

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.1365/Del/2022  
(ASSESSMENT YEAR 2017-18)

Shorya Trading Company Pvt. Ltd., C-5/2A, Opp. CC Colony, Rana Pratap Bagh, New Delhi-110007.  PAN-AAKCS0778A	Vs.	ACIT, Central Circle, Karnal.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Ved Jain, Advocate Shri Aman Garg, Advocate
Department by	Ms. Jaya Chaoudhary, CIT-DR
Date of Hearing	13/02/2025
Date of Pronouncement	21/02/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This is the appeal filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon ('the Ld. CIT(A)' for short) dated 09.05.2022, in appeal No. 10409/2019-20 for Assessment Year 2017-18.

2. Brief facts of the case are that the assessee is a private limited company and filed its return of income on 10.08.2017 declaring total income of Rs. 870/-. Thereafter the proceedings u/s 153A was

initiated vide notice dt. 23.01.2019 and the assessment was completed vide order dt. 31.12.2019 passed u/s 143(3) r.w.s. 153A(1)(b) of the Act at a total income of Rs. 8,10,870 /- by making addition of Rs. 8,10,000/- by holding the cash deposited during the demonetization as unexplained cash credits u/s 68 of the Act. Assessee preferred appeal before the ld. CIT(A) wherein it was contended that in the case of assessee no search warrant was executed nor any search was taken place at the premises of the assessee and only survey u/s 133A was carried out on 22.01.2018 thus no proceedings u/s 153A could be initiated in the case of the assessee. The ld. CIT(A) has not accepted the contention raised and dismissed the appeal of the assessee. Aggrieved by the order of ld. CIT(A) present appeal is filed by the assessee before the tribunal.

3. It was the submission of the assessee that no search was taken place in the case of the assessee as its name was not appearing in the search warrant. For this ld. AR drew our attention towards the copies of panchnama dt. 22.01.2018 drawn in the names of Sh. Padam Sain Gupta, Sh. Rajeev Gupta House Number 871, Sector 13, Karnal placed at pages 23-24 of paper book. The other panchnama was dt. 20.3.2018 drawn in the name of Shri Rajeev Gupta, H. No. 871, Sector 13, Karnal prepared at the time of revocation of order u/s.132(3) of the Act, placed at pages 26 to 27 of the paper book. Ld. AR further submitted that in the case of the assessee only survey u/s 133A was carried out on 22.1.2018 in terms of the authorization of survey dt. 22.1.2018. He therefore submitted that since in the case

of assessee no warrant of authorization for search u/s 132 was issued nor name of the assessee is appearing in any of the panchnama prepared as a result of search, no proceedings u/s 153A could be initiated in the case of the assessee. He further submitted that no material belonging to or pertaining to assessee was seized from the premises of the director where search was conducted. According to ld. AR it is settled law that jurisdiction u/s 153A of the Act can be assumed only when a search u/s 132 of the Act has been conducted at the premises of assessee, not in the case where survey is conducted u/s 133A of the Act. For this he placed reliance on the following judicial pronouncements:-

- *THE COMMISSIONER OF INCOME TAX VERSUS M/S. BALAJI YARN LTD., 2016 (8) TMI 1278-BOMBAY HIGH COURT, Dated.- August 22, 2016*
- *SIKSHA "O" ANUSANDHAN VERSUS COMMISSIONER OF INCOME TAX, ORISSA,, 2010 (7) TMI 640-ORISSA HIGH COURT, Dated.- July 2, 2010*
- *M/S NEW VIRAJ HOUSING AGENCY VERSUS ACIT CENTRAL CIRCLE 1 (1), NAGPUR, 2022 (8) TMi 1065 - ITAT NAGPUR, Dated. June 28, 2022*
- *ACIT-2 (1), RAIPUR VERSUS S.P. COLD STORAGE, 2016 (5) TMI 321-ITAT BILASPUR, Dated.- October 30, 2015*
- *JM TRADING CORPN. VERSUS ASSISTANT COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE 22, MUMBAI, 2007 (9) TMI 447ITAT MUMBAI, Dated.- September 28, 2007*
- *THE COMMISSIONER OF INCOME TAX VERSUS M/S J.M. TRADING CORPORATION, 2009 (6) TMI 988-BOMBAY HIGH COURT, Dated. June 29, 2009*
- C.I.T. -II, MUMBAI VERSUS M/S. J.M. TRADING CORPN. LTD., 2010 (10), 2010 (10) TMI 1099-SC ORDER, Dated. October 29, 2010*

**► COMMISSIONER OF INCOME TAX-III VERSUS SARVMANGALAM BUILDERS & DEVELOPERS PVT. LTD., 2015 (12) TMI 1882, DELHI HIGH COURT”**

4. In the last it was submitted that when the name of the assessee does not appear in the panchnama and no material is seized it could not be taken as omission on the part of the search party of mentioning the name but it is clear and conclusive proof that no search was at all conducted. He thus prayed that jurisdiction u/s 153A was wrongly assumed in absence of search u/s 132 and therefore the order passed u/s 143(3) r.w.s. 153A deserves to be quashed and he prayed accordingly.

5. On the other hand Ld. CIT-DR vehemently supported the order of the lower authorities and requested for the confirmation of the same.

6. We have heard the rival submissions and perused the material available on record. In the instant case it was claimed by the assessee that no search was taken place u/s 132 in its case and its name was not appearing in any of the Panchnama drawn as a result of search carried out by the department in entire group on 22.1.2018. In order to verify the claim of the assessee this bench vide order sheet entry dt. 27.9.2023 has directed the ld. DR to call for report from the AO as to whether search was conducted on assessee and if search was conducted a copy of search warrant in the name of the assessee be produced before the bench. During the course of hearing the ld.CIT Dr has filed a report from the AO i.e. DCIT, Central Circle, Karnal

wherein it is categorically admitted by the AO that no panchnama is available in folder containing the name of the assessee. It is also stated by the AO that no paper was found and seized wherein name of assessee / relation to the assessee has been found. The relevant report dt. 12.6.24 submitted by AO is as under:

To

*Dated 12.06.2024*

*The Commissioner of Income Tax(DR)  
G-Bench, ITAT, New Delhi*

*Sub: Appeal filed by the assessee in the case of M/s Shorya Trading Company Pvt. Ltd. vide ITA No. 1365/Del/2022 for AY 2017-18 (PAN: AAKCS0778A)-Regarding-*

*Kindly refer to your e-mail dated 24.05.2024 vide which certain documents in respect of subject mentioned assessee has been required by your goodself.*

*2. In this regard, requisite information/documents as per following details are enclosed herewith for your kind consideration.*

*i Copy of panchnama drawan on 22.01.2018 in the H.No. 871, Sector-13, Karnal*

*ii As per panchnama folder handed over to this office by the DDIT(Inv.), there is no such panchnama wherein name of assessee M/s Shorya Trading Company Pvt. Ltd. is mentioned.*

*iii During the course of search at House No. 871, Sector-13, Karnal various loose papers were found and seized by the Department. On examination of these documents, no such document wherein name of assessee/relation to the assessee has been found.*

*Encl. As above.*

*Yours faithfully,*

*(DR. AMAN BISHLA)  
Deputy Commissioner of Income Tax  
Central Circle, Karnal.*

7. First we must refer the provisions as contained in section 153A(1) of the Act which is as follows:

**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 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], 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 and for the relevant assessment year or 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 and for the relevant assessment year or years :

*Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :*

*Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or 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 132A, as the case may be, shall abate :*

*Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:*

*Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—*

*(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;*

*(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and*

*(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.*

*Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*

*Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.*

(2).....

As per above, notice u/s 153A of the Act can be issued only 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 132A of the Act. Admittedly in the case of the assessee neither of any such action was carried out thus the notice issued u/s 153A dt. 23.01.2019 is without jurisdiction and is bad in law. In view of these facts and after considering the report of the AO, we find that no search warrant was issued in the name of the assessee thus no proceedings u/s 153A of the Act could be initiate in the case of the assessee accordingly the notice issued us 153A is hereby quashed.

8. As a result, appeal of the assessee is allowed.

Order pronounced on 21<sup>st</sup> February, 2025.

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated: 21/02/2025

*PK/ Ps*

Copy forwarded to:

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

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI