

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2617/Del/2023  
(Assessment Year : 2016-17)

<b>Manan Narang</b> 291, Gujranwala Town, Part-III, Gujranwala Colony, Delhi – 110 009  <b>PAN : ACJPN 9853 B</b>  (Appellant)	Vs.	<b>DCIT</b> Central Circle – 29 Delhi   (Respondent)
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Assessee by	Shri Pranav Yadav, Adv.
Respondent by	Ms. Baljeet Kaur, CIT-D.R.

Date of Hearing	06.02.2025
Date of Pronouncement	06.02.2025

**ORDER**

**PER VIMAL KUMAR, JM:**

1. The appeal filed by assessee is against the order dated 21.08.2023 of Learned Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of assessment order dated 23.03.2022 passed by the Assessing Officer, DCIT, Central Circle – 29, New Delhi (hereinafter referred as 'Ld. AO') under section 153A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2016-17.

2. Brief facts of the case are that a search and seizure action under section 132 of the Act was carried out on 14.10.2020 in the case of Shri Manoj Kumar Singh, his associates and various transacting parties. During the search, it was established that Shri Manoj Kumar Singh entered into unaccounted cash transactions with the various persons/entities. The premise locker of assessee was also covered during the search operation. Assessee had originally Income-tax Return for A.Y. 2016-17 on 01.08.2016 declaring income of Rs.20,11,970/-. The same was processed under section 143(1) of the Act on 17.10.2016 at returned income. The return was further revised on 07.06.2017. CRUI Module of insight portal inputs pertaining to assessee, Shri Manan Narang showed that a search and seizure action was concluded under section 132 of the Act by Investigation Wing, Delhi on 16.05.2018 in case of M/s. Dulla and Tyagi Group and established that M/s. Yamini Investment Company Ltd. used to provide accommodation entries by bogus LTCG. Name of assessee figures mentioned in the beneficiaries list with trade value of Rs.89,53,930/-. Proceedings under section 148 of the Act was initiated after recording reasons in writing and obtaining sanction of JCIT, CR-8, New Delhi under section 151 of the Act. Sanction of JCIT, CR-8, New Delhi was received on 26.03.2021. Notice under section 148 of the Act requiring assessee to file return of income for A.Y. 2016-17 within 30 days was issued on 30.03.2021. Proceedings under section 153A of the Act was initiated. In response to notice, assessee e-filed return on 09.07.2021 at an income of Rs.26,81,310/-.

Subsequently, notice under section 143(2) of the Act dated 04.12.2021 and detailed questionnaires under section 142(1) of the Act were issued on 08.11.2021, 04.12.2021 and 28.12.2021. Assessee filed necessary submissions through ITBA Portal on various dates. Assessee vide e-mail dated 18.04.2021, requested to abate the proceedings under section 148 of the Act as the same is covered under section 153A of the Act. Considering the request of assessee under section 153A of the Act, proceedings in case of assessee are going on. The proceedings initiated under section 148 were abated. Notice under section 142(1) of the Act, asking the assessee to furnish details and documents to conclude the assessment proceedings were issued on 28.12.2021. Assessee vide letter received on 17.01.2022 had submitted the calculation and documentary evidence with regard to the gains and transactions in the penny scrip of M/s. Yamini Investments Company Ltd. On completion of proceedings vide assessment order dated 23.03.2022, learned AO made addition of Rs.86,83,853/- under section 68 of the Act.

3. Against order of learned AO, assessee/appellant filed appeal before the learned CIT(A) which was partly allowed vide order dated 21.08.2023.

4. Being aggrieved, appellant/assessee filed present appeal with following grounds:

1. *“On the facts and circumstances of the case and in law, the addition of Rs. 86,83,853/- made by the assessing officer on account of alleged income u/s 68 is erroneous, even on merits and the CIT(A) erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the CIT(A) erred in stated that the assessing officer is empowered to issue notice u/s 147/148 of the Act.*
3. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.*
4. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is non-est as it does not have DIN on the body of the assessment order and CIT(A) erred in holding so.”*
5. Learned Authorized Representative for appellant/assessee submitted that learned CIT(A) erred in stating that Assessing Officer is empowered to issue notice under section 147/148 of the Act.
6. Learned Departmental Representative for the Department of Revenue submitted that learned CIT(A) had set aside the addition made by learned AO in the assessment under section 153A of the Act and was granted relief.
7. From examination of record in light of aforesaid rival contentions, it is crystal clear that learned CIT(A) in Para Nos. 10.7 and 10.8 has observed as under:

*“10.7 It is clear from the above that no assessment was pending as on date of search and notice u/s 148 was issued after the search and seizure action. Therefore, abatement of proceedings u/s 148 was not correct as per law. It is noted that the appellant herself requested for the abatement of the proceedings u/s 148 in view of the search on her. But such requests made by the assessee cannot change the legal position. It is a well established law that the jurisdiction cannot be conferred by consent or agreement. Now the question before me is that can the AO use other information in his possession while making the assessment u/s 153A in completed assessments where no incriminating material pertaining to the impugned assessment year was found/unearthed during the search operation. This issue has been decided by Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. in CA No.6580 of 2021. The relevant part of the decision is reproduced as under:*

*“14. In view of the above and for the reasons stated above, it is concluded as under:*

*1) 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;*

*ii) 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/un-abated 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.”*

*As per clause 14(iv) of the above referred judgment, in the completed assessment cases, the material gathered by the AO from other sources cannot be used to make addition in 153A proceedings if no incriminating material was found or unearthed during the search. In such cases, AO is empowered to reopen the assessments u/s 147/148.*

*10.8 In the impugned assessment order, it is evident that the addition is not based on any material unearthed during the search operation on the assessee but is based on material/information conveyed to the AO by CRUI on the basis of information gathered by the Deptt. in some other search. The year under consideration is an unabated assessment year which cannot be interfered with by the AO in absence of incriminating material found during the search operation. Accordingly, the addition made by the AO cannot be sustained in the assessment u/s 153A. As such, the appellant gets relief on this ground of appeal.”*

8. In view of above material facts, it is evident that the appellant/assessee has been granted relief by learned CIT(A). The observation “AO is empowered to reopen the assessment u/s 147/148” being directory cannot be declared as illegal since the AO is empowered to reopen the assessment u/s 147/148 as per law.

Therefore, the Ground Nos.1 to 4 being devoid of merit are dismissed.

9. In the result, appeal filed by assessee is dismissed.

**Order pronounced on this day 6<sup>th</sup> February, 2025**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Dated: 06.02.2025

*Priti Yadav, Sr. PS\**

**Sd/-**

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI