

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.198 & 199/Lkw/2023
Assessment Year:2015-16 & 16-17

Smt. Shashi Agarwal, 5 th Floor, Tuba Palace, 15, Madan Mohan Malviya Marg, Lucknow. PAN:ACUPA3714B (Appellant)	Vs.	Dy.C.I.T., Central Circle-1, Lucknow. (Respondent)
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Appellant by	Shri Akshay Agrawal, Advocate
Respondent by	Shri Manu Chaurasia, CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) These two appeals have been filed by the assessee against the impugned appellate orders, both dated 25/04/2023 for assessment year 2015-16 (DIN & Order No.ITBA/APL/S/250/2023-24/1052325007(1) and for assessment year 2016-17 (DIN & Order No.ITBA/APL/S/250/2023-24/1052325703(1) of learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. These two appeals are being disposed of through this consolidated order for the sake of convenience.

(A.1) In assessment year 2015-16, assessment order dated 31/12/2018 was passed u/s 153A read with section 144 of the Income Tax Act, 1961 ("IT Act" for short) wherein the assessee's income was assessed at

Rs.2,49,09,460/- as against returned income of Rs.24,72,560/-. The additions made in the assessment order included Rs.1,85,79,515/- towards unexplained credit u/s 68 of the IT Act; Rs.5,57,385/- towards unexplained investment u/s 69C of the Act and Rs.33,00,000/- towards unexplained investment u/s 69 of the Act. In assessment year 2016-17, assessment order dated 31/12/2018 (DIN & Order No.ITBA/APL/S/250/2023-24/1052325703(1) was passed u/s 153A read with section 144 of the Act wherein the assessee's total income was determined at Rs.58,99,020/- as against returned income of Rs.14,74,020/-. In the aforesaid assessment order for assessment year 2016-16, addition of Rs.44,25,000/- was made towards unexplained investment u/s 69 of the Act. The aforesaid assessment orders were passed consequent to search & seizure operation u/s 132 of the Act in Ramesh Group of cases on 08/07/2016. The Assessing Officer passed the aforesaid assessment order by assuming jurisdiction u/s 153A of the Act; search warrant u/s 132 of the Act having been issued in the name of the assessee. Both the aforesaid assessment orders were passed ex-parte qua the assessee. The assessee filed appeals against the aforesaid assessment orders in the office of the learned CIT(A). In these appeals, the assessee took the ground that the Assessing Officer had erred in law as well as on facts in making addition of various amounts to the returned income of the assessee inspite of the fact that no incriminating documents related to these additions were found during the course of search. Other grounds of appeal were also taken by the assessee regarding merits of the additions made. Vide separate impugned appellate orders, each dated 25/04/2023, vide DIN & Order No.ITBA/APL/S/250/2023-24/1052325007(1) for assessment year 2015-16 and vide DIN & Order No.ITBA/APL/S/250/2023-24/1052325703(1) for assessment year 2016-17, the learned CIT(A) disposed of the assessee's appeals, by dismissing all the

grounds of appeals taken by the assessee in the appeals filed in the office of the learned CIT(A). The aforesaid impugned appellate orders were also passed ex-parte qua the appellant assessee. Aggrieved, the assessee has filed the present appeals in Income Tax Appellate Tribunal. In these appeals filed by the assessee in Income Tax Appellate Tribunal, once again, the assessee has once again raised grounds of appeal to the effect that the learned CIT(A) erred in law and on facts in confirming the aforesaid additions made by the Assessing Officer despite the fact that no incriminating documents relating to these additions were found during the course of search. In addition, separate grounds of appeals have also been taken by the assessee on merits of the various aforesaid additions made by the Assessing Officer in the aforesaid assessment orders which were confirmed by the learned CIT(A) in the aforesaid impugned appellate orders.

(A.1) As the assessment orders as well as impugned appellate orders have been passed ex-parte, qua the assessee, the issues in dispute in the present appeals before us have arisen in the absence of any consideration of submissions of the assessee.

(B) At the time of hearing before us, the appellant assessee was represented by Shri Akshay Agrawal, learned Advocate; and Revenue was represented by Shri Manu Chaurasia, learned CIT (D.R.). Learned Counsel for the assessee submitted that the issue as to whether additions can be made in assessment orders passed u/s 153A of the Act when no incriminating material was found in the course of search u/s 132 of the Act; is now squarely settled in favour of the assessee by orders of Hon'ble Supreme Court in the cases of Principal Commissioner of Income-tax vs. Abhisar Buildwell (P.) Ltd. [2023] 149 Taxmann.com 399 (SC) and in the case of Dy. CIT vs. U. K. Paints (Overseas) Ltd. [2023] 150 Taxmann.com

108 (SC). He further submitted that Central Board of Direct Taxes (CBDT) has also issued instruction regarding implementation of judgment of Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax vs. Abhisar Buildwell (Instruction No. 1 of 2023 [F.No.279/Misc./M-54/2023-ITJ] dated 23/08/2023, directing the field authorities to implement the aforesaid orders of Hon'ble Supreme Court in Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra) in uniform manner. He submitted that the aforesaid Instruction dated 23/08/2023 of CBDT, directing the field authorities to implement the orders of Hon'ble Supreme Court, was binding on Revenue authorities. He further submitted that various Courts and Benches of the ITAT have considered the aforesaid orders of Hon'ble Supreme Court and have decided the issue in favour of the assessee and against the Revenue following the aforesaid orders of Hon'ble Supreme Court in Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra). In particular he drew our attention to cases reported as under:

- (1) Pr. CIT vs. S. S. Con Build (P.) Ltd. [2023] 151 taxmann.com 317 (SC)
- (2) Pr. CIT vs. Jay Ambey Aromatics [2023] 156 taxmann.com 691 (SC)
- (3) Pr. CIT vs. Saroj Sudhir Kothari [2023] 154 taxmann.com 360 (SC)
- (4) Pr. CIT vs. Jay Ace Technologies Ltd. [2023] 154 taxmann.com 45 (SC)
- (5) Pr. CIT vs. King Buildcon (P.) Ltd. [2023] 154 taxmann.com 189 (SC)
- (6) Pr. CIT vs. Saroj Sudhir Kothari [2023] 154 taxmann.com 128 (SC)
- (7) Pr. CIT vs. Backbone Projects Ltd. [2023] 154 taxmann.com 15 (Gujarat)
- (8) Pr. CIT vs. M. Kiran Kumar [2024] 165 taxmann.com 672 (Madras)
- (9) Poonam Builders vs. ACIT [2024] 162 taxmann.com (Bombay)

- (10) Sunny Jacob Jewellers vs. CIT [2024] 163 taxmann.com 722 (Kerala)
- (11) Pr. CIT vs. Oxygen Business Park (P.) Ltd. [2023] 157 taxmann.com 175 (Delhi)
- (12) Pr. CIT vs. Bharatnet Technology Ltd. [2024] 158 taxmann.com 28 (Punjab & Haryana)
- (13) R. B. Jewellers (P.) Ltd. vs. Union of India [2023] 157 taxmann.com 493 (Calcutta)
- (14) Pr. CIT vs. Kaushik Devjibhai Patel [2023] 152 taxmann.com 462 (Gujarat)
- (15) Pr. CIT vs. Shardaben Arvindbhai Patel [2023] 152 taxmann.com 535 (Gujarat)
- (16) Pr. CIT vs. Sidhi Vinayak Aromatics (P.) Ltd. [2024] 159 taxmann.com 1700 (Delhi)
- (17) Pr. CIT vs. Phalguni Enclave (P.) Ltd. [2023] 153 taxmann.com 155 (Calcutta)
- (18) Pr. CIT vs. j Birju Chhotalal Shah [2023] 154 taxmann.com 469 (Gujarat)
- (19) ACIT vs. Saluja Construction Co. Ltd. [2023] 155 taxmann.com 545 (Delhi)
- (20) Pr. CIT vs. Swetaben Ghanshyambhai Patel [2023] 152 taxmann.com 404 (Gujarat)
- (21) Pr. CIT vs. Shyama Power India Ltd. [2023] 154 taxmann.com 403 (Gauhati)
- (22) Shyam Sunder Jindal vs. ACIT [2204] 159 taxmann.com 1384 (Delhi)
- (23) Pr. CIT vs. Salarpuna Properties (P.) Ltd. [2023] 157 taxmann.com 51 (Calcutta)
- (24) CIT vs. Fortune Vanijya (P.) Ltd. [2023] 156 taxmann.com 191 (Gauhati)
- (25) Sunny Jacob Jewellers vs. CIT [2024] 163 taxmann.com 722 (Kerala)
- (26) ACIT vs. Radha Madhav Developers [2024] 165 taxmann.com 578 (Nagpur-Trib.)
- (27) Shamsheer Singh vs. ACIT [2024] 166 taxmann.com 11 (Chandigarh-Trib.)
- (28) ACIT vs. Antony Leo Sequeria [2024] 166 taxmann.com 60 (Mumbai-Trib.)
- (29) Ishtiaq Ahmad Dar vs. ACIT [2024] 163 taxmann.com 662 (Amritsar-Trib.)
- (30) Income Tax Officer vs. Ramchandra Setty & Sons [2024] 163 taxmann.com 666 (Bangalore-Trib.)

- (31) Dy. CIT vs. Arunachal Pradesh Power Corporation (P.) Ltd. [2024] 159 taxmann.com 1369 (Guwahati-Trib.)
- (32) Naresh Manakchand Jain vs. ACIT, I.T.A. No.247 & 240 to 244/Mum/2023, order dated 27/06/2024

(B.1) In view of the aforesaid submissions, learned Counsel for the assessee submitted that the additions made in the aforesaid assessment order, which were confirmed by learned CIT(A) in aforesaid impugned appellate orders, each dated 25/04/2023 should be deleted.

(B.2) Learned D.R. for Revenue submitted that impugned appellate orders of learned CIT(A) were passed following order of Hon'ble Allahabad High Court in the case of CIT vs. Rajkumar Arora 367 ITR 517 (Allahabad). He also submitted that the impugned appellate orders of the learned CIT(A) also took support from decisions reported in CIT vs. K. P. Ummer 413 ITR 251 (Kar), CIT vs. Ormo Marble Palace P Ltd. 308 CTR 584 (Ker.), Sunny Jacob Jewellers and Wedding Center vs. DCIT 362 ITR 664 (Ker.) and E. N. Gopakumar [2016] 75 taxmann.com 215 (Kerala). However, he fairly conceded that orders of Hon'ble Supreme Court in the aforesaid cases of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra) were not available at the time when assessment orders passed by Assessing Officer and impugned appellate orders passed by learned CIT(A) were passed. He also fairly admitted that at present the issue is covered in favour of the assessee by orders of Hon'ble Supreme Court in Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra).

(C) We have heard both sides. We have perused materials on record. There is no dispute regarding relevant facts. It is not in dispute that no

incriminating materials were found in the course of search u/s 132 of the IT Act in respect of the various additions made by the Assessing Officer. Further it is also not in dispute that no assessment proceedings were pending in the cases of the assessee at the time of search conducted on 08/07/2016 in the case of the assessee, u/s 132 of the IT Act. Further, as no assessment proceedings were pending at the time of search & seizure operation u/s 132 of the Act on 08/07/2016, the case of the assessee falls in the category of unabated/completed assessments within the meaning of orders passed by Hon'ble Supreme Court in the cases of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra) and within the meaning of order passed in the case of Kabul Chawla 380 ITR 573 (Delhi), which stands approved by Hon'ble Supreme Court by dint of orders of Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra). Further, in paragraph 14 of the aforesaid order of Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra), the Hon'ble Supreme Court concluded as under:

"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 fulfillment 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."

(C.1) Hon'ble Supreme Court in the case of U. K. Paints (Overseas) Ltd. (supra) widened the application of the order in the case of Abhisar Buildwell (supra) to assessments conducted u/s 153C of the IT Act also. In both orders of Hon'ble Supreme Court i.e. in Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra), the Hon'ble Supreme Court held that in respect of the completed/unabated assessments, no additions can be made in assessment order passed u/s 153A or passed u/s 153C of the IT Act in respect of which incriminating materials were not found in the course of search action u/s 132A of the Act; although Hon'ble Supreme Court held that the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers u/s 147/148 of the IT Act subject to fulfillment of the conditions as envisaged/mentioned u/s 147/148 of the IT Act. Thus, although the powers of the Assessing Officer u/s 147/148 of the IT Act were saved by Hon'ble Supreme Court in the cases of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints

(Overseas) Ltd. (supra), subject to fulfillment of conditions envisaged u/s 147/148 of the IT Act; it has been categorically held that in respect of completed/unabated assessments, no additions can be made u/s 153A or under section 153C of the Act if incriminating material was not found / unearthed during the course of search u/s 132 of the IT Act in respect of the additions made.

(C.2) The issue whether additions can be made in assessment orders passed u/s 153A or u/s 153C of IT Act in cases falling under unabated/completed assessments, when no incriminating material was found at the time of search u/s 132 of the IT Act, was a disputed issue in the past. While a view in favour of assessee was taken, for example, in cases such as CIT vs. Kabul Chawla (supra), Pr. CIT vs. Saumya Construction 387 ITR 523 (Guj), CIT vs. Continental Warehousing 374 ITR 645 (Bom.), Smt. Jami Nirmala vs. Pr.CIT 437 ITR 673 (Orissa), CIT vs. Veerprabhu Marketing Ltd. 388 ITR 574 (Cal.), Pr.CIT vs. Delhi International Airport (P.) Ltd. 443 ITR 574 (Kar.), Pr.CIT vs. Meeta Gutgutia 395 ITR 526 (Delhi), Dr. A. V. Sreekumar vs. CIT 404 ITR 642 (Ker.), Pr. CIT vs. Smt. Daksha Jain 2019 (8) TMI 474 (Rajasthan), etc.; courts took a view in favour of Revenue in cases reported as CIT vs. Rajkumar Arora (supra), CIT vs. Mahndipur Balaji 447 ITR 517 (All.), CIT vs. K. P. Ummer 413 ITR 251 (Ker.), Sunny Jacob Jewellers and Wedding Centre vs. DCIT 362 ITR 664 (Ker.), E. N. Gopakumar 75 taxmann.com 215 (Kerala), etc. The issue has now been finally settled by decisions of Hon'ble Supreme Court in the aforesaid cases of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra) wherein view in favour of assessee has been taken.

(C.2.1) In the present appeals before us, the additions have been made by the Assessing Officer in assessment orders passed u/s 153A of the IT Act. Further, we have already noted earlier that the relevant facts are not in dispute. It is not in dispute that no incriminating materials were found in the course of search u/s 132 of the IT Act in respect of the various additions made by the Assessing Officer. Further it is also not in dispute that no assessment proceedings were pending in the cases of the assessee at the time of search conducted on 08/07/2016 in the case of the assessee, u/s 132 of the IT Act. Furthermore, as no assessment proceedings were pending in the case of the assessee at the time when (on 08/07/2016) search u/s 132 of the IT Act was conducted, the case of the assessee in the present appeals before us, falls in the category of completed/unabated assessments within the meaning of orders passed by Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and in the case of CIT vs. Kabul Chawla (supra) which was approved by Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax vs. Abhisar Buildwell (supra). In view of the foregoing, and having regard to the relevant facts and circumstances of the present case before us, and further, as representatives of both sides are in agreement with this, we are of the view that the issue in dispute is squarely covered in favour of the assessee by the orders of Hon'ble Supreme Court in Principal Commissioner of Income-tax vs. Abhisar Buildwell (supra) and Dy. CIT vs. U. K. Paints (Overseas) Ltd. (supra) and by the aforesaid instruction No. 1 of 2023 of CBDT, which is binding on Revenue authorities. Accordingly, we direct the Assessing Officer to delete the additions made amounting to a total of Rs.2,24,81,900/- for assessment year 2015-16 and addition amounting to Rs.44,25,000/- for assessment year 2016-17.

(C.2.2) Since we have directed that the aforesaid additions be deleted, the other issues regarding merits of the additions made in the aforesaid two years, become merely academic in nature and do not require any adjudication. Therefore, we decline to make any order with regard to the merits of the various additions made.

(D) In the result, these two appeals are treated as allowed for statistical purposes.

(Order pronounced in the open court on 07/10/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:07/10/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar