

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.3340/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)

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2. आयकरअपील सं। ITA No.3341/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)

Shri D.R. Balakrishna Raja 9/16, Venkatesan Street, T.Nagar, Chennai-600 014.	बनाम/ Vs.	ACIT Central Circle-3(3), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGWPD-2354-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

3. आयकरअपील सं./ ITA No.90/Chny/2019
(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT Central Circle-2(4), Chennai.	बनाम/ Vs.	Shri D.R.Balakrishna Raja, 9/16, Venkatesan Street, T.Nagar Chennai-600 014.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGWPD-2354-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी कीओरसे/ Assessee by	:	Shri K.G. Raghunath (Advocate)-Ld.AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Shri A. Sasikumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	25-02-2025
घोषणा की तारीख / Date of Pronouncement	:	25-02-2025

आदेश / ORDER

Per BENCH:

1. The assessee is in further appeal for Assessment Years (AY) 2009-10 & 2010-11 whereas the revenue is in further appeal for AY 2010-11. The appeals have common issues. The registry has noted delay of 2 days in revenue's appeal which stand condoned. First, we take up assessee's appeal for AY 2009-10 wherein the sole grievance of the assessee is confirmation of certain addition u/s 68. The impugned order has been passed by Learned Commissioner of Income Tax (Appeals)-19, Chennai on 08-10-2018 in the matter of an assessment framed by the Ld.AO u/s.144 r.w.s. 153A of the Act on 31-03-2016.

2. The Ld. AR advanced arguments and assailed the impugned addition on legal grounds as well as on merits whereas Ld. CIT-DR has supported the findings given by lower authorities. The case was put up for clarification which was duly been responded to by both the sides. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

Proceedings before lower authorities

3.1 The impugned addition stem from search action u/s 132 on BKR group of cases on 16-05-2013. The assessee was also covered under search and notice u/s 153A was issued on 29-11-2013. In response to the same, the assessee offered original return of income as filed on 25-03-2010 admitting income of Rs.3.76 Lacs. The Ld. AO observed that in the financial statements, the assessee reflected sundry creditors of

Rs.165 Lacs. However, the assessee failed to furnish any details thereof and accordingly, the same was added as unexplained cash credit u/s 68.

3.2 During appellate proceedings, the assessee furnished additional evidences which were subjected to remand proceedings. The assessee also raised a legal plea that in the absence of any incriminating material as found during the course of search, no addition could be made. However, Ld. CIT(A) rejected the same, inter-alia, on the ground that presence of seized material was not a pre-requisite for issuing notices u/s 153A. After considering various judicial decisions, the aforesaid legal plea was rejected. The assessee failed to file any details of these sundry creditors.

3.3 The Ld. CIT(A) rendered a finding that the impugned amount includes opening balance of Rs.34.85 Lacs which was brought forward from earlier years and therefore, the same could not be added in this year. The balance addition of Rs.130.15 Lacs was confirmed against which the assessee is in further appeal before us.

3.4 In AY 2010-11, the assessee had filed regular return of income on 11-01-2011 declaring income of Rs.18.30 Lacs. The return of income was revised on 25-01-2011 admitting income of Rs.10.86 Lacs. The assessee offered same revised return of income in response to notice issued u/s 153A. In the assessment order, Ld. AO made similar addition u/s 68 for Rs.173 Lacs. However, Ld. CIT(A) reduced the opening balance of Rs.165 Lacs and confirmed the balance addition of Rs.8 Lacs. The assessee had offered agricultural income of Rs.5.26 Lacs. However, the same was rejected by Ld. AO on the ground that the assessee could not provide requisite details thereof. The Ld. CIT(A), after considering remand report, observed that the assessee was in

possession of land measuring 23.49 acres from FYs 2010-11 to 2013-14 whereas it was reduced to 20.66 acres from FY 2014-15 onwards. The Ld. CIT(A) estimated agricultural income of Rs.2.40 Lacs for this year and held that the remaining income of Rs.2.86 Lacs was to be treated as non-agricultural income. Aggrieved as aforesaid, the assessee is in further appeal before us. The revenue is also contesting the relief allowed by Ld. CIT(A) on account of agricultural income.

Our findings and Adjudication

4. From the aforesaid facts, it clearly emerges that the addition of unexplained cash credit u/s 68 is not based on any incriminating material as seized from the assessee during the course of search. The return of income, for both the years, had already been filed by the assessee before the date of search and the same had attained finality. No notice u/s 143(2) was issued till the date of search for any of the years and the time limit for issuance of such a notice had already expired for both the years. To make this addition, Ld. AO has merely referred to financial statements of the assessee which forms part of regular books of accounts. Nothing has been shown to us that this addition is based on any incriminating material. In such a case, 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 Chawla (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.

5. 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 vs. 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.

6. 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.

7. 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.

8. The facts of the present case would establish that impugned addition as made u/s 68 as well as the disallowance of agricultural income are not based on any incriminating material as found during the course of search. Therefore, respectfully following the aforesaid decisions, we delete the addition u/s 68, for both the years, as sustained by Ld. CIT(A) in the impugned order. The disallowance of agricultural income for AY 2010-11 is also deleted on the same reasoning. No other ground has been urged in the appeal. The assessee's appeals stand allowed. The revenue's appeal stands dismissed. It is observed that the revenue's appeal is otherwise also not maintainable on account of low tax effect Circular No. 5 of 2024 as issued by CBDT on 15-03-2024 which prescribe monetary limit of Rs.60 Lacs before an appeal could be preferred by revenue before Tribunal. Upon perusal of Form No.36, it is quite evident that the tax effect is much less than Rs.60 Lacs. Therefore, this appeal is otherwise also not maintainable.

9. In the result, ITA Nos.3340 & 3341 /Chny/2018 stand allowed whereas ITA No.90/Chny/2019 stand dismissed.

Order pronounced on 25th February, 2025

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 25-02-2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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