

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA Nos. 3976 & 3977/Del/2025
(Assessment Years: 2019-20 & 2020-21)**

Dharamvir Khosla C/o IPSO Legal, 11-35, 1 st Floor, Jangpura Extension, New Delhi – 110014	Vs.	DCIT, CC-5 E-2, ERA Centre, Jhandewalan Extension New Delhi - 110055
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAGPK4384B		
Appellant	..	Respondent

Appellant by :	Sh. Rajiv Saxena, Adv, Ms. SumanglaSaxena, Adv. Sh. Shyam Sunder, Adv.
Respondent by :	Sh. Mahesh Kumar, CIT, DR

Date of Hearing	06.01.2026
Date of Pronouncement	21.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

These two appeals preferred by the assessee against the common order dated 05.12.2024 of the Ld. CIT(A)-24, New Delhi, (hereinafter referred as

Ld. First Appellate Authority or in short Ld. 'FAA') in DIN No : ITBA/APL/M/250/2024-25/1070940781(1) & ITBA/APL/M/250/2024-25/1070940633(1) arising out of the different assessment order dated 16.03.2024 & 25.03.2024 u/s 153C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the ACIT, CC-5, for AYs: 2019-20 & 2020-21.

2. Both the appeals were heard together and at the very outset it was found that there is a delay of 109 days in filing both the appeals for which an application for condonation of delay has been filed and after taking into consideration the same, we find that the assessee is a senior citizen aged 69 years and has narrated of his bodily ailments leading to delay in filing both the appeals. Considering the same and the delay is not of a substantial period causing prejudice to cause of justice, the delay is condoned in both the appeals and the same are admitted for hearing.

3. Further, it comes up that in AY: 2019-20 the assessment was completed u/s 153C of the Act at an assessed income of Rs.1,04,65,425/- as against income returned u/s 139(1) of the Act at Rs.89,25,914/-. The assessee had

filed original return of income u/s 139 of the Act on 24.10.2019 declaring income of Rs.98,25,914/- and the return was processed u/s 143(1) of the Act by intimation dated 26.02.2020 at returned income of Rs.1,04,65,425/- by observing an amount of Rs.6,36,511/- on account of depreciation disallowable u/s 32(1)(ii) and 32(1)(iia) of the Act.

3.1 Subsequently, search and seizure operation was carried out on 22.10.2020 on Shri Imtiyaz Ahmad Shah for which the case of assessee was opened vide notice u/s 153C of the Act, in response to which assessee filed return of income on 01.09.2022 declaring total income at Rs.98,25,914/- as was filed in original return filed u/s 139(1) of the Act. No addition on account of incriminating evidences found during search was made and the assessment was completed u/s 153C of the Act again at Rs.1,04,65,425/- as was made vide intimation dated 26.02.2020.

3.2 As assessee had challenged the assessment order dated 16.03.2024 passed u/s 153C of the Act raising various grounds of law and merits, the appeal of the assessee was dismissed by Ld. CIT(A) and the relevant portion of the same is reproduced as under:

“4.1.6 In this case return was filed on 24.10.2019 showing income of Rs. 98,25,914/-. Thereafter return was processed by CPC u/s 143(1) of the Income Tax Act and income was determined at Rs. 1,04,65,425/-. In response to notice issued u/s 153C of the Income Tax Act. appellant filed his return showing income of Rs. 98,25,914/-. Assessment order u/s 153C of the Income Tax Act was passed again at Rs, 1,04.65.425/- without doing any verification with regard to income increased by CPC while passing order u/s 143(1) of Income Tax Act. As per the provisions of the Act, the appellate order in this case is order u/s 143(1) passed by the CPC. The appeal under reference is against order u/s 153C wherein Assessing Officer has not made any addition in the body of the assessment order and simply copies the figure of total income as determined u/s 143(1) of the Act. Accordingly this appeal is become infructuous and hence dismissed.”

4. The first issue to be considered is whether Id. First Appellate Authority was justified in dismissing the appeal infructuous and for which we are of the considered view that since, return filed u/s 153C of the Act has to be treated as return u/s 139, even fresh claim could be taken which was left out to be taken in the return filed u/s 153C. In this connection attention was invited by Id. Counsel to Chennai Bench Decision in the case of DCIT versus JSR Infra Developers Pvt. Ltd. ITA No. 2232/Chny/2024 order dated 28.02.2025, where various decisions of Hon'ble High Courts were considered including decision of Hon'ble Mumbai High Court in the case of Pr .CIT versus JSW

Steel Limited [422 ITR 471] and DCIT versus Sew Infra Limited [209 ITD 1].

5. On merits ld. Counsel has explained that at page 11 of the paper-book, depreciation sheet as annexure E of fixed assets was filed being part of audited accounts in which depreciation on the assets purchased after 30-09-2018 was claimed @ 7.5% of the applicable rate i.e. 15% on 3 cars i.e. car Audi A6, Car GLC and Car Mercedes E220D and instead of Rs. 11,74,772/- depreciation was claimed of Rs. 2,95,631/-, Rs. 4,23,888/- and Rs. 4,55,253/- and respectively @ 7.5% on the value of asset as of Rs. 39,41,750/-, Rs. 56,51,844/- and Rs. 60,70,038/- respectively. Thus, total depreciation for 3 vehicles was taken at Rs. 11,74,772/- @ 7.5%. However, while computing intimation the assessing officer ignored page no. 44 at S. No. 11 where depreciation on half rate was clearly mentioned of Rs. 11,74,772/- and while computing at Page 45, depreciation already claimed at half rate was reduced further @ 50% by allowing at Rs. 5,35,264/- at S. No.11. The AO ignored that depreciation on fixed asset was already taken @ 7.5% in the computation of income at Page 4 and depreciation chart at page 11 alongwith the audited

accounts but the AO ignored this fact and simply followed intimation u/s 143(1) of the Act.

5.1 Ground No.3 relates to TDS claimed by Assessee amounting to Rs. 32,72,686/- as against TDS allowed in the computation at Rs.24,37,186/-. Thus, here again AO did not apply his own mind and simply followed intimation u/s 143(1) of the Act and Rs.8,35,000/- was shortly allowed. The reason given in the intimation at Page 22 by referring to 3 TAN Numbers as also mentioned at page No. S of the paper-book i.e. computation of Income where details of TDS claimed was mentioned and these TAN Belongs to Royal Golf Link City Projects Private Limited DELR24338G, Earthcon Construction Pvt. Ltd. DELE04226F and Magical Building Solution Pvt. Ltd. DELM21069G, whose TDS since not deposited or short deposited by the party amounting to Rs.5,95,500/-, Rs.1,35,000/- and Rs.1,05,000/- respectively was not allowed. Thus, total amounted to Rs.8,35,500/-. In this connection, your kind attention is invited to the decisions of Delhi High court in the case of Chintan Bindra versus DCIT 158 taxmann.com 27 (Delhi) and BDR Finvest Pvt. Ltd. versus DCIT 161 taxmann.com 583 (Delhi). In these cases, Hon'ble High Court has held that if deductor had failed to deposit tax

with government, recovery proceeding could only be initiated against deductor and not against the assessee-deductee. Credit for TDS could not be denied to assessee. Para 28 of the decision of BDR Finvest Pvt. Limited. In the case of Chintan Bindra, the Hon'ble Delhi High Court referred to CBDT Instructions and held that demand raised, if any due to short deduction deserves to be set aside and assessee could not be penalized. Copy of both the decisions are enclosed as Annexure B collectively.

6. Similar has been the sequence of events and orders passed by Id. Tax Authorities below in AY: 2020-21 still for conclusiveness we reproduce the relevant part of the order of Id. CIT(A) para 4.1.4 to 4.1.6 of AY: 2020-21:

4.1.4 Further, the Assessing Officer was noticed that the assessee in the ITR filed u/s 153C of the Act had claimed more losses under schedule CYLA.

	<i>As per ITR filed us 139(1) of the Act</i>	<i>As per ITR filed 153C of the Act</i>	<i>u/s Increase in losses</i>
<i>Schedule CYLA</i>	<i>Rs.1,66,80,755/-</i>	<i>Rs.1,85,66,656</i>	<i>Rs.18,85,901/-</i>

4.1.5 The returned income of the assessee as filed in response to section 153C of the Act was not accepted by the Assessing Officer on merit. Based on the facts of the case and material available on record, the returned income of the assessee was assessed by the Assessing Officer as under:

<i>i</i>	<i>Return Income as per Original Return u/s 139 of the</i>	<i>:</i>	<i>Rs.81,46,110/-</i>
----------	--	----------	-----------------------

	<i>IT Act, 1961</i>		
ii	<i>Income assessed u/s 143(1) of the Act vide order dated 26.02.20</i>	:	<i>Rs.81,46,110/-</i>
iii	<i>Income as per return filed u/s 153C of the Act</i>	:	<i>Rs.62,60,210/-</i>
iv.	<i>Assessed income u/s 153C of the Act</i>	:	<i>Rs.81,46,110/-</i>

4.1.6 In this case return was filed on 15.12.2020 showing income of Rs.81,46,110/-. Thereafter return was processed u/s 143(1) of the Income Tax Act and income was determined at Rs.81,46,110/-. In response to notice issued u/s 153C of the Income Tax Act, appellant filed his return showing income of Rs.62,60,210/-. Assessment u/s 153C of the Income Tax Act was passed again at Rs.81,46,110/- without doing any verification with regard to income increased by CPC while passing order u/s 143(1) of Income Tax Act. As per the provisions of the Act, the appellate order in this case is order u/s 143(1) passed by the CPC. The appeal under reference is against order u/s 153C wherein Assessing Officer has not made any addition in the body of the assessment order and simply copies the figure of total income as determined u/s 143(1) of the Act. Accordingly this appeal is become infructuous and hence dismissed.”

7. In regard to AY: 2020-21 on facts ld. Counsel has submitted as follows:

“2. It would be seen at page 29 of the paper-book, i.e. details of depreciation in which claim of depreciation was made of Rs.41,77,670/- by mentioning opening balances of cars and other Mercedes S 500, Car GLC, Car Audi A6, Car BMW and Car Mercedes E220D. All these cars were already declared in depreciation chart of AY 2019-20, which is also fixed alongwith this case and WDV has been taken as on 31-03-2019 as an opening balance in the year ending on 31-03-2020

i.e. AY 2020-21 - the year in concern. Copy of chart of fixed assets as on 31-03-2019 is enclosed for your kind perusal as Annexure A.

3. It would be seen that while filing schedule 'C', fixed assets as on 31-03-2020 with the original return at page 13 of the paper-book, WDV as on 01-04-2019 was taken at Rs.2,77,54,400/- but bifurcation of cars was not given and due to hurriedly filing return mistakes have been made. Subsequently while filing return u/s 153C mistakes have been rectified and depreciation has been claimed of Rs.41,77,670/- allowable to the assessee instead of Rs.22,91,768/- due to error in mentioning sales as well as purchase at the later part of the year. Infact both these figures are incorrectly mentioned and correct depreciation chart by taking opening balances from depreciation chart for AY 2019-20 i.e. year ending 31-03-2019 depreciation has been calculated correctly.

“7. Ground No.3 relates to TDS claimed by Assessee amounting to Rs.25,18,722/- as shown in the computation of income at PB Pg 30 while allowing the claim at Page 3 of the computation of income prepared by AO the amount allowed as TDS was only Rs.8,14,748/-. Thus, credit for TDS amounting to Rs.17,03,974/- was not given as raised in ground No.3. Thus, here again AO did not apply his own mind and simply followed intimation u/s 143(1) of the Act and Rs. 17,03,974 - was shortly allowed. There is no reason given in the intimation at page 16-17 of the paper-book at page 4 of the details of TDS on non salary was given and it is found from Form 26AS that TDS deducted from the amount paid/credited by various parties i.e. at S.No.4 Corp Code India Infra Limited Rs.11,185/- was not deposited. Magical Building Solution Pvt. Ltd. Rs.15,658/- was not deposited, MVS Gymkhana Limited has not deposited Rs.4,350/-, Royal Golf Link City Projects Private Limited has not deposited Rs.8,51,251/- and Shipra Estate Limited and Jaikishan Estate Developers have not deposited Rs.8,21,530/-. Thus,

totaling Rs.17,03,974/- was though deducted but not deposited. Due to which credit was not allowed while computing the tax.”

8. The Id. DR has primarily relied the decision of **Bangalore Bench in Areca Trust, ITA No. 433/Bang/2023 dated 26.07.2023** to contend that when no separate addition is made in assessment completed u/s 143(3) but merely adjustments of intimation of Section 143(1) of the Act are made appeal against the assessment order passed u/s 143(3) is not maintainable and for convenience we reproduce the relevant para of the decision relied by Id. DR:

“7. We have heard the rival submissions and perused the material on record. On perusal of the impugned Assessment Order passed under section 143(3) (order dated 12.02.2021), it is clear that AO has assessed the total income at Rs.23,29,62,420/- solely relying on the adjustment made by the AO/CPC in the intimation made under section 143(1) of the Act. In the impugned Assessment Order passed under section 143(3) of the Act, there is no independent discussion as regards the income assessed at Rs.23,29,62,420/-. The relevant portion of the assessment completed under section 143(3) of the Act dated 12.02.2021 reads as follows:

“4. In response to the notice, the assessee responded via e-proceedings and submitted the details called for. Details filed are examined and the income is assessed at Rs. 23,29,62,420/ as per 143(1)(a) of the Act.”

8. Section 246A specifically provides for an appeal as against intimation issued under section 143(1) of the Act. In the instant case, total income has been assessed at Rs.23,29,62,420/- as per the intimation passed under section 143(1) of the Act. Therefore, the cause of action for the assessee arises from the intimation issued under section 143(1) of the Act and appeal ought to have been filed as against the same. The assessment completed under section 143(3) of the Act merely adopts the assessed figures in the intimation order passed under section 143(3) of the Act. Therefore, no cause of action arises from the order passed under section 143(3) of the Act.

9. Section 143(4) of the Act only mentions that on completion of regular assessment under section 143(3) or 144 of the Act, the tax paid by assessee under section 143(1) of the Act shall be deemed to have been paid toward such regular assessment. That by itself does not mean there is merger of intimation under section 143(1) with that of regular assessment under section 143(3) / 144 (unless issue has been discussed and adjudicated in regular assessment under section 143(3) / 144 of the Act). Assessee, against the intimation under section 143(1) of the Act, has filed a rectification application under section 154 of the Act (vide application dated 16.06.2020) and the same is pending disposal. The CIT(A) in the impugned order has directed the AO to dispose off the said rectification application dated 16.06.2020. Moreover, if assessee is advised to file an appeal as against the intimation under section 143(1) of the Act, a liberal approach may be taken for condonation of delay since assessee's application for rectification of the intimation under section 143(1) of the Act has been filed within time and same is pending disposal. With the above said observation, the grounds of the assessee are rejected.”

9. However, what is material is that present cases deals of assessments concluded u/s 153C of the Act and not u/s 143(3) of the Act for unabated years. The decision relied for appellant in **DCIT versus JSR Infra Developers Pvt. Ltd. (supra)** is quite relevant where co-ordinate bench has held that where assessment is u/s 153C of the Act, then original return filed u/s 139 of the Act is substituted by the return filed in response to the notice u/s 153C of the Act and further claims of assessee are reopened. The relevant part in para **11 to 15 are reproduced herein below;**

“11. It is noted that, the second proviso to Section 153A of the Act mandates that the assessments or re-assessments pending on the date of initiation of search would stand abated. It further provides that, the return of income filed by the searched person, in terms of Section 153A(1)(a) of the Act, would be construed to be a return of income under Section 139 of the Act. Therefore, once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under Section 153Ar.w. 153C of the said Act (which is in consequence to the search action conducted under Section 132 of the Act) takes the place of the original return. In such a case, the return of income filed under Section 153A(1) of the said Act, would be construed to be one filed under Section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. As a result, the return filed under Section 153Ar.w. 153C takes the place of the original return under Section 139 of the Act, for the purposes of all other provisions of the Act. In this regard, it is noted that, the provisions of Section 153A of the Act explicitly provides that, all the provisions of the Income-

tax Act will apply to the return filed by an assessee under Section 153A of the Act, as if such return filed by the assessee was a return filed under section 139(1) of the Act. In other words, in view of the second proviso to Section 153A(1) of the said Act, once an assessment gets abated, the provisions of the Act which would be otherwise applicable in case of return filed under Section 139(1) of the Act, would also continue to apply in case of return filed under Section 153A of the Act. Having regard to the foregoing provisions, we are of the view that the assessee is entitled to lodge a new claim in a proceeding under Section 153A / 153C of the Act, which was not claimed in the regular return of income, because the assessment was never made/finalized in the case of the assessee in such a situation. We find that this particular issue has been decided in favour of the assessee by the Hon'ble Bombay High Court held in the case of B.G. Shirke Construction Technology P Ltd (supra), wherein it was held as under :-

"8. The grievance of the Revenue before us is that the impugned order is unsustainable as it is a passed in the face of the Apex Court Order in Goetze (India) Ltd. (supra). It is submitted that the impugned order could not have held that the claim for deduction could be entertained by the Assessing Officer in the absence of the same finding a place either in return of income or in the revised return of income. It is further submitted that in view of the decision of the Apex Court in CIT v. Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297/64 Taxman 442 a re-assessment consequent to re-opening of the assessment cannot lead to reduction of income which had been originally assessed to tax. In the above view, it is submitted that the impugned order of the Tribunal is not justified and admission of the appeal is warranted.

.....

10. The reliance on the decision of the Apex Court in Sun Engineering Works (P.) Ltd. (supra) by the Revenue is misplaced. The above case dealt with re-opening of an assessment under Section 147 of the Act. It was in that context that the Apex Court observed that the Order passed under Section 147/148 and the Assessing Officer 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.

11. In the present facts for the subject assessment years it is an undisputed position that the pending assessment before the Assessing Officer consequent to return filed under Section 139(1) of the Act for the subject Assessment years had abated. This was on account of the search and as provided in second proviso to Section 153A(1) of the Act. The consequence of notice under Section 153A(1) of the Act 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 of the Act the earlier return filed for the purpose of assessment which is pending, would be treated as non est in law. Further, Section 153A(1) of the Act itself provides on filing of the return consequent to notice, the provision of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore the provisions of the Act which would be otherwise applicable in case of return filed in the regular course

under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply."

12. The Hon'ble Bombay High Court in the case of Pr.CIT Vs JSW Steel Ltd (422 ITR 71) is also found to be squarely applicable to the present case. In this case also, the Hon'ble High Court has held that, it was permissible for an assessee to lodge new claim in proceedings u/s. 153A of the Act in case of abated assessments as the return filed u/s 153A of the Act was required to be treated as return of income filed u/s 139(1) of the Act. The relevant findings of the Hon'ble High Court are noted to be as under:

"8.1 In other words, section 153-A(1) provides that where a person is subjected to a search under section 132 or his books of accounts, etc. are requisitioned under section 132-A after 31-5-2003, the assessing officer is mandated to issue notice to such person to furnish 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 search is conducted or requisition is made. Such returns of income shall be treated to be returns of income furnished under section 139. Once returns are furnished, income is to be assessed or reassessed for the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, once section 153-A(1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or re- assessment. Two aspects are crucial here. One is use of the expression "notwithstanding" in sub-section (1); and secondly that returns of income filed pursuant to notice

under section 153-A (1)(a) would be construed to be returns under section 139. The use of non obstante clause in sub-section (1) of section 153-A i.e., use of the expression "notwithstanding" is indicative of the legislative intent that provisions of section 153-A(1) would have overriding effect over the provisions contained in sections 139, 147, 148, 149, 151 and 153.

8.2 Having noticed the above, we may also refer to the second and the third proviso to section 153A(1). For the sake of convenience, the second and third proviso to section 153A(1) of the said Act which is relevant is reproduced below and reads thus:

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 132A, as the case may be, shall abate:

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

8.3 The second proviso says that any assessment or re-assessment proceedings falling within the said period of six assessment years pending on the date of initiation of search under section 132 or making of requisition under section 132-A shall abate. The third proviso mentions that

the Central Government may frame rules to specify such class or classes of cases in which the assessing officer shall not be required to issue notice for assessing or reassessing the total income for the said six assessment years.

8.4 Reverting back to the second proviso what is to be noticed is that as per this proviso, any assessment or re-assessment in respect of any assessment year falling within the said period of six assessment years is pending on the date of initiation of search or making of requisition, those assessment or re-assessment proceedings shall abate. In other words, pending assessment or reassessment proceedings on the date of initiation of search or making of requisition shall abate.

8.5 That brings us to the crucial expression, which is 'abate'. The ordinary dictionary meaning of the word 'abate', as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove (a nuisance). Derivative of abate is abatement. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. In Supreme Court on Words and Phrases (1950-2008), "abating" has been defined to mean "an extinguishment of the very right of action itself"; to "abate", as applied to an action, is to cease, terminate, or come to an end prematurely.

9. Therefore, from a critical analysis of the provisions contained in section 153-A (1) of the Act more particularly the key expressions as referred to above, it is evident that assessments or re-assessments pending on the date of initiation of search would stand abated. Return of income filed by the person concerned for the six assessment years in terms of section 153-

A(1)(a) would be construed to be a return of income under section 139 of the Act.

...

13. In the present case, search was conducted on the assessee on 30-11-2010. At that point of time assessment in the case of assessee for the assessment year 2008-09 was pending scrutiny since notice under section 143(2) of the Act was issued and assessment was not completed. Therefore, in view of the second proviso to section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc. That apart, assessee could lodge a new claim for deduction etc. which remained to be claimed in his earlier/regular return of income. This is so because assessment was never made in the case of the assessee in such a situation. It is fortified that once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return. In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. If that be the position, all legitimate claims would be open to the assessee to raise in the return of income filed under section 153A(1).

14. We would further like to emphasize on the judgment passed by this Court in the case of Continental Warehousing Corpn (Nhava Sheva) Ltd. (supra) which also explains the second proviso to Section 153A(1). The explanation is that pending assessment or reassessment on the date of

initiation of search if abated, then the assessment pending on the date of initiation of search shall cease to exist and no further action with respect to that assessment shall be taken by the AO. In such a situation the assessment is required to be undertaken by the AO under section 153A(1) of the said Act.

15. In view of the above, we are in agreement with the findings given by the Tribunal in respect of allowing of the assessee's appeal in paragraph -14 of the order under challenge dated 28-9-2016, which reads thus :

"14. From the above discussion and precedence, the scheme of assessment u/s. 153A of the Act in case of search, the AO shall issue notice to searched 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) of sub-section (1) of section 153A and clause (b) postulates assessment or reassessment of the total income of six years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso mandates that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso postulates that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in sub-section (1) is pending on the date of initiation of the search u/s. 132 of the Act shall abate. In the present case before us, however, though the second proviso to sub-section (1) of section 153A would not apply in the first three years of this case, yet, as far as the second three year period is concerned (which are pending before us), the assessments were pending. The proceedings in relation thereto abate. Now the entire assessment in relation to the second phase of three years can be

made. The pending assessment in that case may be undertaken u/s. 153A of the Act. The abatement of pending assessment is for the purpose of avoiding two assessments for the same year i.e. one being regular assessment and the other being search assessment u/s. 153A of the Act. In other words, these two assessments merge into one assessment. It means that completed assessments stand on different footing from the pending assessments. Hence, in so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s. 153A of the Act merge into one and in that case only one assessment for the remaining set of years, where assessment is pending, is to be made separately on the basis of search materials and the regular material existing or brought on record before the AO/Revenue. It means that the assessee can make any new claim in the return of income filed u/s. 153A of the Act or even during the course of assessment proceedings undertaken u/s. 153A of the Act. In our view, and in view of the second proviso to section 153A (1) of the Act, once assessment get abated it is opened both way i.e. for the Revenue to make any additions apart from seized material even regular items declared in the return can be subject matter if there is doubt about the genuineness of those items and similarly the assessee also can lodge new claim, deduction or exemption or relief which remained to be claimed in regular return of income, because assessment was never made in the case of the assessee in such situation. Hence, we allow this issue of assessee's appeal."

16. From the above we conclude that in view of the second proviso to section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation."

13. Coming to the decision of the Special Bench at Hyderabad in the case of Sew Infrastructure Ltd (supra) cited by the Revenue, we are in agreement with the assessee that this decision supports their case. The relevant findings, taken note of by us, is as follows:-

"33. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee cannot make a fresh claim of deduction under Chapter VI-A of the Income Tax Act, 1961, for the first time, in the return of income filed in response to notice issued under Section 153A of the Act, pursuant to search conducted under Section 132 of the Act, in unabated/completed assessment as on the date of search. In case of abated assessments, like the AO who can make assessment based on incriminating materials and any other information made available to him, including information furnished in return of income, the assessee may claim all deductions towards any income or expenditure, as if it is a first return of income and fresh assessment. In view of the above, the questions referred are answered as under:

(i) Whether an assessee can make Yes claim for deduction under Chapter VIA of Income Tax Act, 1961, for the first time, in the return of income filed in response to the notice issued u/ s 153A of the Act, pursuant to a search conducted under section 132 of the Act ?	Yes
ii) If yes, under which circumstances	I. In case of unabated/ completed assessment/s, no fresh claim can be made under chapter VI-A of the Income Tax Act, 1961, for the first time, in the return of income filed in response to the notice issued u/s

	<p>153A of the Act, pursuant to a search conducted under section 132 of the Act.</p> <p>II. in case of abated assessment/s, fresh claim can be made under chapter VI-A of the Income Tax Act, 1961, for the first time, in the return of income filed in response to the notice issued u/s 153A of the Act, pursuant to a search conducted under section 132 of the Act.</p>
--	--

14. We observe that the arguments of the Ld. CIT, DR and his reference to certain excerpts from this decision was misplaced as those were rendered in the context of unabated assessments, to which we agree that, fresh claim of any new deduction cannot be made by an assessee in unabated assessments.

15. In view of the ratio laid down in the above decisions (supra), it is amply clear that the assessee is entitled to lodge new claims in the abated assessments u/s 153A/153C of the Act. As noted earlier, the provisions of the Act, which would be otherwise applicable in case of return filed under Section 139(1) of the Act, would also continue to apply in case of return filed under Section 153A r.w. 153C of the Act. Having regard to the decisions of B.G. Shirke Construction Technology P Ltd (supra), JSW Steel Ltd (supra) & Sew Infrastructure Ltd (supra), the same analogy would be applicable with equal force in the proceeding's u/s 153C of the Act for abated assessments as well. We accordingly hold that the assessee is entitled to raise additional claim/s in the abated assessment for AY 2016-17 in the proceedings u/s 153C of the Act.”

10. Thus Id. CIT(A) has fallen in error to dismiss the appeals being infructuous. The appeals are allowed for statistical purposes and Id. CIT(A) shall decide the issue about admissibility and sustainability of aforesaid claims, afresh and decide the appeals on their merits in accordance with law.

11. The appeals here are allowed for statistical purposes.

Order pronounced in the open court on 21.01.2026

Sd/-

(Naveen Chandra)
ACCOUNTANT MEMBER

Sd/-

(Anubhav Sharma)
JUDICIAL MEMBER

Dated 21.01.2026
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI