

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Neutral Citation No. 2023:PHHC:140799 -DB

(1) **ITA-100-2019**

Principal Commissioner of Income Tax (Central) Gurugram
....Appellant(s)

Versus

M/s Bharatnet Technology Ltd. Respondent

(2) **ITA-116-2019**

Principal Commissioner of Income Tax (Central) Gurugram
....Appellant(s)

Versus

M/s Bharatnet Technology Ltd. Respondent

Decided on : 06.11.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Varun Issar, Advocate, for the appellant.

G.S. Sandhawalia, J. (Oral) :-

The present set of two appeals bearing ITA-110 & 116-2019 filed under Section 260A of the Income Tax Act, 1961 (for short the 'Act') are directed against the order dated 13.11.2017 (Annexure A-3) of the Income Tax Appellate Tribunal, Chandigarh Bench in ITA No.984/Chd/2017 for the assessment year 2008-09 and 2009-10.

2. The following substantial questions of law are sought to be raised in the present set of appeals:

“i) Whether on the facts and in the circumstances of the case and in law the Hon’ble ITAT was right in concluding that there was a difference in scope of proceedings under section 153A of the

Income Tax Act, 1961 for an abated assessment and for a completed assessment.

ii) Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT was right in holding that no addition can be made u/s 153A in respect of completed assessment if no incriminating material is found during search.

iii) Whether there is any restriction on the powers of the Assessing officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se."

3. The Tribunal, vide order dated 13.11.2017 (Annexure A-3) came to the conclusion that the CIT (Appeal) had deleted the impugned addition made by the Assessing Officer observing that no incriminating material was found during the search action carried out in the case of the assessee. The Income Tax Returns and assessment proceedings already stood concluded on the date of the search action carried out on 04.10.2012 and no assessment/re-assessment was pending on the said date. It was noticed that reliance had been placed upon the judgment of the Division Bench in **Commissioner of Income Tax (Central)-III Vs. Kabul Chawla, 2016 (380) ITR 573** by the CIT wherein it was held that in the absence of any incriminating material found during the search action when there was no pending assessment which could be said to have abated on the date of the search, the additions cannot be made. It was also noticed that the departmental representative of the Revenue had been fair enough to admit the said fact and that the original assessment proceedings stood completed on the date of the search. It was noticed that a distinction had been made by the High Court in **Smt.Dayawanti Vs. CIT & others 2017 (390) ITR 496** and keeping in view the fact that the said position has further been discussed in **Principal Commissioner of Income Tax Central-**

2 New Delhi Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals, 2017 (395) ITR 526, the Tribunal did not interfere in the findings recorded.

4. We have gone through the paperbook and perused the order of the Appellate Authority also. The said authority had decided the issue purely on legal grounds regarding the jurisdiction of the Assessing Officer to make the assessment under Section 153A of the Act on the ground that no incriminating material was found during the search which was against the respondent. In such circumstances, the additions which had been made by the Assessing Officer vide his order dated 25.03.2015 (Annexure A-1) that the unaccounted black money of the Steel Strips Group into the regular books of accounts in the form of share capital, share premium and corporate unsecured loans from the respondent-company was held to be not justified. The credit of Rs.4,50,95,000/- which has been held to be unexplained share application money received in the books of the assessee and being unexplained share money received had been added back to the returned income of the assessee vide the said assessment order. The Appellate Authority has also taken into account the decision of the Delhi High Court in Kabul Chawla (supra).

5. On the last date of hearing i.e. 18.10.2023, we had asked counsel for the Revenue whether the judgment in Kabul Chawla (supra) has been upheld by the Apex Court or not. Mr.Issar has been fair enough to produce before us the judgment passed by the Apex Court in **Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell P. Ltd. [2023 (454) ITR 212]**, wherein the said issue was also raised. Keeping in view the fact that no incriminating material had been found during the search, the Revenue had been precluded from considering any other

material derived from any other source. The relevant question which had been framed reads as under:

“2.The core issue involved in the present batch of appeals is the scope of assessment under section 153A of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act, 1961’). According to the Revenue, the Assessing Officer (hereinafter referred to as the ‘AO’) is competent to consider all the material that is available on record, including that found during the search, and make an assessment of ‘total income’. Some of the High Courts have agreed with the said proposition. However, according to the respective assesseees and as per some of the High Courts’ decisions, if no assessment proceeding is pending on the date of initiation of the search, the AO may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source.”

6. After considering the provisions of Section 153-A of the Act and the judgments which were also considered by the Tribunal including Meeta Gutgutia (supra), it was noticed that only the Allahabad High Court in the case of **Principal Commissioner of Income Tax Vs. Mehndipur Balaji, (2022) 447 ITR 517** had taken a contrary view. Resultantly, the view taken by the Delhi High Court in Kabul Chawla (supra) and the Gujarat High Court in **Principal Commissioner of Income Tax-4 Vs. Saumya Construction, (2016) 387 ITR 529** was approved by holding as under:

“8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.”

7. It was accordingly noticed that the Assessing Officer gets jurisdiction to assess or re-assess the total income in respect of each assessment year falling within six assessment years. As per the proviso's, if any assessment or re-assessment is pending on the date of initiation of the search for making requisition under Section 132A of the Act, as the case may be, shall abate. It was thus held that the intention of the legislature was that in the case of a search, only the pending assessment/re-assessment proceedings shall abate and the Assessing Officer could assess or re-assess for the entire set of 6 years for the period/block assessment period until any incriminating material was found. The intention could not be given to reopen the completed unabated assessment. The relevant portion reads as under:

“11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the ‘total income’ in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction

to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO

would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.”

8. Thus, the view taken by the Delhi and Gujarat High Courts was approved. In such circumstances, we are of the considered opinion that no question of law arises in the present set of appeals in view of the fact that the same has been settled by the Apex Court and a factual finding was recorded which has not been rebutted by counsel for the appellant.

9. Resultantly, in view of the above discussion, the present set of two appeals stands dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

06.11.2023
sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes