IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, GUWAHATI
(THROUGH VIRTUAL HEARING AT KOLKATA)

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI MANOMOHAN DAS, JM

IT(SS)A Nos. 1, 2 to 7/GTY/2024
(Assessment Years: 2010-11, 2012-13 to 2017-18)

ITA No. 224/GTY/2024
(Assessment Year: 2018-19)

Mayurply Industries Pvt. Ltd. N.H. 2(old Delhi Road), P.O. Belumiki, Sheoraphully, Hooghly-712223, West Bengal **(Appellant)**	**Vs.**	**ACIT, Circle-3, Guwahati** Aaykar Bhavan, Christian Basti, G.S. Road, Room No.705, 7th Floor, Guwahati-781005, Assam **(Respondent)**

PAN No. AABCT1308G

Assessee by	:	Shri Siddharth Agarwal, AR
Revenue by	:	Shri Kaushik Roy, DR

Date of hearing:	07.03.2025
Date of pronouncement :	24.03.2025

O R D E R

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the orders of the Commissioner of Income-tax (Appeals), Guwahati (hereinafter referred to as the "Ld. CIT (A)"] dated 10.06.2024, 11.06.2024, 12.06.2024, 13.08.2024, 14.08.2024, 30.09.2024 for the AYs 2010-11, 2012-13 to 2017-18, 2018-19 respectively.

02. At the outset, it was pointed out by the ld. Counsel for the assessee that there is a delay in filing these appeals for which condonation

petitions were filed along with affidavit of Shri Prakash Kumar More son of Late Nauranglal More. We note that Shri Prakash Kumar More is Director of Mayurply Industries (P) Ltd. A search and seizure action u/s 132 of the Act was conducted on 12.12.2017 and consequently, the assessments were framed for A.Y. 2010-11 to 2018-19. We note that the ld. CIT (A) passed the *ex-parte* orders in all the above-mentioned assessment years. It was submitted by the ld. AR that Shri Ravinder Sarwagi, CA, was handling the tax matter of the assessee and the assessee was under the belief that he was attending the taxation matters before the tax authorities. The ld. counsel submitted that it was only when enquired about the status of the appeals from the counsel in October, 2024, the assessee came to know about the appellate orders having been passed *ex-parte.* Immediately steps were taken to prepare the appeals by approaching the Counsel Mr. Siddharth Agarwal, advocate and finally, the appeals were filed on 01.11.2024 for which therewith a delay of 85 days in A.Y. 2010-11, 84 days in A.Y. 2012-13, 82 days in A.Y. 2013-14, 21 days in A.Y. 2014-15, A.Y. 2015-16 & 20 days in A.Y. 2016-17. The ld AR stated that in terms of provisions of Section 253(5) of the Act, the Tribunal has the power to admit the appeal even after expiry of the period referred to in sub-section (3) & (4) of Section 253 of the Act if the Tribunal is satisfied that there were sufficient causes and reasons for not presenting the appeals within the stipulated period. The Ld. A.R submitted that since the reasons attributable to late filing the appeal are beyond the control of the assessee, therefore in the interest of justice and fair play the appeal of the assessee may be admitted and adjudicated. In defense of argument the Ld. A.R relied on the decision of Hon'ble Apex court in the case of *Improvement*

Trust vs. Ujagar Singh & Ors. [2010] 6SCC 786 (SC) and Collector, *Land Acquisition vs. Mst. Katiji [1987] 1987 taxmann.com 1072 (SC)* . Finally the Ld. A.R prayed that the appeal may be admitted for hearing. In our opinion, the assessee has to be heard on merits and should not suffer for the negligence of the Chartered Accountant, who was handling the taxation issues. Moreover, the assessee is not benefited by delayed in filing of appeals in any manner whatsoever. Therefore, in the interest of justice and fair play, we are of the view that assessee appeals need to be admitted and adjudicated by condoning the delay as the assessee has explained the delay with reasons which in our view are cogent, sufficient and bonafide. Moreover, the case of the assessee find force from the decision of Supreme Court facts of in cases in the case of *Improvement Trust vs. Ujagar Singh & Ors. [supra)* and Collector, *Land Acquisition vs. Mst. Katiji [supra)*.Accordingly, in view of the above facts and the decisions of the Hon'ble Apex Court, we are inclined to condone the delay by admitting the appeals for adjudication. We shall first take up IT(SS)A 1/GTY/2024 for A.Y. 2010-11.

<u>IT(SS)A 1/GTY/2024 for A.Y. 2010-11</u>

03. First, we would take up ITA(SS)A No.1/GTY/2024 for A.Y. 2010-11. At the outset, the ld. Counsel for the assessee raised legal issue challenging the jurisdiction of the AO in making the addition in case of unabated assessment on the date of search without any incriminating material found and seized during the course of search and therefore, the additions made in the order u/s 153A read with section 143(3) are without valid jurisdiction and are bad in law.

04. The facts in brief are that a search and seizure action u/s 132 of the Act was conducted on Goldstone Group, its business associates, related entities, individual, firms and family groups on 12.12.2017 in Guwahati as well as various other places. Accordingly, notice u/s 153A of the Act was issued to the assessee on 11.09.2019. The assessee filed return of income on 18.11.2019, declaring total income of ₹5,10,80,996/-. Thereafter statutory notices were issued and served upon the assessee along with questionnaires which were duly attended by the Counsel of the assessee and the necessary details/evidences were filed. Thereafter details/ evidences/ explanations were furnished before the ld. AO from time to time as called for. The ld. AO noted during the assessment proceedings that there was non-compliance and deliberate delay on the part of the assessee in every stage of assessment proceedings in furnishing their replies/ evidences. The ld. AO finally stated that upon perusal of audited accounts as noted in Para 6 of the assessment order that assessee has raised share capital to the tune of ₹16,10,15,000/- including share premium. According to the ld. AO, the assessee only furnished the list of new share subscribers without filing the requisite documents such as ITRs, balance sheets, books of accounts, details of share application letters allotment certificates, etc. Thereafter AO noted that in respect of 7 subscribers in Para 8 of the assessment order that in reply to notice u/s 133(6) of the Act, all the subscribers filed their requisite details such as ITRs, Balance sheets, bank accounts, etc however no share application and share allotment letters were filed. The ld. AO on perusal of the said documents came to the conclusion that the source of the money in the hands of the subscribers was not explained and accordingly, the same treated as

unexplained cash credit in the hands of the assessee u/s 68 of the Act and added to the total income of the assessee in the assessment framed u/s 153A of the Act read with Section 144(3) dated 30.12.2019.

05. In the appellate proceedings, the ld. CIT (A), after discussing the assessment order, came to the conclusion that the addition was rightly made u/s 68 of the Act in respect of unexplained share capital/ share premium when assessee or authorized representative failed to attend the appellate proceedings on behalf of the assessee and ld. CIT (A) passed an *ex-parte* order.

06. The ld. AR, at the outset, vehemently submitted that additions were without any valid jurisdiction and therefore the assessment framed by the AO is invalid and needs to be quashed for the reasons that the additions were made without valid jurisdiction under the Act. The ld. Authorized Representative submitted that the return was filed u/s 139(1) of the Act on 30.03.2011 and therefore, time period for issuing notice u/s 143(2) of the Act had already expired on 30.09.2011 i.e. six months from the end of the financial year in which the return of income was filed by the assessee. Thus, the assessment had attained its finality on the date of search. In other words, the assessment is unabated on the date of search within the meaning of Section 153A of the Act. The ld. Authorized Representative submitted that it is settled position of law that in case of unabated assessment year ,the additions can only be made by the AO with reference to or on the basis of incriminating material found and seized during the course of search and not otherwise. The ld. Authorized Representative in defense of his arguments relied on the decision of Hon'ble Apex Court

in the case of *PCIT v. Abhisar Buildwell P. Ltd. (2023)454 ITR 212(SC),* wherein it has been held that in case of unabated assessment year the ld. AO has no jurisdiction to make the addition in absence of any incriminating material found and seized during the course of search. The ld. Authorized Representative therefore, prayed that the order passed by the ld. AO may kindly be quashed as there was no jurisdiction with the AO to make the additions. The ld. Authorized Representative also argued that this being a legal issue and therefore need not to be restored to the file of ld. CIT (A) for fresh adjudication. In defense of his arguments, the ld. AR relied on the decision of Special Bench in case of *Zuari Leasing & Finance Corpn. Ltd. Vs. ITO [2008] 112ITD205 (Delhi) (TM) and the decision of* Bombay High Court in case of *Kansai Nerolac Paints Ltd. VS DCIT [2014] 364 ITR 632 (Bombay).*

07. On the other hand, the ld. DR sought time from the Bench during the course of hearing to seek clarification from the ld. AO whether the addition made on the basis of incriminating materials found and seized during search. Accordingly, the sufficient time of more than two weeks was allowed to the ld. DR. On the next date of hearing when the case was called for hearing, the ld. DR has pointed out that so far as the A.Ys. 2010-11 to 2015-16 are concerned, there were no incriminating material found and seized during the course of search. However, he prayed that the issue has not been examined at the level of appellate authority and therefore, may be restored to the file of the ld. CIT (A).

08. After hearing the rival contentions and perusing the materials available on record ,the undisputed facts as gathered by us from the

records are that a search action u/s 132 of the Act was conducted on 12.12.2017. The original return was filed u/s 139(1) of the Act on 30.03.2011 and therefore, time period for issuing notice u/s 143(2) of the Act had already expired on 30.09.2011 i.e. six months from the end of the financial year in which the return of income was filed by the assessee. Thus, undisputedly the assessment had attained its finality or was unabated on the date of search. We note that the ld. AO has made an addition in respect of share capital with share premium of ₹16,10,15,000/- u/s 68 of the Act on the basis of audited accounts available with the ld. AO as mentioned in para 6 of the assessment order and therefore, bench specifically asked the ld. DR whether there was any incriminating material with respect to the addition made by the AO and he stated that according to the report received from the ld. AO there was no incriminating material found and seized during the course of search. Accordingly, in our opinion, the ld. AO has no jurisdiction to make addition in respect of share capital/ share premium u/s 68 of the Act. The case of the assessee find support from the decision of Hon'ble Apex Court in the case of PCIT Vs *Abhisar Buildwell P. Ltd. (supra)*, wherein the Hon'ble Court has held as under:-

> *"**5.** We have heard learned counsel for the respective parties at length.*
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> *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.*
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> ***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 153 A 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 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."

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 BhandarSahson, 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, 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.*
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> *Civil Appeal Nos. 15617/2017, 10267/2017, 10266/2017 & 10268/2017*
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> ***16.** Insofar as the aforesaid appeals filed by the assessee – Dayawanti through legal heir against the impugned common judgment and order dated 27-10-2016 passed by the High Court of Delhi at New Delhi in ITA Nos. 357/2015, 358/2015, 565/2015 and 566/2015. The question before the High Court was, whether the Income-tax Appellate Tribunal was justified in upholding the addition made on the basis of the incriminating material during the course of search.*
>
> ***16.1** In view of the aforesaid discussion and the reasoning, all these appeals filed by the assessee – Dayawanti through legal heir fail andthrough legal heir fail and the same deserve to be dismissed and are accordingly dismissed. No costs.*

09. We would like to deal with the DR's prayer that the appeal may be restored to the file of the ld. CIT (A) as order passed by the ld. CIT (A) was ex-prate and the issue has not been decided at the first appellate stage. However considering the facts before us, we are of the view that this is a legal issue raised by the assessee qua which all the facts are available on record and no further verification of facts is required to be made from any quarter, whatsoever. Therefore, in our opinion, the appeal can be adjudicated at the level of this forum as the legal issue need not to be restored to the lower authority who has not adjudicated the issue. We find support from the decision of Hon'ble Bombay High Court in the case of Kansai *Nerolac Paints Ltd. (supra)* wherein the facts are that an additional ground was raised challenging the levy of penalty on the non-existent entity. The tribunal admitted the additional ground and additional evidences which included the order of amalgamation of the High Court filed by the assessee remanded the matter to the AO for consideration. On further appeal the Hon'ble Court has held that :

"The tribunal should have answered the legal issue itself.The tribunal s not prevented in any manner and in law from considering a purely legal issue for the first time, especially if this issue went to the root of the matter. The issue was of the impact and legal effect of an order of amalgamation and winding up of the assessee on the penalty proceedings. If the proceedings were initiated prior to the order of the winding up being passed or the scheme of amalgamation being sanctioned then whether the subsequent act of an order sanctioning the scheme would permit continuation of the proceedings against an entity or a company which was wound up an in terms of the provisions contained in the Act was, thus, a clear legal issue. It should have been answered by the Tribunal, particularly when it had admitted the question or ground and the additional evidence filed by the assessee. The only two documents which required to be looked into were the scheme of amalgamation and the order passed in pursuance thereof by the court. The Tribunal was obliged to answer the legal question. Its omission to answer it, therefore, was vitiated in law. The direction to remit and to remand it to the Assessing officer was not justified and in the peculiar facts and circumstances. The Tribunal was directed to decide the legal issue.

010. Similarly, in the case of *Zuari Leasing & Finance Corpn. Ltd. Vs. ITO [2008] 112 ITD 205 (Delhi) (TM),* the operative part of the decision is as under:-

12. *I have also carefully considered the reasons given by the learned Accountant Member in his proposed order for remanding the case back to the Assessing Officer. In the first four paras he records the findings of the ld. CIT (Appeals) that assessee failed to produce the relevant evidence in support of its claim that cheques by the parties were dishonoured and secondly despite proper opportunity given by the lower authorities, the assessee did not file copies of the relevant suits filed in Court to enable lower authorities to verify the relevant facts. I have already noted above that the assessee, before the learned CIT (Appeals), had claimed that proper opportunity was not given to it by the Assessing Officer. Queries on bad debts were raised only in February, 2004 vide order sheet entry dated 9-2-2004. In response thereto the assessee had furnished details of bad debt vide letter dated 19-2-2004. It was again fixed on 27-2-2004 and on that very date, the assessment order was passed. The learned CIT (Appeals) accepted that proper opportunity was not given. The assessee, therefore, placed further evidence before the learned CIT (Appeals) and on that, CIT (Appeals) asked for a remand report. The relevant portion of the remand report has been noted above.*

12.1 *As regards the non-filing of copies of action taken by the assessee against debtors, even the learned Accountant Member has noted that copies of proceeding taken against the debtors were duly filed before the lower authorities. Therefore, the statement made in the order of the CIT (Appeals) is not correct.*

12.2 *Reason No. (iii) in Accountant Member's order that the assessee could not establish that written off debts had not been taken into account for determining*

the income of previous year, as required by section 36(2) is also factually and legally incorrect. This point has been discussed in detail in this order, how income of the debts written off was taken into account in the previous year or in earlier assessment years and that conditions of section 36(2) are fully satisfied in this case.

12.3 *Reason (iv) in the proposed order of learned Accountant Member is not based on any material on record. It has been the case of the assessee that not a single penny has been recovered out of the debts claimed as bad debts. The learned CIT (Appeals) or the learned Accountant Member has not shown any material to establish alleged considerable recoveries in the subsequent years. At any rate, if recoveries have been made of debts written off as bad, then the same is to be taxed under section 41(4) of the Income-tax Act as laid down by their Lordship of Delhi High Court in the decisions quoted (supra). Bad debts could not be disallowed on this ground.*

12.4 *Reason No. (v) has already been referred to above.*

12.5 *It is, therefore, clear that all relevant material to decide the matter with reference to section 36(1)(vii) read with section 36(2) was available on record and it was not necessary for the Bench to remand the case to the file of the Assessing Officer. The learned Judicial Member has referred to the relevant material and I have also discussed how conditions of the statutory provisions were fully satisfied.*

13. *It was contended by learned Departmental Representative that assessee even after the amendment has to establish that debt in question was bona fidely written off. Even assuming that above is the requirement of section 36(1)(vii), in my opinion, above requirement in this case was fully satisfied. The assessee had written off debts in the year under consideration. The assessee also filed evidence in the shape of copies of action taken against the debts in proceedings before learned CIT (Appeals). The claim of the assessee that to this day, not a single penny has been recovered, has not been refuted on record. There is no material to show that writing off of bad debt was not bona fide action. The facts involved in the case in hand are quite different from the facts involved in the case of South India Surgical Co. Ltd. (supra) where the debtor was a Government agency and had shown its willingness to pay the debt. In spite of above fact, the debt was written off in post date and claimed as "bad". The facts involved here are quite distinguishable and there is nothing on record to show that debtors were ready to pay or had in fact paid any amounts to the assessee or the judgment of writing off of debt suffers from any mala fide. There is nothing on record to contradict the claim of the assessee that not a penny had been recovered by the assessee from the debtors till this day. Having noted the facts of the case, I hold that there was no justification for remanding the case back to the file of the Assessing Officer. The learned Judicial Member was right in disposing of the matter on merit and I agree with his proposed order."*

011. So far as the legal issue whether the AO has jurisdiction to make addition in case of unabated assessment sans any incriminating

material seized during search, the same is squarely covered by the decision of the Hon'ble Apex Court in the above case PCIT Vs *Abhisar Buildwell P. Ltd. (supra)* , we are therefore, respectfully following the ratio laid down by the Hon'ble Supreme Court, set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition on the ground that the ld. AO has no jurisdiction to make the addition in absence of any incriminating search material found and seized during search. The appeal of the assessee is allowed on legal issue.

012. The other issues raised on merit by the assessee are not being adjudicated at this stage and may be decided at a later stage if need arises for the same in future. The appeal of the assessee is allowed.

IT(SS)A No. 2 to 5/GTY/2024 for A.Ys. 2012-13 to 2015-16

013. Since, the legal issue raised in these appeals for A.Ys. 2012-13 to 2015-16 is similar to one as decided by us in IT(SS)A No.01/GTY/2024 for A.Y. 2010-11 above, therefore, our decision would, mutatis mutandis, apply to these appeals as well. Consequently , the appeals of the assessee in IT(SS)A Nos. 2 to 5/GTY/2024 for A.Ys. 2012-13 to 2015-16 are also allowed.

IT(SS)A Nos. 6 & 7/GTY/2024 for A.Ys. 2016-17, 2017-18 and ITA No. 224/GTY/2024 for A.Y. 2018-19

014. In these appeals, the assessee has challenged the addition on legal issue as well as in merit. For the sake of convenience, we would first take the facts from A.Y. 2016-17 and decide the issue accordinly. The grounds for A.Y. 2016-17 is extracted below:-

> *"1.For that the assessment order dated 30.12.2019 passed u/s 153A r.w. section 143(3) is bad in law and is liable to be quashed.*

2. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition made by the A.O. on account of unsecured loans treating it as unexplained credit of Rs. 4,03,00,000/wrongly invoking the provisions of section 68.

(b) For that the Ld. CIT(A) failed to appreciate that the aforesaid addition related to an item of regular assessment and cannot be the subject matter of addition u/s 153A.

3. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought. to have deleted the addition made by the A.O. of Rs. 9,31,038/- u/s 36(1)(va) on account of payments of ESI even though payments were made within the due date.

(b) For that the Ld. CIT(A) failed to appreciate that the aforesaid addition related to an item of regular assessment and cannot be the subject matter of addition u/s 153A.

4. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.4,64,45,827/- made by the A.O. u/s 40(a)(ia) on account of non-deduction of TDS.

(b) For that the Ld. CIT(A) failed to appreciate that the aforesaid addition related to an item of regular assessment and cannot be the subject matter of addition u/s 153A.

4. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have deleted the addition of Rs.16,70,30,136/- made by the A.O. on account of alleged undisclosed investment u/s 69.

(b) For that the Ld. CIT(A) failed to appreciate that the aforesaid addition related to an item of regular assessment and cannot be the subject matter of addition u/s 153A.

015. So far as the ground no.1, is concerned , the counsel of the assessee submitted before us that the assessment has abated on the date of search. The facts in brief are that the return of income in the instant assessment year was filed on 07.02.2018 and the six months from the end of the financial year in which the return of income was filed i.e. 31st March, 2018, has expired on 30th September, 2018. Since, the search in this was conducted on 12.12.2017, and therefore, the assessment has abated on the date of search and is an abated assessment on the date of search. Therefore, the ld. AO has

jurisdiction to make all the additions on the basis of facts and material available before him. Accordingly, we are inclined to dismiss this legal ground raised before us. The ground no 1 is dismissed.

016. So far as the grounds on merit are concerned, the assessee has filed before us the application for admission of additional evidences under Rule 29 of the Rules comprising various expenses debited to the Profit and Loss Account along with copies of ledger accounts, TDS returns and documents relating to loan creditors and submitted that since these documents could not be submitted at the time of assessment proceedings because the director of the assessee company who was looking after the matter with an assistant could not attend the proceedings and therefore, proper compliance could not be made before the ld. AO by furnishing these evidences. The ld. AR submitted that since these are very important documents in order to decide and adjudicate the matter correctly and to assess the income as per the provisions of the Act, therefore, same may kindly be admitted. Accordingly, we are inclined to admit the aforesaid evidences and restore and relegate the appeal to the file of the ld. AO for fresh adjudication on the issue after taking into account these evidences after offering reasonable opportunity to the assessee. The appeal of the assessee is allowed for statistical purposes.

017. The issue raised in IT(SS)A Nos. 7/GTY/2024 for A.Ys. 2017-18 and & ITA No. 224/GTY/2024 for A.Y. 2018-19 are similar to one as decided by us in A.Y. 2016-17 in IT(SS)A No. 6/GTY/2024. Therefore, our decision would, mutatis mutandis, apply to IT(SS)A Nos. 7/GTY/2024 & ITA No. 224/GTY/2024. Consequently , the appeals of assessee in IT(SS)A Nos. 7/GTY/2024 & ITA No. 224/GTY/2024 for

A.Ys. 2016-17 & 2017-18 respectively are allowed for statistical purposes.

018. In the result IT(SS)A Nos. 1 to 5/GTY/2024 for A.Ys. 2012-13 to 2015-16 are allowed & IT(SS)A Nos. 6 & 7/GTY/2024 for A.Ys. 2016-17, 2017-18 and ITA No. 224/GTY/2024 for A.Y. 2018-19 are allowed for statistical purposes.

Order pronounced in the open court on 24.03.2025.

Sd/-
(MANOMOHAN DAS)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.03.2025
Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Guwahati