

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER,**

**ITA No: - 1481/Del/2022
(Assessment Year: 2014-15)**

Deputy Commissioner of Income Tax, Central Circle-27, New Delhi.	Vs.	Sh. Anand Kumar Chaurasia , 575, 1 st Floor, Double Storey, New Rajinder Nagar, New Delhi-110060.
PAN No:		
APPELLANT		RESPONDENT

**C.O. No: - 1/Del/2024
(Assessment Year: 2014-15)**

Sh. Anand Kumar Chaurasia , 575, 1 st Floor, Double Storey, New Rajinder Nagar, New Delhi-110060.	Vs.	Deputy Commissioner of Income Tax, Central Circle-27, New Delhi.
PAN No: AADCB4458R		
APPELLANT		RESPONDENT

Revenue by : Shri. Rajesh Mahajan, Sr. DR
Assessee by : Shri Sanjiv Choudhary, CA,
Shri Anil Chopra, CA &
Shri VK Garg, Adv.

Date of Hearing : 19.12.2024
Date of Pronouncement : 19.12.2024

ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Revenue and Cross Objection (C.O.) by the Assessee are arising out of the order of Commissioner of Income Tax (Appeals)-29, New Delhi-110055, in Appeal No. CIT(A), Delhi-29 10433/2013-14, dated 19.04.2022. Assessment was framed by DCIT, Central Circle-27, New Delhi, under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2021 for the Assessment Year 2014-15.

2. The Only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by the Assessing Officer ('AO') of Rs. 22,21,54,985/- by holding that there is no incriminating material found during the course of search and assessment is unabated assessment, and hence quashed the addition. For this, the Revenue has raised the following four grounds:

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 22,21,54,985/- made. u/s 68 of the Act, without appreciating the facts that the Sh. Anil Kedia Soumen Sen, an entry operator in his statement, recorded u/s 131(1) of the Act, had accepted that Nikki Global Finance Ltd was a penny stock and providing accommodation entries in the

form of LTCG to the various beneficiary and the assessee is one of the beneficiary.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 67,60,956/- u/s 69C of the Act on account of commission paid for procuring the above transaction without appreciating the facts that the Sh. Anil Kedia & Sh. Soumen Sen, an entry operator in their statement recorded u/s 131(1) of the Act had accepted that Nikki Global Finance Ltd was a penny stock and used for providing accommodation entries in the form of LTCG to the various beneficiary and the assessee is one of the beneficiary.

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) is correct in holding that the scope of section 153A of the Act is limited to assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income that comes to the notice of the AO?

4. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in limiting the scope of section 153A of the Act only to undisclosed income when as per the section the AO has to assess the total income of the six assessment years.?"

3. Brief facts are that search and seizure operation was conducted on M/s Kamla Pasand (KP Group) group of cases U/s 132 of the Act on 15.01.2020. In consequent to this operation, a warrant of authorization for search was issued in the name of Sh. Anand Kumar Chaurasia for his various premises from where certain papers / documents belonging to the assessee were found and seized. Consequently, assessment jurisdiction over the assessee was transferred from PCIT-10, Central Circle-9 and accordingly this case was assigned to DCIT, Central Circle, Delhi dated 10.12.2020.

Accordingly, in consequent to search U/s 132 of the Act, notice U/s 153A of the Act was issued on 19.03.2021. In consequent to notice issued U/s 153A of the Act, the assessee filed return declaring income of Rs. 1,73,20,930/- on 30.03.2021. Consequently, scrutiny assessment by issuing notice U/s 132 of the Act read with Section 143(2) and 142(1) of the Act was issued on 11.06.2021 and the same was duly complied. During the course of assessment proceedings, the assessee noticed from the accounts of the assessee i.e. balance sheet etc., that the assessee has shown long term capital gain amounting to Rs. 22,21,54,985/- on account of sale of shares of Nikki Global Finance Ltd. The assessee purchased 265787 shares of Nikki Global Finance Limited during the financial year 2006-07 & 2007-08 for a total consideration of Rs. 46,44,897/-. The assessee sold these shares during Financial Year 2013-14 for a total sale price of Rs. 22,53,65,205/- and claimed the long term capital gains as exempted U/s 10(38) of the Act as declared in the original return of income. The AO noted that a survey action was carried out by the Kolkata Directorate of Investigation at the business premise of Excel Stock Broking Pvt. Ltd. at 21, Hemanta Basu Sarani, 3rd Floor, Room No. 309, Kolkata-700001 on 15.06.2015. From this survey, it was

found that Nikki Global Finance Limited is a established penny stock company and was being used by various entry providers for providing bogus LTCG on sales of penny stock for accommodation entry. Consequently, the AO from the account of the assessee noticed that it is the same Nikki Global Finance Ltd. whose shares were sold by assessee and earned long term capital gain at Rs. 22,21,54,985/-. The AO issued show-cause notice to the assessee, as to why the long term capital gain claimed by assessee is disallowed. The assessee replied that this was a genuine claim and assessee has disclosed the entire long term capital gain in the original return of income, filed on 30.09.2014 declaring income of Rs. 1,73,20,930/-. The AO was not convinced with the reply of the assessee and he made addition on long term capital gain as unexplained cash credit U/s 68 of the Act amounting to Rs. 22,21,54,985/-. Similarly, addition was also made on account of expenditure being 3% of commission paid on the above accommodation entry received by assessee U/s 69 of the Act and thereby another addition of Rs. 67,60,956/- was made.

