed before Ld. AO during assessment proceedings. However, Ld. CIT(A), noted that the seized document include lease agreement. As per this agreement, the assessee paid an amount of Rs.10 Lacs to prospective lessor. Accordingly, the impugned addition was confirmed.

4.8 On the issue of profit on sale of agricultural land, the assessee submitted that he was not aware of any such transaction. The assessee also submitted that it had requested Ld. AO to furnish the copies of documents based on which additions were made. However, no such details were provided to the assessee. Concurring with the same, Ld. CIT(A) directed Ld. AO to provide the requisite details to the assessee and re-examine the issue. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. Before us, the assessee substantially assails the assumption of jurisdiction of Ld. AO u/s 153A on the ground that in the absence of incriminating material as found during search, impugned additions could not have been made. For the same, the assessee has primarily relied on

the recent decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)**.

6. From the facts, it is quite clear that the impugned addition of on-money is not based on any incriminating material as unearthed during the course of search proceedings in the case of the assessee. In para-7 of assessment order, the Ld. AO has referred to documents / information as unearthed during earlier search conducted in the case of OSAPL on 02.07.2010 which has led to impugned addition in the hands of the assessee. The impugned additions are thus based on incriminating material found in another search which has already concluded much before initiation of search on the assessee. The search in assessee's case has happened on 21.06.2011. As noted in preceding para 3.1, the assessee had filed its return of income for this year on 11.12.2008 declaring income of Rs.16.50 Lacs. Notice u/s 153A was issued the assessee on 14.09.2012 against which the assessee offered original return of income as filed on 11.12.2008. It is quite clear that on the date of issuance of notice u/s 153A, no proceedings for this year were pending against the assessee and this was a case of an unabated year. The additions, in such a case, should strictly be made on the basis of any incriminating material found during the course of search action on the assessee.

7. On the given set of facts, the ratio of recent decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)**, considering all the earlier decisions holding the field, would squarely apply to the facts of the case settling the

impugned issue in favor of the assessee. The adjudication of Hon'ble Court was as under: -

5. We have heard learned counsel for the respective parties at length. The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, i.e., whether any 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 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under section 132 or requisition under section 132A, the assessment has to be done under section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of *Kabul Chawla* (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of *Saumya Construction* (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of *Pr. CIT v. Mehndipur Balaji* 2022 SCC Online All 444/[2023] 147 taxmann.com 201/ [2022] 447 ITR 517 has taken a contrary view.

7.1 In the case of *Kabul Chawla* (supra), the Delhi High Court, while considering the very issue and on interpretation of section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

38. 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 decisions, the legal position that emerges is as under:

i. Once a search takes place under section 132 of the Act, notice under section 153A(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 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 153A 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 153A 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.

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) and after considering the entire scheme of block assessment under section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A 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. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee

is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

8. For the reasons stated hereinbelow, 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), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961. 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. Secondly, that 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 regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under 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 any special rate. Thus, after introduction of Section

153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132 of the Act, 1961. 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 ordinary course of regular assessment. 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.

10. 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. Section 153A of the Act reads as under:

"153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132-A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132-A, as the case may be, shall abate.

(2) 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:

Provided that such revival shall cease to have effect, if such order of annulment is set aside

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153-B and section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

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. Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021

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 6-9-2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, TANVI 16/2015, 268/2014 and 17/2015, as also, against the order dated 21-9-2017 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 reassess 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.

Approving the decision of Hon'ble Delhi High Court in the case of **Kabul Chawla (380 ITR 573)** as well as the decision of Hon'ble Gujarat High Court in **Saumya Construction (P.) Ltd. (387 ITR 529)**, it was held that in respect of completed assessments / unabated assessments, no addition could be made by Assessing Officer in the absence of any incriminating material found during the course of search under section 132 or requisition made under section 132A.

8. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT V/s Continental Warehousing Corporation [2015; 374 ITR 645]** which has been followed in subsequent decision in **CIT V/s Gurinder Singh Bawa (79 taxmann.com 398 05/10/2015)** which deal with a situation wherein the original return of income was processed u/s 143(1). The present case before us is on similar fact. It was held by Hon'ble Court that in respect of non-abated assessment, the additions are to be strictly based on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search and undisclosed income or undisclosed property discovered during search.

9. We find that similar is the view of Hon'ble Delhi High Court in **Pr. CIT V/s Meeta Gutgutia (82 Taxmann.com 287)** which has primarily followed the decision of **Kabul Chawla (supra)**. We also find that Special Leave Petition (SLP) filed by the revenue against this decision has already been dismissed by Hon'ble Supreme Court on 02.07.2018

which is reported at 96 Taxmann.com 468. The decision of Hon'ble Court was as under: -

1. Delay condoned.
2. We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.
3. Pending application stands disposed of.

Therefore, the attempt of Ld. CIT(A) to seek distinction in these case laws is devoid of any merits and needs to be rejected. Respectfully following the ratio of all these binding judicial precedents, the impugned addition of Rs.46.25 Lacs as confirmed in the impugned order, stand deleted on legal grounds alone. Delving into the merits of quantum addition has been rendered academic in nature.

10. So far as the addition of Rs.10 Lacs is concerned, it could be seen that the same is based on one registered lease agreement found from the premises of the assessee. The Ld. AO alleged that such document mention payment of Rs.10 Lacs by the assessee which was not recorded by the assessee in its books of accounts. However, the assessee has stated that the said amount was never paid. The assessee also placed on record confirmation from the prospective sellers to substantiate its stand. This being the case, the impugned addition could not be sustained since there is no other evidence to establish that this payment was ever made by the assessee. It could also be seen that Ld. AO has not brought on record any corroborative evidences to sustain this addition. Therefore, the addition of Rs.10 Lacs stand deleted.

11. The addition of Rs.6.10 Lacs is not based on any incriminating material found during the course of search. The Ld. AO has not referred

to any seized document while making the impugned addition. Therefore, this addition stands deleted on legal grounds.

12. In the result, the appeal stands partly allowed.

Order pronounced on 17th May, 2024

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 17-05-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF