

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3438/DEL/2017[A.Y 2008-09]

ITA No. 3439/DEL/2017[A.Y 2009-10]

ITA No. 3440/DEL/2017[A.Y 2011-12]

Smt Aruna Choudhary
39, Gadai Pur, Mehrauli
New Delhi

Vs.

The A.C.I.T
Central Circle - 26
New Delhi

PAN - AAEPK 0681 R

Assessee By : Shri C.S. Anand, Adv
Ms. Vaishnavi Yadav, Adv

Department By : Ms. Ritu Sharma, CIT-DR

Date of Hearing : 20.09.2024

Date of Pronouncement : 25.10.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

The above captioned three separate appeals by same assessee are preferred against the order passed by the ld. CIT(A) - 31 dated 31.03.2017 u/s 147 r.w.s 153A/143(3) of the Income-tax Act, 1961 [the

Act, for short] pertaining to Assessment Years 2008-09, 2009-10 and 2011-12.

2. Since the underlying facts are common in the appeals of the assessee, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Relevant judicial decisions considered wherever necessary.

4. This is a recalled matter. Vide MA Nos. 88 to 93/DEL/2018, the assessee sought to recall the consolidated order passed by the Tribunal on 04.01.2018 on the ground that the legal issue raised by the assessee was not adjudicated by the Tribunal.

5. After perusing the material available on record, the Tribunal vide order dated 10.10.2023, on finding that non-adjudication of specific ground i.e., Ground No. 7 in A.Y 2008-09, Ground No. 5 in A.Y 2009-10 and Ground No. 4 in A.Y 2011-12 raised by the assessee, constitutes mistake apparent on record warranting rectification u/s 254(2) of the

Act, recalled the orders passed for the limited purpose of adjudication of ground as above of the assessee.

6. Pursuant to the order of the Tribunal [supra], we proceed to adjudicate Ground No. 7 in A.Y 2008-09 , Ground No. 5 in A.Y 2009-10 and Ground No. 4 in A.Y 2011-12.

7. Ground No. 7 in A.Y 2008-09 reads as under:

"That the Assessing Officer as well as the Id. CIT(A), in respect of addition in Para 5 and 6 ignored the judgment of the Jurisdictional Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573 whereby it was held that completed assessments can be interfered with by the Assessing Officer while making addition u/s 153A only on the basis of some incriminating material found during the search."

8. Ground No. 5 in A.Y 2009-10 reads as under:

"That the Assessing Officer as well as the Id. CIT(A), in respect of addition para 3 and 4 [supra] ignored the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573 whereby it was held that completed assessments can be interfered with by the Assessing Officer while making addition u/s 153A only on the basis of some incriminating material found during the search."

9. Ground No. 4 in A.Y 2011-12 reads as under:

“That the Assessing Officer as well as the Id. CIT(A), in respect of addition in Para 3 ignored the judgment of the Jurisdictional Delhi High Court in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573 whereby it was held that completed assessments can be interfered with by the Assessing Officer while making addition u/s 153A only on the basis of some incriminating material found during the search.”

10. Brief facts of the assessee filed a return of income for AY 2008-09 u/s 153A on 31.07.2014 declaring income of Rs.92,23,790/- which is the same as was declared in the original return filed u/s 139 of the I.T. Act, 1961. It was during the assessment proceedings, the assessee revised her computation of income and declared an amount of Rs 1,50,000/- as exempt agriculture income. In absence of any substantiating documents with regard to her claim of exempt agricultural income, the Assessing Officer treated the agricultural income disclosed as income from other sources and added the same to the total income of the assessee under the head “Income from Other sources”.

11. The assessee's contention that no incriminating evidence was unearthed or seized during the search pertaining to the agricultural income of Rs. 1,50,000/- in A.Y 2008-09, Rs. 1,75,000/- in A.Y 2009-10 and Rs. 2,00,000/- in A.Y 2011-12 respectively, was rejected by the assessing officer.

12. The assessee agitated the matter before the Id. CIT(A) and vehemently contended that the entire addition is devoid of any incriminating material found at the time of search and since the addition has been made without there being any incriminating material, it should be deleted.

13. The Id. CIT(A), after considering the facts and submissions, confirmed the treatment of agricultural income as 'income from other sources'.

14. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities. The Id AR submitted that copy of Girdawari or Khasra Khatauni was produced before the lower authorities to show that the assessee was owner of land where crops were cultivated resulting into agricultural income for the assessee. The

ld AR reiterated that no incriminating material was unearthed in the course of search with respect to the agricultural income and consequently the decision of the case of Kabul Chawla shall apply.

15. Per contra, the ld. DR relied on the orders of the lower authorities. The ld DR submitted that as the assessee never declared the agricultural income in regular course of filing return for AYs 2008-09 and 2009-10 u/s 139(1) and u/s 153A, the amount declared as agricultural income can only be treated as 'as income from other sources'. The ld DR reiterated that the agricultural income was not shown in the return of income in the two years which goes to show that the assessee did not have any genuine agricultural income. The Ld DR, however could not controvert the assessee averment that the addition was based on any incriminating material that was found during the search.

16. We have carefully perused the orders of the authorities below. Search was conducted on 11.09.2013 and the A.Y under consideration is A.Ys. 2008-09, 2009-10 and 2011-12. The assessee declared agricultural income for AY 2008-09 and 2009-10 in the course of assessment proceedings. For AY 2011-12, the assessee declared the

agricultural income in the return itself. Assessments were completed u/s 153A/143(3) of the Act by treating the agricultural income of Rs. 1,50,000/- for A.Y 2008-09, Rs. 1,75,000/- for A.Y 2009-10 and Rs. 3,25,000 for A.Y 2011-12 as income from other sources.

17. We find that the contention of the assessee that no incriminating material with respect to the agricultural income was found during the course of search has not been dislodged by the Revenue. We are of the considered view that since the impugned additions are not based on any incriminating material found at the time of search, the ratio laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell* 454 ITR 212 will squarely apply.

18. The Hon'ble Supreme Court in the case of *Abhisar Buildwell* [supra] has set at rest the entire quarrel revolving around the assessments devoid of incriminating material. As per the decision of the Hon'ble Supreme Court, completed assessment can only be reopened and reassessed only on the basis of incriminating material relevant to the A.Y under consideration. The relevant findings read as under:

"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.

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 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 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 re-assess 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."

19. Considering the facts of the case in totality, we are of the considered view that the additions in the hands of the assessee have been made without any incriminating material found from their premises at the time of search. Therefore, following the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell* [supra], we delete the impugned additions made under 'income from other sources' in the assessment orders. As the facts are identical in AYs 2009-10 and 2011-12, ground no 5 in A.Y 2008-09, Ground No. 3 in A.Y 2009-10 and in A.Y 2011-12 is allowed.

20. That leaves Ground No 6 relating to addition of Rs 31,84,299/- for A.Y 2008-09 on account of indexed cost of construction claimed on the sale of Dera land.

21. The facts of the case is that during the year under consideration, the assessee sold agricultural lands in Village Ghitorni and Dera land and earned long term capital gains on it. The assessee, with regard to agricultural land in Dera land, has claimed an amount of Rs. 31,84,299/- as a cost of construction and its indexation on this land. The AO in absence of any supporting documents denied the cost of construction and its indexation amounting to Rs. 31,84,299/- and added back to the total income of the assessee.

22. The Id AR of the assessee repeated the same argument as in respect of agricultural income that that no incriminating material was unearthed in the course of search with respect to the cost of improvement and its indexation and consequently the decision of the case of Kabul Chawla [supra] shall apply.

23. Per contra, the DR relied on the orders of the lower authorities.

24. We find that the additions in the hands of the assessee on account of cost of improvement and its indexation have been made without any incriminating material found from their premises at the time of search. Therefore, following the decision of the Hon'ble

Supreme Court in the case of Abhisar Buildwell [supra], we delete the impugned addition of cost of improvement and its indexation made in the assessment orders. As the facts are identical in AYs 2008-09 and 2009-10, therefore the Ground No. 6 in A.Y 2008-09, and Ground No. 4 in A.Y 2009-10 is allowed.

25. In the result, Ground No. 7 in A.Y 2008-09, Ground No. 5 in A.Y 2009-10 and Ground No. 4 in A.Y 2011-12 of the captioned appeals of the assessee in ITA Nos. 3438, 3439 and 3440/DEL/2017 are allowed.

The order is pronounced in the open court on 25.10.2024.

Sd/-

**[VIKAS AWASTHY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 25th October, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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