Aggrieved, the assessee preferred an appeal before the CIT(A)

4. The CIT(A) after going through the facts of the case, deleting both the additions by observing as under:

“8.4. I find that the addition made in the assessment order is not based upon any incriminating material or documents found during the course of search. The assessment order does not refer to any seized material or any incriminating material found during the course of search regarding the additions made. In the assessment order it has been mentioned that, on the basis of the details filed by the assessee during the assessment proceedings, the AO issued a showcause to the assessee to explain about the LTCG of Rs.22,21,54,985/- on account of sale of shares of M/s Nikki Global Finance Ltd during the year. Further, in the assessment order there is a mention of the Survey conducted by the Investigation Wing of the Department on 15.06.2015 on M/s Excel Stock Broking Pvt Ltd from whom the information of the said LTCG came to knowledge. It may be noted that the search on the appellant was carried out on 15.01.2020. Thus, the information regarding the LTCG incurred by the appellant was not found in the form of incriminating evidence during the course of search conducted on the appellant, but was found in action conducted five years prior to the search. Also there is no mention of incriminating evidence found during search to suggest that the appellant had paid 3% commission amounting to Rs 67,60,956/- for obtaining the accommodation entry.

8.5 The position of law that addition can be made only on the basis of incriminating material etc. found during search, has been laid down by the Hon'ble jurisdictional High Court in the case of CIT vs Kabul Chawla (2016) 380 ITR 0573 and plethora of subsequent judicial pronouncements as relied upon by the appellant. The Hon'ble Delhi High Court in the case of Kabul Chawla reported in 380 ITR 573 has held that the completed assessment can be interfered with by the Assessing Officer while making the assessment u/s 153A only on the basis of some incriminating material found on or 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 not known in the course of original assessment. The Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla, reported as 380 ITR 573, has held at para 37 as follows-

"37. 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:

"vii Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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."

8.5.1 Following the above decision, the Hon'ble Jurisdictional High Court the case of CIT vs. MeetaGutgutia reported in 395 ITR 526 has taken similar view that once the assessment has attained finality for a particular year i.e. it is not pending then the same cannot be subject to tax in proceedings u/s 153A of the I.T. Act. The SLP of the Revenue challenging the decision of the Hon'ble Delhi High Court in the case was dismissed by the Hon'ble Supreme Court. There are plethora of judicial pronouncements after the above verdicts that unabated assessments can be interfered with u/s 153A only on the basis of incriminating material/ documents/ evidence discovered during the course of search.

8.6 Accordingly, I am of the view that the addition on account of sale of shares treating the same as accommodation entries and the commission charges paid, by AO is not justifiable. Respectfully following the legal pronouncements as discussed above, it is held that the additions made by the AO were contrary to provisions of law. In view of the above, the additions made by AO of Rs. 22,21,54,985/ on account of sale of shares and of Rs. 67,60,956/- on account of commission charges paid are deleted. Accordingly, the appellant gets relief on these grounds of appeal."

Aggrieved, now the Revenue is in appeal before the Tribunal.

5. We have heard the rival contentions and facts and circumstances of the case. Admittedly, a search was conducted on assessee U/s 132 of the Act on 15.01.2020 along with search conducted on Kamla Pasand Group of cases. Consequently, search assessment U/s 153A of the Act was framed on 30.09.2021. The assessee filed original return of income on 30.09.2014 declaring an

income of Rs. 1,73,20,930/- along with original return, the assessee filed financials wherein he has declared the shares of Nikki Global Finance Ltd. sold by it and declared long term capital gain at Rs. 22,21,54,985/- and claim the same as exempt U/s 10(38) of the Act. It means that assessment has become final and that assessment was unabated because assessment year is 2014-15 and original return was filed on 30.09.2014. We further find that there is no incriminating material available in the record or not found during the course of search, on this issue of sale of shares by assessee and long term capital gain claim to have exempt U/s 10(38) of the Act. We noted that, this issue, in view of the above facts is now squarely covered by the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell* reported in [2023] 454 ITR 212, wherein Hon'ble Supreme Court has finally held down how search assessments are to be framed in para 14 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 fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The above clause (iv) of para 14 clears that in case, no incriminating material is found or seized during the course of search proceedings, the AO cannot assess or reassess taking into consideration other materials in respect of completed assessment or unabated assessment meaning thereby no addition can be made by the AO in absence of any incriminating material found during the course of search u/s.132 of the Act. Further, we notice that the Hon'ble Supreme Court has rejected the Revenue's contention that in case of search even where no incriminating material is found during the course of search, whether the AO can assess or reassess the income taking into consideration the other material, the Hon'ble Supreme

Court has explained in great detail the provisions of section 153A r.w.s. 132 of the Act vide paras 11 & 12 as under:-

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 subsection (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 subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.”

5.1 In terms of above, we uphold the order of the CIT(A) and dismiss this appeal of revenue.

6. Coming to the cross objection of the assessee, the Ld. Counsel for the assessee stated that the C.O. is supportive of the order of CIT(A), and hence, it become dismissed as academic.

7. In the result, appeal filed by the Revenue is dismissed, and C.O. by assessee is dismissed as academic.

Order pronounced in the Open Court on 19.12.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 19 /12/2024.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI