

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 6482/Mum/2024
Assessment Year: 2015-16
I.T.A. No. 6481/Mum/2024
Assessment Year: 2016-17
I.T.A. No. 6484/Mum/2024
Assessment Year: 2017-18

Jayems Engineering Company Private Limited 130/132, Great Western Building S B S Marg Fort Mumbai - 400023 [PAN: AAACJ0059P]	Vs	Assistant Commissioner of Income Tax, Central Circle - 4(2), Mumbai
अपीलकर्ता/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Nitesh Joshi, A/R
Revenue by :	Shri Vivek Perampurna, CIT D/R

सुनवाई की तारीख/Date of Hearing : 05/08/2025
घोषणा की तारीख /Date of Pronouncement: 11/08/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 6482/Mum/2024, I.T.A. No. 6481/Mum/2024 and I.T.A. No. 6484/Mum/2024 are three separate appeals by the assessee preferred against three separate orders of Id. CIT(A) - 52, Mumbai [hereinafter 'the Id. CIT(A)'] pertaining to AYs 2015-16, 2016-17 and 2017-18.

2. Since common grievance is involved in the captioned appeals, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The common grievance relates to the validity of the assessment orders passed contrary to the provisions of Section 153A of the Act and the additions made on account of alleged suppressed sales.

4. Since the issue of validity of the assessment order goes to the root of the matter, we proceed to adjudicate it first.

5. Briefly stated, the facts of the case are that a search and seizure action u/s 132 of the Act was carried out in the case of the assessee at his business premises at 130/132, Great Western Building, SBS Marg, Mumbai. Subsequently, a notice u/s 153A of the Act was issued and served upon the assessee in response to which the assessee filed its return of income. The details of filing of the original return of income and pursuant to Section 153A of the Act can be understood from the following chart:-

<i>Assessment Year</i>	<i>Date of filing of Original return of income</i>	<i>Date of filing return of income in pursuance to the notice u/s 153A of the Act</i>
2015-16	29/09/2015	26/02/2021
2016-17	14/10/2016	26/02/2021
2017-18	29/10/2017	26/02/2021

6. In AY 2015-16 and 2016-17, the validity of the assessment has to be considered in light of the incriminating material found at the time of search basis which the assessments have been framed.

7. The assessee is engaged in the business of trading of designer garments. During the course of search action, the sales data of the assessee was extracted from its ERP system and on review of sales data extracted from assessee's ERP system and sales data from ITR for the year under assessment, it was found that the assessee has disclosed lesser turnover in ITR as compared to sales data extracted from its ERP system. The year-wise difference of sales are tabulated as under:-

Financial year	Assessment year	As per ITR	Sales data as per assessee's ERP System	Sales suppressed in ITR
2014-15	2015-16	16,61,47,841	16,71,98,776	10,75,935
2015-16	2016-17	17,22,23,344	17,33,29,848	11,06,504
2016-17	2017-18	21,07,02,740	21,43,09,661	36,06,921
				57,59,360

7.1. From the above chart, it can be seen that the basis of the proceedings u/s 153A of the Act is the sales data of the assessee as extracted from its ERP system. In our considered opinion the regular books of accounts of the assessee by any stretch of imagination cannot be treated as incriminating material forming basis of framing assessment u/s 153A r.w.s. 143(3) of the Act. The decisions of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla* (2016) 380 ITR 573 (ITR); *Chintles India Ltd v. Dy..CIT* (2017) 397 ITR 416 (Delhi)(HC) and the decision of the Hon'ble Supreme Court in the case of *PCIT v. Abhisar Buildwell P. Ltd.* (2023) 454 ITR 212 (SC), squarely apply on the facts of the case as discussed hereinabove. The ratio of the decision laid down by the

Hon'ble Delhi High Court in the case of *Kabul Chawla (supra)*, reads as under:-

"37. 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 153 A (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. Insofar as Assessment Years 2015-16 and 2016-17 are concerned, where no assessment was framed u/s 143(3) of the Act, it can be safely concluded that the period of limitation for issuing show-cause notice u/s 153A of the Act expired before the date of search as explained in the chart elsewhere.

8. The Hon'ble Delhi High Court in the case of *Chintels India Limited (supra)* has held that once an assessee does not receive a notice u/s 143(2) of the Act within the stipulated period, such an assessee can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return. This is also abundantly clear from the *Circular No. 549 dated 31/10/1989*.

9. The Hon'ble High Court was seized with the following substantial question of law:

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the assessments for Assessment Year 2008-09 were pending, on the date of the search i.e. 25.03.2010, in the circumstances of the case?"

10. The relevant findings of the Hon'ble High Court read as under:

"19. The above submissions have been considered. As far as AY 2008- 09 is concerned, the fact that there was no notice sent to the Assessee under [Section 143\(3\)](#) of the Act before the deadline, i.e., 30 th September, 2009, is not in dispute. The CBDT Circular No. 549 dated 31st October, 1989 deals with such a situation. Para 5.13 thereof reads as under:

"5.13 A proviso to sub-section (2) provides that a notice under the sub-section can be served on the assessee only during the financial year in which the return is furnished or within six months from the end of the month in which the return is furnished, whichever is later. This means that the Department must serve the said notice on the assessee within this period, if a case is picked up for scrutiny. It follows that if an assessee, after furnishing the return of income does not receive a notice under section 143(2) from the Department within the aforesaid period, he can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return."

20. In *Vipan Khanna v. Commissioner of Income Tax (supra)*, the Punjab and Haryana High Court referred to the same circular and observed that in case where the

AO chose to verify the return and frame an assessment he has to issue a notice under [Section 143\(2\)](#) of the Act requiring the Assessee to produce his books of accounts and other material in support of his return. The High Court proceeded to observe:

"...Thereafter he can make an assessment under sub-section (3) of [section 143](#) of the Act. Another important change incorporated in sub-section (2) of [section 143](#) of the Act is that the notice under this sub-section cannot be served on an assessee after the expiry of 12 months from the end of the month in which the return is furnished. Therefore, in a case where a return is filed and is processed under [section 143\(1\)\(a\)](#) of the Act and no notice under sub-section (2) of [section 143](#) of the Act thereafter is served on the assessee within the stipulated period of 12 months, the assessment proceedings under section 143 come to an end and the matter becomes final. Thus, although technically no assessment is framed in such a case, yet the proceedings for assessment stand terminated."

21. In the present case, the facts speak for themselves. The Assessee filed its return on 21st October, 2008. The return was processed under [Section 143\(1\)](#) of the Act on 27th March, 2010. It has held by this Court in [Indu Lata Rangwala v. Deputy Commissioner of Income Tax](#) (supra) that the mere processing of a return under [Section 143\(1\)](#) of the Act and the sending of an intimation to the Assessee will not make it an 'assessment'. At the same time, the consequences of the Department not issuing a notice under [Section 143\(2\)](#) of the Act within the time stipulated as far as the filing of the return in normal course is concerned was not examined either in [Commissioner of Income Tax v. Kabul Chawla](#) (supra) or [Indu Lata Rangwala v. Deputy Commissioner of Income Tax](#) (supra). As notice by the Punjab & Haryana High Court in [Vipan Khanna v. Commissioner of Income Tax](#) (supra), the CBDT circular makes it abundantly clear that once an Assessee does not receive a notice under [Section 143\(2\)](#) of the Act within the period stipulated then such an Assessee "can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return."

22. The inevitable conclusion, therefore, in the present case, is that the ITAT was in error in holding that the assessment for AY 2008-09 should be treated as 'pending' whereas in terms of the above CBDT circular it should be treated as final in respect of which no scrutiny are to be started.

23. Consequently as far as ITA No. 581/2016 is concerned the question framed by this Court on 27th January, 2017 is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue. The impugned order of the ITAT to the extent it negatives the plea of the Assessee is hereby set aside and the appeal is allowed.

11. The aforementioned decisions of the Hon'ble High Court of Delhi, one in the case of [Kabul Chawla](#) [supra] and another in the case of [Chintels India Ltd](#) [supra] clearly settle down the quarrel in favour of the assessee and against the revenue.

12. The aforementioned decisions were followed by the Co-ordinate Benches in the case of *Param Dairy Ltd. in ITA Nos. 3988 to 3995/Del/2019* and order was challenged before the Hon'ble Delhi High Court by the revenue and the Hon'ble High Court held as under:-

"5. We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act. It was further held that assessment for the Assessment Years 2008-2009 and 2009-2010 were completed under Section 143(3) vide orders dated 28th July, 2010 and 31st May, 2011 respectively and audited books of account were thoroughly examined and details of purchase of milk must have been scrutinized as it was part of audited financial statement of accounts; as per Kabul Chawla supra, completed assessments can be interfered only on the basis of some incriminating material unearth during the search. With respect to the Assessment Years 2010-2011 to 2012-2013, the ITAT held that though no assessment was framed under Section 143(3) but it could safely be concluded that the period of limitation for issuing a notice under Section 143(2) expired much before the date of the search; reliance was placed on Chintels India Ltd. Vs. Deputy Commissioner of Income-Tax (2017) 397 ITR 416 (Delhi) holding that once an assessee does not receive a notice under Section 143(2) of the Act within the stipulated period, such an assessee can take it that the return filed by him has become final and no scrutiny proceeding are to be undertaken with respect to that return."

13. It is worth mentioning that the decision of the Hon'ble Delhi High Court in the case of *Param Dairy Ltd. (supra)*, was part of the bunch appeals decided by the Hon'ble Supreme Court tagged along with *Abhisar Buildwell Pvt. Ltd. (supra)*. In light of the aforementioned discussion and drawing support from the decisions discussed hereinabove, the impugned assessment orders for AY 2015-16 and 2016-17 are quashed. Since we have quashed the assessment orders for AY

2015-16 and 2016-17, we do not find it necessary to delve into the merits of the case.

14. Coming to the grievance in AY 2017-18, facts are identical as discussed hereinabove and as mentioned elsewhere, basis the sales data extracted from the ERP system of the assessee, the AO came to the conclusion that in AY 2017-18, there were suppressed sales of Rs. 36,06,921/-.

15. During the course of assessment proceedings itself, the assessee explained that there are no suppressed sales and it is only because there were sales returns. The explanation of the assessee did not find any favour with the AO who made the impugned addition.

16. Before the Id. CIT(A), the assessee furnished the factual position of sales as per accounts *vis-à-vis* disclosed in ITR sales as under:-

AY 2017-18				
Particulars	As per Accounts	As per ITR	As per AO	Difference
Sales in Navision ERP	21,41,96,346	21,41,96,346	21,41,96,346	-
Sales of EDS-	12,69,428	12,69,428	-	(12,69,428)

Tally (not considered by AO)				
Gross Sales (A)	21,54,65,774	21,54,65,774	24,41,96,346	(12,69,428)
Sales Return in Navision ERP (not considered by AO)	(45,06,976)	(45,06,976)	-	45,06,976
Sales Return in EDS Tally (not considered by AO)	(2,56,058)	(2,56,058)	-	2,56,058
Total Sales Return (B)	(47,63,034)	(47,63,034)	-	47,63,034
Sales (net of return) (A-B) As per Accounts (Page 11)	21,07,02,740	21,07,02,740	21,41,96,346	34,93,606

17. It was explained to the ld. CIT(A) that these facts were also explained to the AO customer-wise list of sales returns along with reconciliation was also furnished. After considering the facts and the submissions, the ld. CIT(A) observed that it is highly unconventional that products to be returned after such long period in a fashion conscious business. The ld. CIT(A) further observed that the AO has also pointed out that several of the details including money trail of sales return, stock register, sales return policy and many other details have not been furnished by the. The ld. CIT(A) went on to confirm the addition.

18. Before us, the assessee furnished the sample copies of money trails of sales return, stock register along with copies of sales invoices and the ledger account of the customers and pointed out that the sales returns have been properly explained and there is no suppression of sales.

Per contra, the ld. D/R strongly supported the findings of the AO and the ld. CIT(A).

19. We have carefully considered the submissions along with the sample copies of invoices, money trail of sales return, stock register. We are of the considered view that these facts have not been examined properly by the authorities below, therefore, in the interest of justice and fairplay, we deem it fit to restore the issue to the files of the AO. The assessee is directed to furnish the details along with the supporting evidence and the AO is directed to examine the same in light of the commercial expediency and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

20. In the result, appeals by the assessee for AY 2015-16 and 2016-17 are allowed and that for AY 2017-18 is allowed for statistical purposes.

Order pronounced in the Court on 11th August, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 11/08/2025

Sd/-

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai