

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकरअपील सं./ ITA No.1222/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
- &
2. आयकरअपील सं./ ITA No.1223/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
- &
3. आयकरअपील सं./ ITA No.1224/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)
- &
4. आयकरअपील सं./ ITA No.1225/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)

Shri Palladam Krishnasamy Ganeshwar 21,Shri Ganesa Textiles, Pollachi Road, Palladam, Tirupur-641 664.	बनाम/ Vs.	DCIT Central Circle-3 Coimbatore.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADFPG-6476-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी कीओर से/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/Date of Hearing	:	10-09-2024
घोषणा की तारीख /Date of Pronouncement	:	19-11-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by assessee for Assessment Years (AY) 2014-15 to 2017-18 arises out of separate orders of first appellate authority.

However, facts as well as issues are substantially the same in all the years and it is admitted position that our adjudication in any one year would equally apply to the other years also. First, we take up appeal for AY 2014-15 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 29-02-2024 in the matter of an assessment framed by the Ld. AO u/s.143(3) r.w.s 153A of the Act on 18-06-2021.

1.2 The grounds raised by the assessee read as under: -

1. The order of the CIT (Appeals) - 20, Chennai dated 29.02.2024 vide DIN Order No. ITBA/APL/S/250/2023-24/10617359071) for the abovementioned Assessment Year is contrary to law, fact and in circumstances of the case.
2. The CIT (Appeals) - 20, Chennai erred in confirming the search assessment in terms of section 153A of the Act in contra distinction to a search assessment as per section 153C of the Act without assigning proper reasons and justification and ought to have appreciated that the order of search assessment was pished out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law
3. The CIT (Appeals) - 20, Chennai erred in confirming the validity of framing of the assessment under Section 153A of the Act in the absence of seized material during the course of the search made in hands of the appellant and further erred in confirming the addition made in the search assessment order passed in terms of Section 153A of the Act without assigning proper reasons and justification.
4. The CIT (Appeals) - 20, Chennai failed to appreciate that having assessed the appellant in terms of Section 153A of the Act based on the incriminating materials seized during the search in the premises of Mr. O. Arumugasamy and others in contra distinction to the search in the premises of the appellant here in, where in no incriminating materials were seized for the purpose of making the disputed addition(s) in the search assessment order(s), the consequential search assessment order pass should be reckoned as bad in law.
5. The CIT (Appeals) - 20, Chennai failed to appreciate that having used the disputed search materials seized in the premises at Mr. O. Arumugasamy and others for making the disputed addition and further having not seized any incriminating material in support of the disputed addition in the hands of the searched person, the assessment completed by making additions not arising from the search conducted in the hands of the appellant should be reckoned as nullity in law.
6. The CIT (Appeals) - 20, Chennai failed to appreciate the law declared by the Supreme Court in the case reported in 454 ITR 212 on the scope of jurisdiction on the scope of jurisdiction under Section 153A of the Act in proper perceptive and as a consequence ought to have appreciated that the search assessment order under consideration was invalid, passed without jurisdiction and not sustainable both on facts and in law.
7. The CIT (Appeals) - 20, Chennai failed to appreciate that the finding rendered with respect to framing of assessment under Section 153A of the Act in the absence of incriminating material in contrary to judicial precedents, there by vitiating the passing of the appellate order,

8. The CIT (Appeals) - 20, Chennai erred in sustaining the addition of Rs. 6,00,00,000/- being the sum alleged to have been given as loan to Mr. O. Arumugasamy and others as unexplained investment in terms of Section 69 of the Act in the computation of taxable total income without assigning proper reasons and justification.

9. The CIT (Appeals) - 20, Chennai erred in sustaining the addition of Rs.49,00,000/- being the sum alleged to have been earned as unaccounted interest income for the loan given to Mr. O. Arumugasamy and others as income of the appellant in terms of Section 56 of the Act in the computation of taxable total income without assigning proper reasons and justification.

10. The CIT (Appeals) - 20, Chennai failed to appreciate that the additions made merely based on the 'dairy statement' seized during search in the premises of Mr. O. Arumugasamy and others was wholly unjustified and ought to have appreciated that the subsequent affidavit filed was rejected on superfluous reasons, there by vitiating the action of First *Appellate* Authority in confirming the addition made.

11. The CIT (Appeals) - 20, Chennai failed to appreciate that the rejection of the affidavits and the explanation provided by the appellant on the ground that other parties had not appeared before the Assessing Officer in response to the summon issued by them was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The CIT (Appeals) - 20, Chennai failed to appreciate that appellant had discharged the onus cast upon in explaining the transaction under consideration by way of affidavits from the person whose statements were relied on and ought to have further appreciated that the action of the First Appellate Authority in not conducting any further enquiry while passing the order impugned is unsustainable in law.

13. The CIT (Appeals) - 20, Chennai failed to appreciate that having not unearthed any material indicating the actual transfer of the money relating to the presumed transaction by the appellant with the other individual(s)/ entities, the addition made as part of the computation of taxable total income invoking the provisions of section 69 of the Act was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

14. The CIT (Appeals) - 20, Chennai failed to appreciate that the misreading of the sworn statements of the other parties would negate the presumption of unaccounted loan transactions and ought to have appreciated that the process of translating their presumption for substantiating the addition made in the computation of taxable total income was not conducted in accordance with the settled principles of law thereby grossly violating the principles of natural justice.

15. The CIT (Appeals) - 20, Chennai failed to appreciate that having not examined the nature of transactions reflected in the invalid loose sheets, the additions made should be reckoned as bad in law in view of the presumption of disputed loan transactions.

16. The CIT (Appeals) - 20, Chennai failed to appreciate that reasons provided in the affidavit for explaining the transactions under consideration was not understood in proper perceptive while rejecting the same on mere suspicion and surmises,

17. The CIT (Appeals) - 20, Chennai failed to appreciate that the findings rendered in relation there to in the impugned order was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

18. The CIT (Appeals) - 20, Chennai failed to appreciate that the entire recomputation forming part of the assessment order was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

19. The CIT (Appeals) - 20, Chennai failed to appreciate that the assessment order under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

As is evident, the sole subject matter of appeal is additions made by lower authorities consequent to search proceedings in the case of the assessee. The assessee has challenged the assumption of jurisdiction on legal grounds and also assailed the quantum additions on merits.

2. The Ld. AR, drawing attention to the documents as placed on record, assailed the assessment proceedings on the legal ground and submitted that that in the absence of any incriminating material found during the course of search, no addition could be made in the hands of the assessee as per the ratio of decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment in the absence of any incriminating material found during the course of search. The Ld. CIT-DR advanced arguments and supported the findings of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident individual is stated to be engaged in Textile business. The assessee filed return of income on 29-11-2014 offering income of Rs.439.79 Lacs, The same was scrutinized u/s 143(3) vide order dated 10-08-2016 and no assessment proceedings were pending for this year on the date of search (06-03-2019) on the assessee. In other words, this was unabated assessment year.

3.2 However, the impugned assessment proceedings stem from search carried out by the department u/s 132 in the case of the assessee group

on 06-03-2019. Consequently, notice u/s 153A was issued on 06-02-2020 and in response, the assessee filed return of income of income u/s 153A on 19-08-2020 declaring the same income as offered in regular return of income filed u/s 139(1).

3.3 In the assessment order, Ld. AO referred to search conducted by the department on 09-11-2017 in the case of another group viz. Shri O. Arumugasamy and M/s Senthil group of companies wherein certain incriminating material was found from the premises of Smt. R. Santhamani (cashier of M/s Senthil Group of companies) as well as from the office premises of M/s Senthil Group of Companies. The same inter-alia, includes details of loan taken in cash as well as through cheques from various creditors, payment of interest in cash to them and repayment of loans by the said group.

3.4 It was noted by Ld. AO that certain loans were received in cash as well as through bank from the assessee i.e., Shri PK Ganeswar (Prop. of Shri Ganesha Textile) as well as from his other concerns and interest was paid in cash to them. The details thereof along with scanned images of incriminating material as well as statements recorded during the course of search proceedings on that other group has already been extracted extensively in the assessment order.

3.5 During search on assessee group, details of loans advanced to debtors were found from the office premises of Shri Ganesha Textile (proprietorship Shri PK Ganeshwar). The details of the same were also available in Tally Data. On verification of the same, it was found by Ld. AO that the assessee group had advanced loans to Shri O. Arumugasamy, Shri A. Senthil Kumar (son of Shri O. Arumugasamy), and Shri M. Palanisamy (business associate of Shri O. Arumugasamy).

The details of the same along with ledger extracts have been extracted on Page No.28 onwards in the assessment order. The material as seized from other group indicated that there was a loan received entry of Rs.20 Crores from PK Ganeshwar Tirupur Tip Top and interest payment at the rate of 3% per month for the said loan.

3.6 In assessee's premises, there was a sale agreement between Shri R. Eswaran (shareholder of Tirupur Tip Top Chit funds) and Sh. Senthil Kumar (son of Shri O. Arumugasamy) and director of M/s Kasthuri Mills Pvt. Ltd.

3.7 Considering all the above facts, Ld. AO concluded that there exists a nexus between Shri O. Arumugasamy, assessee, M/s SG wind farms Pvt. Ltd. and R. Eswaran of Tirupur Tip Top Chit funds. Hence, in the seized material of Shri O. Arumugasamy, notings were mentioned as Tirupur Tip Top C/o PK Ganeshwar, Further, cash loan of Rs.20 Crores entered in the seized material of Shri O. Arumugasamy as 'PK Ganeshwar C/o TPR Tip Top' was also repaid by Shri O. Arumugasamy during demonetization as part of Rs.36 Crores that was totally repaid to Shri PK Ganeshwar. As per document seized during search on that group, outstanding quantum of loan lent by the assessee and his concerns was Rs.71.88 Crores. Out of the same, the undisclosed portion was Rs.42.34 Crores whereas the balance was Rs.29.54 Crores which was the disclosed portion as per the books of assessee still outstanding from Shri O. Arumugasamy and his related concerns.

3.8 In relation to undisclosed portion, Rs.36 Crores was allegedly received by the assessee in cash from Shri O. Arumugasamy on two occasions i.e., Rs.16 Crores on 03-12-2016 and Rs.20 Crores on 27-11-

2016 as per material seized from search of Shri O. Arumugasamy group and confirmed in sworn statement recorded therein.

3.9 The details of return of income as filed by the assessee u/s 139(1) as well as filed u/s 153A was tabulated by Ld. AO as under: -

A.Y.	Date of notice issued u/s.153A	Original return of income as per 139(1)	Original return of income date filed	Return of income as per 153A	Date of return of income filed u/s.153A	Agri income	Addl. income disclosed
2011-12	06.02.2020	-(110177310)	30.09.2011	-(110177310)	18.08.2020	765400	Nil
2012-13	06.02.2020	375100	29.09.2012	10605100	18.08.2020	825700	10230000
2013-14	06.02.2020	23354770	29.09.2013	51315770	18.08.2020	102560	27961000
2014-15	06.02.2020	43979575	29.11.2014	43979575	18.08.2020	877000	Nil
2015-16	06.02.2020	54702600	02.10.2015	54702600	18.08.2020	303500	Nil
2016-17	06.02.2020	8329460	10.10.2016	8875360	18.08.2020	314600	545900
2017-18	06.02.2020	14322420	07.11.2017	14322420	18.08.2020	412600	Nil
2018-19	06.02.2020	28136770	27.09.2018	28136770	18.08.2020	463050	Nil
2019-20	143(2)	2364868	19.08.2020	NA	NA	NA	NA

3.10 During the course of assessment proceedings, the assessee furnished various replies and filed financial statements etc. in support of its return of income. Upon perusal, it was noted by Ld. AO that no interest income was admitted by the assessee as received from Shri O. Arumugasamy group whereas material found during the search on that group indicated that the assessee had advanced loan of Rs.5 Crores during 16-12-2013 which was also available in the books of the assessee. Though the transactions were undertaken by the assessee, the assessee failed to disclose the interest income against the same. Such interest allegedly received by the assessee group was quantified at Rs.108.70 Lacs as under: -

Amount in Rs.	Interest rate	Period	Duration	Interest paid on 06.03.2014	In the hands of P.K.Ganeshwar
10,00,00,000/-Rs. 5 crores given by M/s.Shri Ganesh Textiles and Rs.5 crores by M/s.SG Windfarms P.Ltd.	3%	16.12.2014 to 06.03.2014	2 months 18 days	78,00,000	39,00,000
3,00,00,000/- given by M/s. SG Windfarms P.Ltd.	3%	30.12.2014 to 06.03.2014	2 months 16 days	19,80,000	0

2,00,00,000/- Undisclosed cash loan given by Shri P.K.Ganeshwar	3%	21.01.2014 to 06.03.2014	1 month & 13 days	8,60,000	8,60,000
1,00,00,000/- Undisclosed cash loan given by Shri P.K.Ganeshwar	3%	12.02.2014 to 06.03.2014	23 days	2,30,000	2,30,000
	Total			1,08,70,000	49,90,000/-

Accordingly, Ld. AO proceeded to add the proportionate interest of Rs.49.90 Lacs in the hands of the assessee.

3.11 The assessee opposed the same on the ground that all these loans were advanced through banking channels and repayment also happened through banking channels only. All the transactions were duly disclosed in the books of accounts. The assessee also filed loan confirmation from each of the entities for respective years. The assessee denied having entered into any other transactions with Shri O. Arumugasamy and others. The assessee also submitted that the group was unable to repay the outstanding loans and interest due to heavy losses incurred by that group in their business. The assessee refuted the allegation of Ld. AO on the ground that loose sheets recovered during search on third-party could not be considered as conclusive evidence in the absence of corroboration thereof. No addition could be made on the basis of presumption and surmises.

3.12 However, going by the material found during the search in the case of Shri O. Arumugasamy group as well as statements recorded therein, Ld. AO rejected the submissions of the assessee and added interest income of Rs.49.90 Lacs in the hands of the assessee as 'income from other sources' u/s 56. The interest income of Rs.58.80 Lacs pertaining to M/s SG Wind farms Pvt. Ltd. was added on protective basis.

3.13 The Ld. AO also made addition of alleged undisclosed investment for Rs.600 Lacs. The same is also based on material seized during search on Shri O. Arumugasamy group. As per the seized material, the assessee advanced cash loan of Rs.200 Lacs, Rs.100 Lacs and Rs.300 Lacs on 21-01-2014, 12-02-2014 and 06-03-2014 which was not entered in the assessee's books of accounts. Though the assessee denied the same, the Ld. AO made addition in the hands of the assessee on similar lines. Finally, the assessment was framed on 18-06-2021 assessing returned income of Rs.439.79 Lacs at Rs.1148.49 Lacs.

3.14 In AYs 2015-16 & 2016-17, Ld. AO made similar addition of undisclosed investment and undisclosed interest income. In AY 2017-18, Ld. AO made addition of undisclosed interest income.

3.15 The assessee assailed impugned additions, in all the years, on legal grounds as well as on merits. On legal grounds, reliance was placed on the decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** for the argument that in the absence of any incriminating material as found during search on assessee, no addition could be made for unabated assessment year. The assessee also submitted that notice issued u/s 153A was not legally sustainable and consequential assessment was to be reckoned as nullity in law. On the given facts, Ld. AO ought to have issued notice u/s 153C by reckoning the assessee as "other person" by following separate procedure as laid down in the statute including the recording of satisfaction by both the AO of the searched person (Shri O Arumugasamy) and the AO of the assessee. The failure to do so would be fatal to assessment. The assessee also assailed impugned addition on merits, inter-alia, on the ground that the details in loose sheets were

rough details having no evidentiary value and without any corroborative evidences. It was also submitted that the assessee had advanced loan to that group through banking channels only which was duly recorded in the books of accounts well before the date of search. During search proceedings, the assessee furnished copy of the affidavits of all these persons confirming that no cash transaction was entered into by the assessee. Further, Ld. AO did not bring on record any document / corroborative evidence establishing the movement of cash / alleged advancement of cash loan by the assessee during relevant assessment years. However, Ld. CIT(A) rejected the legal grounds and also confirmed the quantum addition on merits except for deletion of protective addition. Aggrieved, the assessee is in further appeal by us.

Our findings and Adjudication

4. We find that identical legal issue has been decided by us in the case of group entity M/s SG Wind Farm Pvt. Ltd. (ITA Nos.1227/Chny/2024 & ors. for AYs 2014-15 to 2017-18) as under: -

5. Upon perusal of factual matrix as enumerated in preceding paragraphs, the undisputed position that emerges is that the impugned addition of undisclosed interest income is based on incriminating material found during an earlier separate / independent search conducted by the department on Shri O. Arumugasamy group on 09-11-2017. No incriminating material, in this regard, has been found during the search conducted on assessee group on 06-03-2019. From tabulation in para 3.9, it could be seen that the assessee had filed return of income for this year on 29-09-2014 which stood attained finality since the date of issuance of notice u/s 143(2) had already expired on 30-09-2015. In other words, the regular assessment proceedings had attained finality and this year was a case of unabated assessment year. In response to notice u/s 153A, the assessee offered same income. Quite clearly, the impugned addition of undisclosed interest income is not based on any incriminating material found during search on the assessee group but the same are based on incriminating material found in another search which has already happened much earlier before the date of search on the assessee.

6. On 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 Chawal (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 course of search under section 132 or requisition made under section 132A.

7. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT vs. 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 deals 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.

8. 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.

9. Similar is the decision of this Tribunal in the case of **M/s Pearl Printers & Publishers Pvt. Ltd. (ITA Nos.1042/Chny/2023 dated 03-06-2024)**. The bench, under similar circumstances, held that the ratio of decision of Hon'ble Apex Court in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** would squarely apply wherein it was held by Hon'ble Court that concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search.

10. The facts of the present case would establish that impugned addition of interest income has been made on the basis of incriminating material found during the course of search on a third-party as well as statement recorded therein. In such a case, the proceedings have to be initiated u/s 153C and not u/s 153A which has not been done by Ld. AO. To initiate proceedings u/s 153C, it is mandatory requirement of law that satisfaction should have been recorded by Ld. AO of the searched person as well as the AO of the other person before proceedings u/s 153C. The recording of satisfaction is sine qua non to assume jurisdiction u/s 153C. Without recording of this satisfaction, no addition could have been made in the hands of the assessee. In the present case, no such satisfaction has been shown to us and in fact, the assessment has been framed u/s 153A which could not be sustained in law considering the mandatory provisions of Sec.153C.

11. Our aforesaid view is duly supported by the decision of Hon'ble Delhi High Court in the case of **PCIT vs. Anand Kumar Jain HUF (ITA Nos.23/2021 & ors. dated 12.02.2021)**. The Hon'ble Court held that additions on the basis of statement recorded in a separate search action in the case of a third-person are not permissible in Section 153A proceedings. The Hon'ble High Court observed that the statement of third person cannot be construed as an incriminating material belonging to or pertaining to the person other than the person searched. Similar is the view of Bangalore Tribunal in **ACIT Vs. P. Shyamaraju & Co. India Pvt. Ltd (ITA Nos.978 to 984/Bang/2014 dated 25-04-2022)** as well the decision of Kolkata Tribunal in the case of **Krishan Kumar Singhania vs. DCIT (88 Taxmann.com 259)**.

12. Therefore, considering the aforesaid settled position of law, we would hold that the assessment, for all the years, would be bad-in-law and therefore, the impugned addition could not be sustained on this score only. We order so. In other words, the impugned addition of alleged undisclosed interest income stands deleted. The return of income as filed by the assessee stand restored.

We find that similar fact exists in the present appeals before us. Therefore, taking the same view, we would hold that in the absence of any incriminating material found during the course of search of assessee and all these years being unabated assessment years, the impugned additions as sustained in the impugned order, for all the years, is unsustainable in law. We delete the impugned additions as made by Ld. AO in all the years. The Ld. AO is directed to re-compute the income of the assessee for all the years.

5. All the appeals stand allowed in terms of our above order.

Order pronounced on 19th November, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 19-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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