

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 1279/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18

Ajay Bakliwal C 6 Vallabh Bari, Vallabh Bari, Kota	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABZPB 7775 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Rajendra Sisodia, Adv.  
राजस्व की ओर से/ Revenue by : Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख/ Date of Hearing : 29/01/2025  
उदघोषणा की तारीख/Date of Pronouncement: 11/04/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of present appeal, the above-named assessee-appellant challenges the order of the learned Commissioner of Income Tax (Appeal), Udaipur-2 dated 30.09.2024 [ for short CIT(A) ]. The dispute relates to the assessment year 2017-18. The said order of the Id. CIT(A) arises as against the order dated 28.12.2019 passed under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 [ for short Act] by ACIT, Central Circle-Kota [for short AO].

2. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Act was carried out on 07.09.2017 at the various premises of 'Resonance Group, Kota' to which the assessee belongs. Assessee is an individual and derives income from salary, business and other sources. Pursuant to the search notice u/s 153A of the Act was issued to the assessee on 05.07.2018 which was duly served. In response to a notice issued u/s 153A, the assessee furnished his return of income on 11.08.2018, declaring total income of its. 3,87,72,400/-. Earlier the assessee had filed his return of income u/s 139 of the Act on 30.03.2018 at the total income of Rs. 87,72,400/-. The case of the assessee was selected for scrutiny by CASS. The CASS scrutiny proceeding was abated vide order dated 20.11.2019. Statutory notices were issued along with questionnaire / Annexure-A requiring certain details / information, which was served upon the assessee. In response to that, he furnished the desired details / information / documents / which were examined with respect to claims made in the return of income,

2.1 While assessment proceeding the assessee file application u/s. 154 of the Act for rectification of mistake on 24.10.2019. The application was disposed of by-passing order u/s. 154 of the Act. On 24.12.2019.

2.2 As there was difference of Rs. 3,00,00,000/- between ITR filed under section 153A and 139 of the IT. Act, 1961, the Id. AO considered the additional income so disclosed liable for penalty proceedings u/s 270A of the Act for under reporting of income and thereby completed the assessment determining the total income at Rs. 3,87,72,400/-. u/s. 143(3) r.w.s. 153A of the Act.

3. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“6.3 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In this case, the AO noted that in response to notice u/s 153A the assessee furnished his return of income on 11.08.2018, declaring total income of Rs. 3,87,72,400/-. Earlier the assessee had filed his return of income u/s 139 of the Act on 30.03.2018 at the total income of Rs. 87,72,400/- There is difference of Rs. 3,00,00,000/- between ITR filed under section 153A and 139 of the I.T. Act, 1961. The AO has assessed the income of the assessee at Rs. 3,87,72,400/- which is the returned income furnished in the return filed in response to notice u/s 153A of the Income Tax act.

*The assessee stated that the revised return filed on 21.11.2019 was a valid return. Non consideration of this return by the learned AO has resulted in violating the assessment proceedings. Similarly the learned AO failed to consider the letter of retraction filed on 13.12.2019 and has not assigned any reason for doing the same*

*Not only that the learned AO failed in not considering the revised return filed on 21.11.2019, the learned AO further committed a mistake in assessing income on the basis of return filed on 11.08 2018 wherein income of Rs. 3.00 Crore was surrendered on account of waiver of loan in respect of the credit standing in the name of Shri R.K Verma This was so because firstly there was no waiver of loan*

*The amount of Rs. 3.00 crore remained payable upto 31.03.2019 as per Affidavit filed by Shri RK Verma. Secondly also waiver of loan does not result income. This is so held by Supreme Court in the case of Mahindra and Mahindra cited supra. Thus the determination of income at Rs. 3,87,72,404/-which included income of Rs. 3.00 Crores is unlawful illegal and unjust. The assessment required to be completed on the basis of the revised return disclosing income of Rs. 87,72,400/- Hence the completion of assessment deserved to be quashed.*

The claim of the assessee is contradictory. In the reply furnished during the appellate proceedings for AY 2015-16 different claim was made.

*In the appellate proceedings for AY 2015-16 the assessee claimed that the assessee, in his statements recorded u/s 132(4) had stated that he received an amount aggregating Rs. 2 crore from Shri R.K. Verma, in FY 2014-15, which was shown by him as unsecured loan in the ITR filed by him, which in the next year, i.e. FY 2015-16, has been adjusted against work receipts of his concern Navbharat Nirman Co. Thus, the tax liability on this amount stands duly discharged once it is adjusted against the work receipts in FY 2015-16*

The assessee is claiming that the amount of Rs. 3.00 crore remained payable upto 31.03.2019 as per Affidavit filed by Shri R K Verma in current year and in AY 2015-16 it was claimed that Rs. 2 crore from Shri R.K.Verma, in FY 2014-15, which was shown by him as unsecured loan in the ITR filed by him, which in the next year, i.e. FY 2015-16, has been adjusted against work receipts of his concern Navbharat Nirman Co. Thus, the tax liability on this amount stands duly discharged once it is adjusted against the work receipts in FY 2015-16.

In both situations at least the amount of loan of Rs. 2 Crore is not pertaining to current year. Hence, the argument of the assessee with regard to waiver of loan is not found to be relevant for the amount of 2 Crore. This also proves that there is no double deduction of Rs. 2 Crore as claimed by the assessee in the reply furnished during appellate proceedings for AY 2015-16.

The assessee himself has filed a return u/s 153A in which the income has been increased by Rs. 3 Crore. The return filed u/s 153A is duly verified by the assessee. The return filed u/s 153A is furnished after considering the findings of the search by the assessee. The return filed in response to the notice issued u/s 153A is an important document.

The revised return was not furnished within the time allowed by the AO

The section 153A read as under

*"153A. ((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*

*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*

*(a) 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,*

*assess or reassess the total income of six assessment years immediately preceding*

*(b) the assessment year relevant to the previous year in which such search is conducted or requisition is made "land for the relevant assessment year or years)"*

As per section 153A, the AO shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice. It is not the case of the assessee that the revised return filed by the assessee on 21 11 2019 was filed within the time as specified in the notice issued u/s 153A.

The return of income furnished by the assessee is to be filed in response to the time allowed in the notice issued u/s 153A of the Income Tax Act. The assessee is claiming that the return filed in response to the notice u/s 153A was revised. It is not furnished and explained with evidence that the return filed in response to notice issued u/s 153A was revised within the time provided by the AO in the notice issued u/s 153A. In the absence of any evidence, it is presumed that the revised return was not filed within the time allowed by the AO.

In response to the notice u/s 153A the assessee already furnished his return of income on 11.08.2018. Therefore, the returned filed on 21.11.2019 was not filed in response to notice issued by the AO u/s 153A. Such return is considered as non est as per law.

The assessee wants to reduce the returned income by claiming various excuses which is not permissible in the law. The income offered by the assessee in the return filed in response to the notice u/s 153A is to be treated as final.

The decisions relied upon by the appellant are distinguishable on facts and hence not found to be applicable on the facts of the case.

The assessee has relied upon the decision of ITAT, Jaipur in the case of DCIT Vs Smt. Sheena Mathur, Jaipur (ITAT Jaipur) in ITA No. 627/JP/2017 dated 10.11.2017 AY 2011-12. In that case, the assessee realized that figures for AY 2014-15 were inadvertently copied and pasted in the return for AY 2011-12, accordingly, assessee on 14.12.2016 filed return where total income was taken at Rs. 30,64,640/-. It is also submitted that as the ITD System did not allow assessee to revise its return filed pursuant to the notice issued u/s 153A of the Act, assessee simply filed the fresh return for the AY 2011-12 on 14.12.2016 by rectifying the mistake apparent from the record. There is no mistake apparent from the record in the case of the assessee. The assessee after considering the fact that similar transaction of loan taken from Sh. R. K. Verma are admitted as undisclosed income for AY 2014-15 and AY 2015-16, the assessee offered the amount of Rs. 3 Crore for taxation. It is so stated by the assessee himself in the reply furnished in the appellate proceedings for AY 2015-16. Hence, the return was filed after considering that the bogus loan entry is in fact taxable income. The revised return can be at best be treated as retraction from the earlier return and there is no mistake apparent from record. The ITAT has given the decision considering peculiar facts of the case as mentioned in the order, which cannot be applied in each case. Therefore, this decision is not found to be applicable on the facts of the case.

The assessee has relied upon the decision of M/s OSE infrastructure Ltd Vs Assistant Commissioner of Income Tax ITA No. 5895/Del/2018 dated 14.08.2018. The issue of filing revising the return of income filed in response to the notice issued u/s 153A was not before the Hon'ble ITAT in that case. The appeal was filed against the penalty order passed u/s 271(1) (C) OF THE Income Tax act. Therefore, the decision is not found to be applicable on the facts of the present case.

Brief facts of the case are that originally the assessee filed the return of income on 30.9.2009 declaring a loss of Rs.1,13,74,180/- Pursuant to the search and seizure operations u/s 132 of the Income-tax Act, 1961 ("the Act") on 10.2.2012 and issuance of notice u/s 153A of the Act, assessee filed the return of income declaring a loss of Rs.27,62,303/- which the assessee revised declaring nil income. Assessment was completed on the nil income only. Therefore, in that case, the AO himself accepted the revised return of income in compliance to the notice issued u/s 153A. In the present case, no evidence furnished by the assessee to prove that the AO accepted the revised return of income. Therefore, the decision relied upon by the appellant is not found to be applicable on the facts of the case.

The appellant has also discussed the taxability of waiver of loan. On the facts of the case, the AO has only accepted the returned income and not made any addition. It is not evident that on which issue the assessee offered the excess income because of contradictory stand taken in the proceedings before the AO and

during the appellate proceedings. Hence, the issue discussed by the assessee is not found to be relevant on the facts of the present case.

In view of above discussion, the arguments of the appellant are not found to be acceptable. The various decisions relied upon by the appellant are distinguishable on the peculiar facts of the case of the assessee and hence not found to be applicable on the facts of the case of the assessee. The action of the AO in making assessment at returned Income of Rs. 3,87,72,404/- is found to be justified and upheld

This ground of appeal is treated as dismissed.

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8. In the result, the appeal of the appellant is treated as dismissed.

4. As the assessee did not find any favour, from the appeal filed before the Id. CIT(A), the assessee preferred the present appeal before this Tribunal on the ground as reproduced herein below :

“1. The Ld. CIT(A) has erred in upholding the action of the AO in not considering the revised return of income filed during the course of assessment proceeding on 21.11.2019 declaring income of Rs.87,72,400/-.

2. The Ld. CIT(A) has erred in upholding the action of the AO in completing the assessment at Rs. 3,87,72,404/- on the basis of return filed on 11.08.2018 ignoring the revised return, in which the income stood revised to Rs. 87,72,400/-

3. The Ld. CIT(A) has erred in holding that the revised return should have been furnished within the time allowed by the AO, i.e. within the time as specified in the notice issued u/s 153A.

4. The Ld. CIT(A) has erred in not following the decision of jurisdictional ITAT in the case of DCIT vs. Sheena Mathur, wherein the Hon'ble Bench has held that there is no restriction for filing a revised return pursuant to filing of return in response to notice under section 153A of the Act and the provisions of section 139(5) are equally applicable in case of return filed pursuant to notice under section 153A of the Act.

5. The Appellant craves leave to take additional grounds of appeal before or at the time of hearing of the appeal and/or modify any of the above grounds.

5. In support of the above grounds of appeal raised by the assessee. Id. AR of the assessee filed detailed written submissions in support of the various grounds so raised, which reads as under ;

“The assessee had filed his original ITR for AY 2017-18 u/s 139(4) on 30.03.2018, showing an income of Rs.87,72,404/- which was processed u/s 143(1) on 28.03.2019. Thereafter, on receiving notice u/s 153A, he again filed a return on 11.08.2018, inadvertently showing an income of Rs.3,87,72,404/- On realizing his mistake, he filed a revised return on 21.11.2019. This return was transferred to the AO by CPC on 26.11.2019. During the course of assessment proceedings, the assessee filed a letter to the AO intimating him about the filing of the revised return, enclosing a copy of the same and a detailed note as to why the return was revised. The AO ignored the same and did not take the cognizance of the revised return. He did not even discuss it in his order and went on to finalize the assessment on the basis of the return filed u/s 153A on 11.08.2018.

Submission on the grounds of appeal

Grounds 1 & 2 The Ld. CIT(A) has erred in upholding the action of the AO in not considering the revised return of income filed during the course of assessment proceeding on 21.11.2019 declaring income of Rs.87,72,400/-.

The Ld. CIT(A) has erred in upholding the action of the AO in completing the assessment at Rs. 3,87,72,404/- on the basis of return filed on 11.08.2018 ignoring the revised return, in which the income stood revised to Rs. 87,72 ,400/-

Before proceeding to file submission on the above grounds of appeal, for a better understanding of the case, it would be apt to know the chronological sequence of events, which is as under :

S.No.	Date	Event	Remarks
1.	07.09.2017	Search conducted	No incriminating document found
2.	30.03.2018	ITR for AY 2017-18 filed	Return filed u/s 139(4) disclosing an income of Rs.87,72,404/-
3.	05.07.2018	Notice u/s 153A issued by AO	
4.	11.07.2018	Notice u/s 153A received	
5.	11.08.2018	ITR filed in response to notice u/s	Return filed disclosing an income of

		153A	Rs.3,87,72,404/-
6.	28.03.2019	Return filed on 30.03.2018 u/s 139(4) processed by AO	Demand of Rs.1,30,380/- created.
6.	21.11.2019	Revised ITR filed in response to notice u/s 153A	Return filed on 11.08.2018 revised disclosing an income of Rs. 87,72,404/-
7.	26.11.2019	Return transferred to JAO by CPC	Return filed on 21.11.2019 revising the earlier return, transferred to JAO
8.	13.12.2019	Letter to AO intimating revision of ITR	Copy of revised return along with detailed note for filing it, enclosed
9.	28.12.2019	Assessment order passed on the basis of ITR filed on 11.08.2018	Revised return not considered and no reasons for doing so given in the order.

The AO completed the assessment on 28.12.2019 at Rs.3,87,72,400/- accepting the returned income disclosed in the return filed u/s 153A on 11.08.2018, ignoring the revised return filed on 21.11.2019. The revised return was filed to correctly reflect the true income of the assessee by making suitable corrections of wrong assertions inadvertently made in the earlier return with regard to certain hypothetical income allegedly flowing from the belief of the assessee that the loan taken by him from R.K.Verma has been waived off and it constituted his income. The assessee had filed a revised return on 21.11.2019, which was transferred by CPC to the AO on 26.11.2019. The Ld.AO, in the assessment order passed by him, did not even make a mention of the revised return filed by the assessee. In the light of the above submissions, it was contended on behalf of the assessee before the learned CIT(Appeals) that there was a wrong statement of income made in the original return in as much as there was no such income accruing or arising to the assessee and, therefore, the revised return filed by him correcting the said wrong statement was valid in accordance with the provisions of section 139(5). The Supreme Court in the plethora of cases has held that book entries are not decisive in determination of taxability nor otherwise of a transaction. What is relevant is the actual accrual of income. The accrual of income means the right to receive is vested in favour of assessee and becomes legally due to him. In the instant case, the purported income never accrued or became legally due to the assessee. He continued to be a debtor in the books of Shri R.K.Verma, for AY 2017-18 and thereafter. Hence, the assessee was fully justified in excluding hypothetical income based on erroneous book entries by filing revised return. In any case, the hypothetical income cannot be taxed. As per law, a revised income tax return would substitute the original income tax return completely. Thus, once

the revised return is filed, it will be considered the taxpayer's final income tax return. The AO ought to have considered the revised return for completing the assessment. As the assessment has been not been completed on the basis of the revised return, but on the basis of original return, it is void-ab-initio. The erroneous assessment made by the AO resulted in over-assessment of income by Rs.3,00,00,000/- It has been held by ITAT Mumbai, in the case of M/s Lok Housing & Construction Ltd. vs. ACIT in ITA No.8485/Mum./2011 that Earlier return, after a revised return, cannot form the basis of assessment.

It may be mentioned that there is no bar in revising a return filed u/s 153A. Reference in this regard may be made to Hon'ble jurisdictional ITAT's decision in the case of DCIT vs. Sheena Mathur, in ITA No.627/JP/2017. Quite surprisingly, the AO in his assessment order, had not uttered a word on the issue of revised return having been filed by the assessee or as to why he has ignored the same. The assessee vide his letter dated 11.12.2019 had informed the AO about filing of the revised return and what necessitated the same. But the Ld.AO did not feel it appropriate to address the same. In view of the above legal position, the assessment order passed by the AO deserves to be quashed.

The Ld.CIT(A) in respect of rejection of revised return has given his finding in Para-6.3 of his order. He has observed - The revised return was not furnished within the time allowed by the AO

At this juncture, it would be relevant to refer to the provisions of section 153A of the Act which read as under:-

"153A (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, the Assessing Officer shall-

(a) issue notice to such person requiring him to furnish within such period, as may 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."

On reading of the above provisions, it provides for issuance of notice to such person requiring him to furnish the return of income within the prescribed time limit as may be specified in the notice. Further, it provides that 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 of the Act.

The expression "so far as may be" used in section 153A(1)(a) came up for consideration before ITAT, Delhi in case of R.S. Investment vs. ITO reported in 15 Taxman.com 270 wherein in the context of whether provisions in respect of penalty for violation of provisions of section 139 shall be applicable where there is a violation of section 153C, read with section 153A in respect of filing return of income, it was held as under:

*"7. We have heard both the sides on this issue. The provisions of section 153C under which the assessment has been made provide in respect of the assessment of income of any other person in addition to the assessment in the case of search or requisition u/s 153A of Income-tax Act. The provisions itself provide that the assessments under this section shall be made by the AO of such person by issuing the notice and on that basis, the AO will assess or reassess the total income of such person or such assessment years in the manner provided in section 153A. Thus, the assessment and reassessment has to be made in the manner provided in section 153A. Section 153A provides that the AO shall issue the notice requiring to furnish return of income within a period as specified in the notice. The assessee was under the obligation to file the return of income in respect of each assessment year falling within six assessment years in a prescribed form and verified in a prescribed manner along with other particulars as may be prescribed and the provisions of Income-tax Act shall, as far as may be, apply, accordingly as if such return was a return required to be furnished u/s 139. In view of these, we are not in agreement with the pleadings of the learned AR that the provisions of section 271F cannot be applied where the return is required to be furnished u/s 153C read with section 153A of the Income-tax Act. Although there is no minimum time required to be give in the notice to be issued u/s 153A for filing the return and also no separate form has been prescribed, however, assessee was under legal obligation to file the return of income. The phrase has been used 'so far as may be' in section 153A. In our considered view, these words 'so far as may be' have been used to restrict the applicability of those provisions which are inconsistent with the provisions of section 153A. Meaning thereby that by using word 'so far as may be' in section 153A, the provisions and requirement of section 139 which are not inconsistent with provisions of section 153A shall be applicable and compliance thereof shall be as mandatory.*

Here, it would also be relevant to refer to erstwhile provisions of section 158BC contained in Chapter XIV-B which contains similar provisions for filing of return of income pursuant to issuance of notice by the AO where the search has been conducted. By way of a proviso to section 158BC(a), it was specifically provided that a person who has furnished a return under this clause shall not be entitled to file a revised return of income. The said provisions have since been superseded by the provisions of section 153A of the Act. Unlike the erstwhile provisions of section 158BC which provides a clear embargo on filing the revised return, current provisions in section 153A do not contain any specific restriction.

Rather, it is seen that current provisions have been drafted in a way so as to align with the provisions contained in section 139 provided they are not inconsistent with the provisions of section 153A of the Act. Therefore, in absence of a specific restriction under section 153A, it would be wrong to hold that the assessee would be barred from filing a revised return assuming he satisfies the conditions for filing such revised return.

In light of above discussions, it is amply clear that there is no restriction for filing a revised return pursuant to filing of return in response to notice under section 153A of the Act and the provisions of section 139(5) are equally applicable in case of return filed pursuant to notice under section 153A of the Act. Coming to the period of limitation for filing the revised return as mentioned in section 139(5), it may be furnished at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. As the notice u/s 153A for filing the return was itself issued on 05.07.2018, revision of return prior to this date is an impossibility and the former condition of furnishing the revised return before the expiry of the relevant assessment year i.e. by 31.03.2018 becomes redundant. The revised return having been furnished on 21.11.2019 before completion of assessment on 28.12.2019, is therefore, well within the time limit prescribed u/s 139(5).

The jurisdiction ITAT in the case of DCIT vs. Sheena Mathur (supra) in exactly identical circumstances held –

20. The third condition which is required to be fulfilled is that the revised return should be filed before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. In the instant case, the relevant assessment year is AY 2011-12, the revised return of income was filed on 14.12.2016 and the assessment was completed by passing of order [u/s 153A](#) r/w [section 143\(3\)](#) on 29.12.2016. In the instant case, the notice requiring the filing of return of income under [section 153A](#) was itself issued on 17.12.2014, therefore applying the principle of impossibility of performance, filing of revised return of income on or before 31.03.12 cannot be said to be applicable or enforced upon the assessee in the peculiar facts of the case. Given that the revised return was filed on 14.12.2016 well before the completion of assessment on 29.12.2016, the time limit for filing the revised return is satisfied in the instant case.

The Ld.CIT(A) has observed - *As per section 153A, the AO shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice. It is not the case of the assessee that the revised return filed by the assessee on 21.11.2019 was filed within the time as specified in the notice issued u/s 153A. The return of income furnished by the assessee is to be filed in response to the time allowed in the notice issued u/s 153A of the Income Tax Act. The assessee is claiming that the return filed in response to the notice u/s 153A was revised. It is not furnished and explained with evidence that the return filed in response to notice issued u/s 153A was revised within the time provided by the AO*

*in the notice issued u/s 153A. In the absence of any evidence, it is presumed that the revised return was not filed within the time allowed by the AO.*

The Ld.CIT(A) has misunderstood Clause(a) of Section 153A(1). The clause speaks of filing of the return in compliance to notice u/s 153A, which was filed by the assessee on 11.08.2018. The Ld.CIT(A) has conveniently ignored the latter part of Clause A, which reads thus – *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.* So, it clearly follows that a return filed u/s 153A can be revised u/s 139(5), subject to the conditions stated therein.

The Ld.CIT(A) has further observed - *In response to the notice u/s 153A the assessee already furnished his return of income on 11.08.2018. Therefore, the returned filed on 21.11.2019 was not filed in response to notice issued by the AO u/s 153A. Such return is considered as non est as per law.* The Ld.CIT(A) is misinterpreting the provisions of section 153A(1) in failing to consider that the return filed on 21.11.2019 has not been filed in response to notice u/s 153A but is a revised return. It is contended that the learned CIT(Appeals) was not right in going a step further to declare the said return as non-est, ignoring that the powers conferred upon him u/s 251(1)(a) are only in relation to the order of assessment to the extent that he may confirm, reduce, enhance or annul the assessment. The validity of the revised return filed by the assessee was not a ground of appeal requiring adjudication. As a matter of fact, the AO's order is silent on the revised return. It is contended that the learned CIT(Appeals), therefore, exceeded his jurisdiction while declaring the revised return of income filed by the assessee as non-est.

Ground 3 The Ld. CIT(A) has erred in not following the decision of jurisdictional ITAT in the case of DCIT vs. Sheena Mathur, wherein the Hon'ble Bench has held that there is no restriction for filing a revised return pursuant to filing of return in response to notice under section 153A of the Act and the provisions of section 139(5) are equally applicable in case of return filed pursuant to notice under section 153A of the Act.

The Ld.CIT(A) has attempted to distinguish this case on the basis of the second condition stated in section 139(5), viz. If any person, having furnished a return under sub section (1) or sub section (4), *discovers any omission or any wrong statement therein*, he may..... Here, the non-consideration of the revised return by the AO and completion of assessment on the basis of original return was challenged and it was for this proposition that the case of DCIT vs. Sheena Mathur was relied upon, and should have been followed by the Ld.CIT(A) in view of judicial discipline. The above decision was relied upon to show that the revised return having been filed within the time limits as per section 139(5) ought to have been given cognizance to and the assessment ought to have been framed on it's basis.

In view of the factual and legal position and further no incriminating material for the relevant year having been unearthed during search, the returned income as per the revised return may kindly be accepted.”

6. The Id. AR of the assessee vehemently argued that the assessee initially filed his ITR on 30.03.2018 u/s. 139 disclosing an income of Rs. 87,72,400/-. When the notice u/s. 153A of the Act was issued the assessee filed his return of income at Rs. 3,87,72,400/-. During the assessment proceeding realizing the fact that he has wrongly offered higher income than what was legally due from him he revised the return of income on 21.11.2019 disclosing an income what was originally filed at Rs. 87,72,400/- , but Id. AO did not give cognizance to that revised return and completed the assessment at the income that was filed disclosing Rs. 3 crore more income based on the retracted statement. While completed the assessment Id. AO did not mention that contention of the assessee and completed the assessment without considering the facts placed on record. Not only that he has not bothered to refer the contention raised in the assessment proceeding. The statement based upon which the assessee filed a return u/s. 153A which was revised by filling in a retraction statement and revised computation of income needs to be considered as income of the assessee. The transaction based upon which the disclosure was obtained were already recorded in the books of the assessee and therefore, even after

considering the decision of apex court, that income cannot be added in the hands of the assessee as the same is not supported by any incriminating material and statement was retracted by the assessee.

7. The Id. DR is heard who relied on the findings of the lower authorities and submitted her contention vide written submission so placed on record which reads as under :

#### 1. Introduction

The Revenue respectfully submits this counter-response to address the appellant's claims regarding the rejection of the revised return and the assessment under Section 153A of the Income Tax Act, 1961. This submission also seeks to confirm the findings of the Ld. CIT(A) and the Assessing Officer (AO), who have rightly concluded that the assessment based on the original return is valid and correct.

#### 2. Factual Background

##### 1. Filing of Returns

- The original return under Section 153A was filed on 11.08.2018, declaring an income of ₹3,87,72,404/-.
- A revised return was filed on 21.11.2019, declaring an income of ₹87,72,404/-.
- The AO completed the assessment based on the original return, rejecting the revised return as invalid due to its delayed filing beyond the timelines permitted under Section 139(5).

##### 2. Appellant's Claims

- The appellant contends that the revised return should have substituted the original return.
- The appellant argues that the declaration of ₹3,87,72,404/- in the original return was an inadvertent error and claims hypothetical income was wrongly declared.

##### 3. Revenue's Submissions

###### 3.1. Confirmation of Findings by Ld. CIT(A) and AO

###### 1. Findings of the AO

- The AO correctly completed the assessment based on the return filed under Section 153A on 11.08.2018.
- The AO observed that the revised return filed on 21.11.2019 was beyond the timelines prescribed under Section 139(5) and did not meet the conditions for a valid revised return.

## 2. Findings of the Ld. CIT(A)

- The Ld. CIT(A) rightly upheld the AO's decision to disregard the revised return, citing its invalidity under the provisions of Section 153A read with Section 139(5).
- The Ld. CIT(A) further held that the revised return filed by the appellant did not comply with the requirements of law and was rightly treated as "non-est" by the AO.

## 3. Revenue's Confirmation of Findings

- The Revenue concurs with the findings of the Ld. CIT(A) and the AO, as the appellant's revised return was both procedurally and substantively invalid.
- The rejection of the revised return was justified based on the established legal framework and judicial precedents.

### 3.2. Revised Return as an Afterthought

#### 1. Timing of the Revised Return:

- The revised return was filed over a year after the original return, without any credible explanation for the delay.
- As held in CIT v. Nova Promoters & Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Delhi HC)], claims introduced belatedly and without substantiation are often afterthoughts to escape tax liability.

#### 2. Contradiction Between Returns:

- Either the original return filed under Section 153A or the revised return is false. The appellant has failed to establish which one is accurate.
- The Hon'ble Supreme Court in Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)] held that claims contrary to human probabilities and devoid of credible evidence must be rejected.

### 3.3. Assessee's Team of Accountants and Professional Background

#### 1. Professional Background of the Assessee:

- The appellant, a qualified civil engineer with over 35 years of experience, is not unfamiliar with financial and tax matters.

#### 2. Access to Professional Resources:

- The appellant had access to a team of accountants and financial professionals to ensure accurate tax compliance.

- Errors in tax filings are less excusable when the assessee has professional support, as held in Zoom Communication Pvt. Ltd. v. CIT [(2010) 327 ITR 510 (Delhi HC)].

### 3.4. Retraction of Income and Hypothetical Claim

#### 1. Declaration Under Section 153A Is Binding:

- The return filed on 11.08.2018 was a conscious declaration of income and is binding unless proven otherwise.
- If the appellant claims that the declaration of ₹3,87,72,404/- was a mistake, the onus lies on the appellant to provide credible evidence, as held in Kishinchand Chellaram v. CIT [(1980) 125 ITR 713 (SC)].

#### 2. Failure to Substantiate Hypothetical Income:

- The appellant's claim that the declaration of ₹23,87,72,404/- was based on hypothetical income is unsupported by any documentary evidence or explanation.
- Hypothetical or non-existent income cannot form the basis of a revised return, as reiterated in CIT v. Lovely Exports (P) Ltd. [(2008) 216 CTR 195 (SC)].

### 3.5. Legal Provisions and Precedents

#### 1. Applicability of Section 153A:

- Section 153A requires a return to be filed in response to a notice issued under the provision.
- The revised return filed on 21.11.2019 does not align with the timelines or conditions specified under Section 139(5) and is therefore invalid.
- The Hon'ble Madras High Court in T. Devasahayam v. CIT ((2021) 430 ITR 107 (Mad HC)] held that revised returns under Section 153A must comply with the timelines prescribed under Section 139(5).

#### 2. Judicial Endorsement of AO's Action:

- The Hon'ble ITAT in DCIT v. Sheena Mathur [ITA No. 627/JP/2017] upheld that returns filed under Section 153A must be treated as original returns and cannot be revised beyond the prescribed timelines.

#### 4. Conclusion

The Revenue respectfully submits that:

1. The findings of the Ld. CIT(A) and the AO are valid and supported by established legal principles and judicial precedents.
2. The revised return filed by the appellant was an afterthought and lacks credibility, as it was filed beyond the permissible timelines and without substantive evidence.
3. The appellant's claim of inadvertent error is unsupported and contradicted by the facts and circumstances of the case.

4. The assessment order passed based on the original return filed under Section 153A is valid and must be upheld.

5. Prayer

In light of the above submissions, the Revenue respectfully prays that:

1. The appeal of the appellant be dismissed, and the findings of the L.d. CIT(A) and the AO be confirmed.

2. The revised return filed on 21.11.2019 be treated as invalid and disregarded for assessment purposes.

3. The assessment order passed based on the original return filed under section 153A be upheld in its entirety.

4. Any other relief deemed fit in the interest of justice may also be granted.

Respectfully submitted on Behalf of the Revenue.”

8. We have heard the rival contentions and perused the material placed on record. Ground no. 1 to 4 so raised by the assessee relates to the only one contention that the assessee filed return of income at Rs. 87,72,400/- then filed the same at Rs. 3,87,72,400/- considering the additional income in response to notice u/s. 153A of the Act which was stands corrected by filling again the revised computation of income during the pendency of assessment revising the income at Rs. 87,72,400/- as originally filed. Ld. AO ignored that submission and considered the income disclosed by the assessee at Rs. 3,87,72,400/-. So now, the precise question that is to be considered is whether the assessee in the proceeding u/s. 153A of the Act filed the return of income and thereafter he can again revise the return of income during the pendency of the proceeding or not?

To decide the issue, it would be better to reproduce the date of events in this case;

S.No.	Date	Event	Remarks
1.	07.09.2017	Search conducted	No incriminating document found
2.	30.03.2018	ITR for AY 2017-18 filed	Return filed u/s 139(4) disclosing an income of Rs.87,72,404/-
3.	05.07.2018	Notice u/s 153A issued by AO	
4.	11.07.2018	Notice u/s 153A received	
5.	11.08.2018	ITR filed in response to notice u/s 153A	Return filed disclosing an income of Rs.3,87,72,404/-
6.	28.03.2019	Return filed on 30.03.2018 u/s 139(4) processed by AO	Demand of Rs.1,30,380/- created.
6.	21.11.2019	Revised ITR filed in response to notice u/s 153A	Return filed on 11.08.2018 revised disclosing an income of Rs. 87,72,404/-
7.	26.11.2019	Return transferred to JAO by CPC	Return filed on 21.11.2019 revising the earlier return, transferred to JAO
8.	13.12.2019	Letter to AO intimating revision of ITR	Copy of revised return along with detailed note for filing it, enclosed
9.	28.12.2019	Assessment order passed on the basis of ITR filed on 11.08.2018	Revised return not considered and no reasons for doing so given in the order.

As is evident from the above chart that first there was search on 07.09.2017. The assessee files the voluntary return on 30.03.2018 declaring income at Rs. 87,72,404/-. On 05.07.2018 notice u/s. 153A of the Act was issue and the assessee files the return of income pursuant that notice on 11.08.2018 wherein he has included an income of Rs. 3 cr being the amount of loans which he has disclosed in the statement recorded in the search. The assessee retracted that statement and thereby also filed a revised return on 21.11.2019. CPC transferred that revised return to the

JAO on 26.11.2019. Vide letter dated 13.12.2019 assessee informed to JAO by filling a letter along with revised return and note explaining the reasons for filling that. Ld. AO has passed the assessment order on 28.12.2019 where in he has not discussed the filling of revised return and the reasons as to why the same was not considered. Thus, when the appeal of the assessee argued by the Id. DR she contended that revised return filed on 21.11.2019 does not align with the timelines or condition specified u/s. 139(5) and therefore, stated by her as invalid in the eyes of the law.

Thus, the precise question before us whether the returned filed in response to notice u/s. 153A can be compared to the return filed as per provision of section 139 of the Act or not. In this regard we would like to discuss the various case law on this aspect of the matter which will assist the bench to take the decision on the issue raised before us. Those decision considered by the bench are as under:

1. **The Bombay High court** in the case of *CIT v. B. G. Shirke Construction Technology (P.) Ltd.* [\[2017\] 79 taxmann.com 306/246 Taxman 300/395 ITR 371 \(Bom.\)](#) has decided similar issue in favour of assessee. In that case, the assessee was engaged in the execution of construction contracts. There was a search and seizure action under section 132 upon the assessee. Consequent thereto, a notice under section 153A was issued to the assessee for the assessment years 2003-04, 2006-07, 2007-08 and 2008-09. However, as the assessments for the subject assessment years 2007-08 and 2008-09 were pending before the Assessing Officer they stood abated in

view of the second proviso to section 153A(1).

In its return of income filed consequent to notice under section 153A, in both the assessment years, assessee had while offering its income on account of execution of the contracts had not excluded the amounts retained by its customers till the completion of the defect liability period after completion of the contract. This amount could not be quantified in the short time available to file its return of income. Therefore, the assessee filed a note along with its returns of income pointing out the aforesaid facts and its seeking appropriate deduction when completing the assessments. In assessment proceedings, appellant made such claim before AO. Though AO and CIT(A) has decided such issue against assessee, Hon'ble ITAT allowed such claim. The Hon'ble court allowed such claim mainly on following grounds.

Pending assessment for both the years in which assessee has kept note in return of income filed u/s 153A were abated as provided in second proviso to section 153A(1).

The consequence of notice under section 153A(1) is that assessee is required to furnish fresh return of income for each of the six assessment years in regard to which a notice has been issued. **It is this return which is filed consequent to the notice which would be subject of assessment by the revenue for the first time in the case of abated assessment proceedings.**

Consequent to notice under section 153A the earlier return filed for the purpose of assessment which is pending, would be treated as *non est* in law. Consequently, the return filed under section 153A(1) is a return furnished under section 139 of the Act.

In the above referred case, even court has discussed decision of Supreme Court in the case of *CIT v. Sun Engineering Works Pvt Ltd.* [198 ITR 297/64 Taxman 442](#) and court observed that said case was dealing with reassessment u/s 147/148 of the Act vis a vis additional claim and role of AO is primarily restricted to such income which has escaped assessment and does not permit reconsideration of issue which are concluded in the earlier assessment years in favour of the Revenue whereas additional claim made by appellant in return of income u/s 153A of the Act is allowable because provisions of the Act **which would be otherwise applicable in case of return filed in the regular course under section 139(1) would also continue to apply in case of return filed under section 153A.**

2. **Pune ITAT** in the case of *UMESH DHONDIRAM SHINDE v. DCIT* [IT Appeal No 1363 to 1367/PUN/2014, dated 16th March 2018, has held that following the ratio laid down by the Hon'ble Bombay High Court in *CIT v. Continental Warehousing Corp. (Nhava Sheva) Ltd (supra)*, *All Cargo Global Logistics Ltd.* (Income Tax Appeal No. 523 of 2013, Income Tax Appeal No. 1969 of 2013) and in *CIT v. Deepak Kumar Agarwal* [\[2017\] 86 taxmann.com 3/251](#)

[Taxman 22/938 ITR 586 \(Bom.\)](#), in the absence of any incriminating document, no addition is warranted in the hands of assessee in the respective years which are non-abated assessment years. **Following very same decisions, ITAT has held that assessee is not entitled to claim any fresh claim in the returns of income filed u/s 153A in respect of assessment years for which assessment proceedings have not abated** which suggest that new claim can only be made by assessee for assessment years for which proceedings are abated.

3. **Kolkata ITAT** in the case of *Electrosteel Castings Ltd. v. Dy. CIT* [\[2017\] 88 taxmann.com 862](#) has observed that the issues with regard to deduction under section 80-IA of the Act and arm's length price of international transaction between the assessee and its associated enterprise (AY 2003-04 to 05-06) could not and ought not to have been examined by the Assessing Officer in the assessment proceedings, under section 153A of the Act as the said issues stood concluded with the assessee's return of income on these issues being accepted in the assessment completed under section 143(3) of the Act prior to the date of search. Similarly for claim of the assessee in the assessment under section 153A of the Act for the aforesaid three assessment years that sales Tax remission subsidy which was originally offered to Tax and brought to Tax in the original assessment under section 143(3) of the Act, is not Taxable, ITAT has held that these claims could not be made by the assessee as these claims were independent claims and had no nexus or interconnection with the determination of total income under section 153A of the Act based on incriminating material found in the course of search.

Here, it is pertinent to observe that search was carried out in the case of assessee on 19/03/2009 and for AY 2006-07, ITAT at para 28 of order observed that there was no prior assessment for this year hence in said year only one order would be passed which includes both disclosed and undisclosed income would be brought to tax. In light of these facts, ITAT has held that Assessee can file revised computation in the course of ongoing assessment proceedings under the Act, without making recourse to revised return, despite the fact that time limit for revising return under section 139(5) had expired. ITAT for this year accepted new claim regarding taxability of sales tax remission as capital receipt as against revenue receipt shown in original return of income filed prior to search u/s 132 of the Act.

Ongoing through finding of ITAT referred *supra*, new claim can be made by assessee only for those years for which proceedings have abated in terms of section 153A of the Act.

4. The **Delhi High court** in the case of *Pr. CIT v. Neeraj Jindal* [\[2017\] 79 taxmann.com 96/393 ITR 1 \(Delhi\)](#) has deleted penalty u/s 271(1)(c) of the Act when an assessee has filed revised return after search has been conducted, and such revised return has been accepted by Assessing Officer. In this case, for the relevant assessment year 2005-06(Not search year),

assessee reported its income through a return under Section 139(1) of the Act, declaring an income of Rs.1,72,799/- on 30.12.2005. A search and seizure operation under Section 132(4) of the Act was carried out on 11.01.2007 in the premises of the assessee's group companies and directors of the company. A disclosure of Rs.16 crores was made by the group under Section 132(4) of the Act on behalf of different directors and relatives of the directors. Notice under Section 153A of the Act was issued on 26.02.2008, in response to which the assessee filed his return of Income on 23.10.2008 declaring an income of Rs.23,38,731/-, thus showing additional income of Rs.21,65,932/-. The AO completed the assessment under Section 153A read with Section 143(3) of the Act on 31.12.2008 after accepting the declared income. While deleting the penalty, the court has observed as under:

21. Thus, it is clear that when the A.O. has accepted the revised return filed by the assessee under Section 153A, no occasion arises to refer to the previous return filed under Section 139 of the Act. For all purposes, including for the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A. In fact, the second proviso to Section 153A(1) provides that "assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this subsection 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." **What is clear from this is that Section 153A is in the nature of a second chance given to the assessee, which incidentally gives him an opportunity to make good omission, if any, in the original return.** Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est. Now, it is trite to say that the "concealment" has to be seen with reference to the return that it is filed by the assessee. Thus, for the purpose of levying penalty under Section 271(1)(c), what has to be seen is whether there is any concealment in the return filed by the assessee under Section 153A, and not vis-a vis the original return under Section 139.

The ratio of above decision can also be applied for additional claim or new claim made by assessee for assessment years getting abated in terms of section 153A of the Act.

5. The Co ordinate bench of **Ahmedabad ITAT** in the case of *Bhanuben Kantibhai Savalia v. Dy. CIT* [\[2019\] 111 taxmann.com 150/179 ITD 710](#) wherein assessee had filed return of income for AY 2008-09 on 05/12/2008 u/s 139 of the Act and search action was carried out on 06/01/2011. The appellant in original return of income has shown from sale of plots as capital gain i.e in return of income filed u/s 139 prior to date of search and in return of income filed in response to notice u/s 153A, appellant has shown such income as business income. The Issue before ITAT was whether the assessee is entitled to revise its claim and alter its original position in

accordance with law or not. The ITAT has decided issue in favour of assessee and mainly observed as under:

Unlike Section 147, the scope of Section 153A of the Act is not necessarily relatable to only undisclosed income. The scheme of assessment under section 153A of the Act appears to be quite different *qua* Section 147 of the Act on the face of it.

Section 153A of the Act begins with non-obstante clause which has an override effect over Section 147 of the Act among others.

Reference was drawn to decision *Shrikant Mohta v. CIT* [2018] 95 taxmann.com 224/257 Taxman 43/[2019] 414 ITR 270 (Cal.), *Asstt. CIT v. V.N. Devadoss* [2013] 32 taxmann.com 133/57 SOT 67 (URO) (Chennai - Trib.) and held that a conspectus of the aforesaid decision cited would thus give a rise to a compelling impression that assessee is not prevented from making a claim to its advantage in the proceedings under section 153A of the Act unlike Section 147 of the Act.

In above decision, court has not discussed second proviso to section 153A of the Act relating to abatement of proceedings but has decided in favour of assessee relying upon other decisions of courts.

6. The **Hyderabad ITAT** in the case of *Dy. CIT v. Megha Engg. & Infrastructure Ltd.* [IT Appeal No. 607 to 610/H/2016, dated 15/12/2019] also held that assessee can make fresh claim in return of income filed in response to notice u/s 153A of the Act.
7. Our own Jurisdictional Hon'ble **Rajasthan High Court** in *Jai Steel (India) v. Asstt. CIT* [2013] 219 Taxman 223/36 taxmann.com 523 were that search u/s 132 was carried out on 20/02/2004. For AY 2000-01 to 2002-03, in the return filed in response to the notice under Section 153A of the Act, the assessee, *inter alia*, claimed deduction of Sales Tax Incentive relying on decision in the case of *Dy. CIT v. Reliance Industries Ltd.* [2004] 88 ITD 273 (Mum.) (SB). The said claim was not made in the original return filed under Section 139(1) of the Act and it was contended that such claim can be made in the return filed in response to notice under Section 153A of the Act as it was over riding all proceedings earlier taken overall. The AO denied deduction in assessment order passed u/s 143(3) r.w.s 153A of the Act.

The Court at para 19 of the order observed that the purpose of second proviso to section 153A of the Act is also very clear, inasmuch as, once a assessment or reassessment is 'pending' on the date of initiation of search or requisition and in terms of section 153A a return is filed and the Assessing Officer is required to assess the same, there cannot be two assessment orders determining the total income of the assessee for the said assessment year and, therefore, the proviso provides for abatement of such pending assessment and reassessment proceedings and it is only the assessment

made under section 153A which would be the assessment for the said year.

While adjudicating above issue, the Court then explained as under:

"22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under sections 132 and 132A, it is apparent that:

The assessments or reassessments, which stand abated in terms of II proviso to section 153A of the Act, the AO acts under his Original jurisdiction, for which, assessments have to be made;

Regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and

In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

The argument of the Revenue that the AO was free to disturb income *de hors* the incriminating material while making assessment under section 153A was specifically rejected by the Court on the ground that it was "not borne out from the scheme of the said provision" which was in the context of search and/or requisition. **The Court also explained the purport of the words "assess" and "reassess", which have been found at more than one place in section 153A as under:**

"26. The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess' have been used at more than one place in the section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word assess has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents."

In this context, court at para 29 of the order held that the argument of the assessee for allowing new claim for assessment proceedings for AYs already unabated on the date of search, if taken to its logical end, would mean that even in cases where the appeal arising out of the completed assessment has been decided by the Commissioner (Appeals), the Tribunal and the High Court, on a notice issued under section 153A, **the Assessing Officer would have power to undo what has been concluded upto the High Court. Any interpretation which leads to such conclusion has to be repelled and/or**

**avoided.**

Thus, at para 30 of the order, High court held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because assessment under section 153A in pursuance of search or requisition is required to be made.

8. **Mumbai ITAT** in the case of *Dy. CIT v. Eversmile Construction Co.(P.) Ltd* [[2013\] 33 taxmann.com 657\(Mum.\)](#)] held that any deduction claimed by assessee in proceedings under section 153A cannot be rejected simply on ground that it was not claimed in original assessment or was disallowed. In this case, AO had disallowed interest expenditure in original assessment order passed u/s 143(3) of the Act and appellant has not challenged such addition in appeal. Though in return of income filed in response to notice u/s 153A of the Act, assessee has suo moto disallowed such interest but in notes to return, it reserved its right to claim such interest at assessment stage. The AO has not entertained such claim in assessment order but ITAT has allowed such deduction on the ground that "As there is no specific inhibition on the jurisdiction of the Assessing Officer in not including any new income to such fresh total income pursuant to search which was not added during the original assessment, in the like manner, there is no restriction on the assessee to claim any deduction which was not allowed in the original assessment.

The ratio of above decision has been followed by **Mumbai ITAT** in the case of *UNIVERSAL MEDICARE PVT. LTD. v. Dy. CIT* [IT Appeal Nos. 2967 to 2971/Mum/2016, dated 05/12/2018 and *V.N. Devadoss (supra)*].

However, ratio of above decisions may not hold good considering the decisions of Bombay High court and Rajasthan High court referred *supra* for new claim made by assessee for unabated assessment years.

9. The **Pune ITAT** in the case of *Mapani Estate v. Asstt. CIT* [[2014\] 44 taxmann.com 242/64 SOT 105 \(Pune - Trib.\) \(URO\)](#)] after considering Bombay High court decision of *CIT v. Sheth Developers Pvt. Ltd.* [[2012\] 210 Taxman 208 \(Mag.\)/25 taxmann.com 173 \(Bom.\)](#)] allowed higher deduction u/s 80IB(10) after considering additional income.

Though in this case, assessee has not made any additional or new claim in return of income filed in response to notice u/s 153A of the Act, assessee has claimed higher deduction u/s 80IB(10) than deduction claimed in original return of income and ITAT after considering scope of provisions of section 153A and distinguishing provisions of section 147, allowed such higher claim.

As is evident from the various decisions cited herein above, we note

that the consequence of notice under section 153A(1) is that assessee is required to furnish fresh return of income for each of the six assessment years in regard to which a notice has been issued. **It is this return which is filed consequent to the notice which would be subject of assessment by the revenue for the first time in the case of abated assessment proceedings.**

Consequent to notice under section 153A the earlier return filed for the purpose of assessment which is pending, would be treated as *non est* in law. Consequently, the return filed under section 153A(1) is a return furnished under section 139 of the Act.

On the merits of the case we note that the assessee has disclosed Rs. 3 crore income based on the statement recorded and the same was retracted. There was no material of having incriminating material the loans which were disclosed in the statement were duly recorded in the return of income so filed therefore, considering the decision of the apex court in the case of *Abhisar Buildwell*.

As regards the addition based on the retracted statement we get support of our own jurisdictional High Court while deciding the case of *PCIT Vs. M/s. Esspal International P. Ltd.* DB ITA no. 25/2024 dated 03/09/2024

that merely based on the statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

**11. Now *it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.***

**12.** Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

**13.** For the foregoing reasons, D.B. Income Tax Appeal No.25/2024 is dismissed.

Based on the discussion so recorded herein above ground no. 1 to 4 raised by the assessee are allowed. Ground no. 5 being general does not require any finding.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/04/2025.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/04/2025

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Ajay Bakliwal, Kota
2. प्रत्यर्धी / The Respondent- ACIT, Central Circle, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1279/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar