

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI MANJUNATHA G., ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 59/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Smt. Deepa Gupta, H. No. 23, 8-2-618/G/1 and 2, Road No. 11, Banjara Hills, Hyderabad 500003 PAN:AAGPG9555N	Vs.	ACIT, Central Circle – 3(1), Hyderabad
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निर्धारिती द्वारा/Assessee by: Advocate Narahari Biswal  
राजस्व द्वारा/Revenue by: Shri CH Rajeswara Reddy, DR

सुनवाई की तारीख/Date of hearing: 01/07/2024  
घोषणा की तारीख/Pronouncement on: 18/07/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("learned CIT(A)"), in the cases of Smt. Deepa Gupta, ("the assessee") for the assessment year 2012-13, the assessee preferred this appeal.

2. After hearing both the sides, we are of the considered opinion that the primary question that arises for consideration in this appeal is, in the

absence of any incriminating material found during the search, whether any interference could be made with the concluded assessments while assessing the income under section 153A of the Income Tax Act, 1961 ('the Act').

3. Brief facts of the case are that the returns of income for the assessment year 2012-13 the assessee filed the return of income on 29/9/2012. Due date for issuing notice under section 143 of the Act for the assessment year 2012-13 expired by 30/09/2013 but neither of these assessee received any such notice, thereby resulting in the assessments for those years attaining finality.

4. There was a search conducted on 02/05/2018 under section 132 of the Act in the business premises of M/s. Jitendra Roller Flour Mills covering the assessee also. Pursuant to the notice issued under section 153A of the Act, both these persons filed the returns of income. Learned Assessing Officer, however, completed the assessment under section 143(3) read with section 153A of the Act, by making addition under section 68 of the Act.

5. Aggrieved thereby, the assessee preferred appeals before the learned CIT(A) and, among other things, argued that there was no incriminating material relevant to the matter on the issue pertaining to these assessment years and since no assessment was pending for these assessment years as on the date of search in terms of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 / (2015) 61 taxmann.com 412 (Delhi), no interference could be made with

the concluded assessment, while making assessment under section 153A of the Act.

6. Learned CIT(A) did not agree with the contentions raised by the assesseees and recorded that the execution of warrant makes it obligatory on the part of the learned Assessing Officer to initiate proceedings under section 153A of the Act, there is no mention of the seized material by the legislature in section 153A of the Act and, therefore, anything which is not to be found in the legislature as to the availability of incriminating material cannot be read into the same. On this premise, learned CIT(A) held that non-availability of incriminating material cannot be a limiting factor on the jurisdiction of the learned Assessing Officer. According to the learned CIT(A), there is incriminating material in the form of various statements and documents gathered by the investigation wing along with SEBI report and also the fact that during the course of search, the assessee could not furnish any details of the transactions which resulted in the claim of exempt income under section 10(38) of the Act. Learned CIT(A) further observed that similar additions were made in the cases of one Virender Kumar Gupta, Narinder Kumar Gupta, and Kanishk Gupta on account of sale of shares of M/s Twenty First Century Pvt. Ltd and in all such cases the appeals were decided against them. For these reasons, the learned CIT(A) rejected the contentions of the assesseees.

7. Assesseees, therefore, preferred these appeals on many grounds, but the main plank of argument of the learned AR is that when there is no incriminating material found during the search in case of a concluded assessment, no addition could be made. According to him, authorities below failed to appreciate the difference between the abated and un-

abated assessments and the well settled principle under section 153A of the Act that the jurisdiction to make assessment for a concluded assessment is limited to incriminating material found during the course of search. In support of his contentions, he placed reliance on the latest decision of the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. [2023] 149 taxmann.com 399 (SC).

8. Per contra, learned DR submits on behalf of the Revenue that section 153A of the Act does not limit the jurisdiction of the learned Assessing Officer to make the addition to the seized material alone and on the other hand, it is the bounding duty of the learned Assessing Officer to initiate proceedings under section 153A of the Act, the moment the search warrant is executed. According to the learned DR, there is no room from interpretation of this aspect and no discretion is left with the learned Assessing Officer to initiate or not initiate proceedings under section 153A of the Act in case of a search or, to limit his power to assess basing on the incriminating material alone. Learned DR placed reliance on several decisions reported in support of her contentions, namely, Gopal Lal Bhadraka vs. DICT (2012) 27 taxmann.com 167 (AP), E.N. Gopakumar vs. CIT (2016) 75 taxmann.com 215 (Ker), CIT vs. Raj Kumar Arora (2014) 52 taxmann.com 172 (All), Suman Poddar vs. ITO, SLP No. 26864/2019, dt. 22/11/2019 (SC), Suman Poddar vs. ITO, ITA No. 841/2019, dt. 17/09/2019 (Del), Suman Poddar vs. ITO, ITA No. 1006/Del/2019, dt. 25/07/2019 (ITAT, New Delhi), Krishna Devi vs. ITO, ITA No. 6356/Del/2019, dt. 04/01/2022, SEBI vs. Rakhi Trading Pvt. Ltd., Civil Appeal No. 1969 of 2011, 08/02/2018 (SC), Anandtex International P. Ltd., vs. ACIT, ITA No. 2476/Del/2018, dt. 24/02/2022. She also placed reliance on the decision reported in B. Kishore

Kumar vs. DCIT [2014] 52 taxmann.com 449 (Madras) against which, the SLP was dismissed by the Hon'ble Apex Court. Learned DR tried to make a distinction between the assessments concluded under section 143(3) of the Act and 143(1) of the Act, to say that the concluded assessment means only such assessment, which is terminated by the order passed under section 143(3) of the Act. Learned DR further submitted that there is incriminating material available in this case in the form of the statements made by various entry operators and also the statement of the assessees in these cases.

9. We have gone through the record in the light of the submissions made on either side. Insofar as the facts and figures are concerned, there is not much dispute. Before the expiry of the period to issue notice under section 143(2) of the Act for the assessment years 2012-13, no notice under section 143(2) of the Act was issued. It is also not the case of the Revenue that any incriminating material was found during the search that was considered by the learned Assessing Officer, but made the assessment.

10. Insofar as the contention of the Revenue as to the statement recorded under section 132(4) of the Act, in such a statement, only Mr. Narendra Kumar Agarwal agreed to withdraw the claim under section 10(38) of the Act that too on 14/06/2018 with a qualification that though he reiterates that the long term capital gains was duly disclosed in the IT return and the exemption under section 10(38) of the Act was claimed lawfully, but only to avoid litigation with the department, he voluntarily agreed to withdraw the exemption claim. By no stretch of imagination could it be said that this sort of statement is of incriminating in nature.

11. In view of the decisions of the Hon'ble jurisdictional High Courts in the cases of CIT vs. Shri Ramdass motor transport (1999) 12 Taxman 300 (Andhra Pradesh) and CIT vs. Naresh Kumar Agarwal [2015] 53 taxmann.com 306, followed by the Hon'ble Delhi High Court in the cases of CIT vs. Harjeev Aggarwal [2016] 70 taxmann.com 95 (Delhi) and PCIT vs. Best Infrastructure (India) (P.) Ltd. [2017] 84 taxmann.com 287 (Delhi), such a statement on standalone basis has no evidentiary value and cannot be acted upon to fasten any liability on the assessee.

12. Further, it is also the settled principle of law that after furnishing the return of income, if the assessee does not receive any notice under section 143(2) of the Act within the stipulated period, it amounts that the return has become final and no scrutiny proceedings shall be deemed to have been pending as on the date of expiry of such period to issue notice under section 143(2) of the Act. We are fortified in our view by the Circular No. 549 dated 31/10/1989 published in 1989 (1990) 182 ITR (St.) 1 and referred to by the Hon'ble Punjab and Haryana High Court in the case of Vipin Khanna vs. CIT (2002) 255 ITR 220 (P&H).

13. In view of the fact that neither of the assesseees received any notice(s) under section 143(2) of the Act before the expiry of the period to issue notice under such section, in view of the settled position of law stated above, it can safely be concluded that no assessment proceedings were pending as on 02/05/2018, the date of search in the business premises of M/s. Jitendra Roller Flour Mills covering the case of assessee also.

14. Learned CIT(A) in the impugned order advert to the fact that similar addition was done in the case of other related persons like Virendra Kumar Gupta, Narendra Kumar Gupta and Kanishk Gupta in respect of the in respect of the sale of shares of M/s Twenty First Century Pvt. Ltd, and such additions were confirmed in appeal, and in view of the similarity of the facts of the cases of such persons and the assessee, following the view taken in the case of Kanishk Gupta, learned CIT(A) confirmed the addition in this case also. In ITA No. 507 /Hyd/ 2022 in the case of Jitendra Kumar Gupta and another by order dated 17/10/2023 a coordinate Bench of this Tribunal deleted the addition. Following this order, vide order dated 30/10/2023 in ITA No. 34 /Hyd/ 2022 in the case of Kanishk Gupta a coordinate Bench of this Tribunal deleted the addition on similar reasoning in the preceding paragraphs. Further on similar reasoning the additions made in the case of Virender Kumar Gupta and Narinder Kumar Gupta in ITA numbers 45 to 47 /Hyd/ 2022 by order dated 18/10/2023 the additions were deleted. The reasons given in such cases are applicable to the facts of this case also on all fours.

15. Coming to the aspect of fastening the liability on the assesseees in the shape of additions pursuant to the search and seizure operations, but in the absence of any incriminating material to be found in such search and seizure operations, though the divergent views taken on this aspect are brought to our notice by both the counsel, the Hon'ble Supreme Court put a quietus to the issue by the decision in the case of PCIT vs. Abhisar Buildwell P. Ltd. (supra). While in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi) and the Hon'ble Gujarat High Court in the case

of PCIT Vs. Saumya Construction (2016) 387 ITR 529 and the decisions of the other Hon'ble High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material, Hon'ble Apex Court concluded that-

*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.*

16. This decision applies to the facts of the case on all fours and respectfully following the same, we hold that since no incriminating material was found in the case of assessees for the relevant assessment years, the concluded assessments cannot be disturbed, and the addition made by the learned Assessing Officer and sustained by the learned CIT(A) cannot be upheld. We accordingly allow the appeals of assessees.

17. In the result, all the appeals are allowed.

Order pronounced in the open court on this the 18<sup>th</sup> day of July, 2024.

Sd/-  
**(MANJUNATHA, G)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated:18/07/2024

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

*PVV/SPS*

Copy forwarded to:

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2. Asst. Commissioner of Income Tax, Central Circle-3(1), Hyderabad.
3. Pr.CIT(Central)-Hyderabad
- 4.DR, ITAT, Hyderabad.
- 5.GUARD FILE.

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ITAT, HYDERABAD