



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 97 of 2023 (O&M)

Reserved on : 25.09.2024

Date of Pronouncement : 22.10.2024

The Pr. Commissioner of Income Tax (Central), Gurugram ... Appellant
Versus

M/s M3M India Holdings
(Formerly known as M/s Krishna Flexi Solution) ...Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Yogesh Putney, Senior Standing Counsel,
for the appellant.

Ms. Radhika Suri, Senior Advocate assisted by
Mr. Abhinav Narang, Advocate and
Ms. Parnika Singla, Advocate, for the respondent.

SANJEEV PRAKASH SHARMA, J.

The present appeal is directed against the order passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi, (hereinafter to be referred as 'the ITAT') dated 23.09.2022 for the assessment year 2012-13.

2. It is stated that a search and seizure operation was conducted on 21.07.2016 at the residential as well as office premises of M3M Group of Companies including the assessee. A notice under Section 153A(1)(a) of the Income Tax Act, 1961 (for short, 'the Act') was issued and served upon the assessee – M/s M3M India Holdings (Formerly known as M/s Krishna Flexi Solution), C-13, Sushant Lok, Phase-1, Gurugram on 28.03.2018. In the return of income, the assessee has declared its income of ₹ 3,53,03,79,100/-.

After giving opportunity to the assessee, the assessment order was



passed under Section 153A (1)(b) of the Act on the total income of ₹ 5,77,68,34,292/-. Aggrieved against the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-3, Gurugram, who vide his order dated 31.03.2022 dismissed the appeal. Thereafter, the assessee filed the appeal before the ITAT, which was allowed vide order dated 23.09.2022. Now the Revenue is in appeal before this Court.

3. Learned counsel for the Revenue submitted that the ITAT was incorrect in holding that no search was conducted in the premises of the assessee, whereas warrants of authorization were executed in the name of the assessee. It was incorrect in holding that no additions can be made under Section 153A of the Act as there was no incriminating material found during search. The interpretation made under Section 153A of the Act by the ITAT that proceedings can be initiated only with regard to incriminating material found during search at the premises of the assessee is incorrect.

4. Learned counsel for the Revenue fairly submitted that the ITAT has relied on **CIT vs Kabul Chawla** 380 ITR 573 (Delhi) and **Pr.CIT vs Meeta Gutgutia** 395 ITR 526, although the same were subject matter of challenge before the Supreme Court at that relevant time.

5. It was further submitted that the ITAT was incorrect in holding that additions could not have been made in the hands of the assessee, as such additions had already been made in the hands of M/s Peakwood Reality Private Limited ignoring the aspect that it was M/s M3M India Holdings, which had made the entire payment through paper/ shell companies for purchase of land measuring 430 acres at Manger, Gurugram and it was the ultimate beneficiary of such transactions.



6. Learned counsel for the Revenue vehemently argued that during the search and seizure conducted with reference to another group of companies, a laptop of one Bina Shah was seized indicating that on 18.06.2015 some transactions relating to the purchase of shares of two entities KMPL and GBPL, who collectively owned 430 acres of land at Mangar by M/s ESS Gee Shelters Private Limited, were made and involvement of the respondent-assessee was found. The recovered data could be taken into consideration for initiating proceedings under Section 153A of the Act.

7. On the other hand, learned counsel appearing for the respondent-assessee has argued that the proceedings could not have been initiated under Section 153-A of the Act as the documents found from the possession of third party could not be held to be incriminating documents found from the premises of the assessee. She relied on judgment of Delhi High Court in **Kabul Chawla's** case (supra).

8. Learned senior counsel appearing for the assessee has filed written submissions to submit that entire basis of the additions were some documents found from the Laptop of Bina Shah and the statements of Gaurav Jain and Suresh Gandhi recorded under Section 132(4) of the Act during the course of their search. The search was conducted in the premises of the partners at 106A, Tower-1, DLF Aralias, Golf Link, Gurugram on 23.07.2016. The name of the assessee was not mentioned in the *Panchnama*. The search conducted could not be held to be a valid search as it was not held and occupied by the assessee partner firm. Since the premises, in which the name of the assessee found mentioned does not belong to the assessee, the search could not be held to be valid. She submitted that no incriminating



material was found from the premises of the assessee to justify the additions of Rs. 62.89 crores in the hands of the assessee.

9. Learned counsel for the Revenue submitted that the ITAT has wrongfully noted that no incriminating material was found at the premises where the search was conducted. He also submitted that warrants, which were issued to search 106A, Tower-1, DLF Aralias, Golf Link, Gurugram, mentioned the name of the respondent, therefore, there was sufficient incriminating material available for initiating proceedings. There is perversity in the order passed by the ITAT.

10. We have carefully considered the submissions of the counsel for the parties and perused the referred law.

11. Although, *prima facie*, this Court is of the firm view that the factual aspects would not be examined in appeal but with the purpose to satisfy ourselves, we asked the Department to place before us the warrants of authorization issued under Section 132 of the Act.

12. The original file containing satisfaction note for issue of consequential warrant of authorization and the satisfaction note prepared after search was also perused. It is noticed that there were two warrants of authorization issued under Section 132 of the Act by the Principal Director of Income Tax (Inv.), Chandigarh. One is for partners Bansant Bansal, Roop Kumar Bansal, Pankaj Bansal, Smt. Anita Bansal, Smt. Abha Bansal and M/s M3M India Holdings Private Limited dated 16.07.2016 at the address C-13, Sushant Lok, Phase-1, Gurgaon and the other one issued on the same day is for Bansant Bansal, Roop Kumar Bansal, Pankaj Bansal, Smt. Anita Bansal, Smt. Abha Bansal and M/s M3M India Holdings (Firm) at 106-A, Tower-1, DLF Aralias, DLF Golf links, Gurugram. Thus, the name of the



firm assessee is mentioned in the warrants at (**Global 3rd Floor**) 106-A, Tower-1, DLF Aralias, DLF Golflinks, Gurugram, which is not the registered office of the assessee.

13. The other warrant which does not contain name of the assessee but contains name of M/s M3M India Holdings Private Limited and registered office of the assessee i.e. C-13, Sushant Lok, Phase-1, Gurgaon. However, the name of the partners of the firm are mentioned. We find ourselves in agreement with learned counsel for the Revenue that mentioning M/s M3M India Holdings Private Limited for the addressee C-13, Sushant Lok, Phase-1, Gurgaon would not be a reason to hold that no search operation was conducted at the premises of the assessee because even if the name of other private limited company is mentioned in the warrant, the fact remains that the registered address of the respondent firm was searched and the names of their partners were mentioned. The findings of the ITAT that there was no search conducted at the premises of the respondent-firm is, therefore, found to be erroneous and perverse.

14. Further contention of the appellant with regard to assertion of incriminating material being found in the premises of the respondent, however, is without any basis. We have carefully gone through the Satisfaction Report and found that only incriminating material which has been made the basis for initiating proceedings under Section 153-A of the Act is the so called laptop of one Bina Shah recovered from Mumbai. We also noticed that recovery of the said Laptop is not from the office belonging to the assessee. The search operation in which the laptop was recovered was of different firm and it was not during the course of search operation conducted against the respondent-firm or its partners that incriminating



material was recovered. If there was any indication of violation of provisions of the Act or suppression of income or any other incriminating material, which may have been recovered from the premises, the proceedings under Section 153-A of the Act can be said to be justified and legal. However, since no such material was collected or found from the premises of the respondent-assessee, we are unable to sustain the proceedings initiated under Section 153-A of the Act.

15. Delhi High Court in **Kabul Chawla**'s case (supra) has held as under:-

“Summary of the legal position

On a conspectus of section 153A(1) of the Act, read with the provisos 37 thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

(i) Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer 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 assessment years "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) Although section 153A 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 Assessing Officer 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 the seized material."

(v) In the 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 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to the completed assessment proceedings.

(vi) In so far as the 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 assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A 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."

15. In the case of **Principal Commissioner of Income Tax, Central-3 vs Abhisar Bhildwell Private Limited** (2023) 454 ITR 212, the



Supreme Court upheld the law laid down in **Kabul Chawla's** case (supra) and held as under:-

“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.”

We further find that the proceedings, if at all which could have been initiated on the basis of material collected while conducting search of some other assessee and found to be relevant for the purpose, then the course which could have been adopted was only under Section 153-C of the Act. In **Misty Meadows Private Limited vs Union of India and others** 2024 (465) ITR 630, after considering the provisions of Section 153-A and 153-C of the Act, we have held that both operate in different fields. Relevant paras of **Misty Meadows Private Limited** (supra) are extracted below:-

“Thus, we find that a particular procedure has been prescribed, as above. Following the salutary principles of law as laid down in Nazir Ahmad and followed in Rao Shiv Bahadur Singh and Singhara Singh's cases (supra). we find that the respondents were obliged to compulsorily follow the procedure for reassessment of the petitioner company in the manner as prescribed under Section 153C(1) alone and in no other manner. However, we find that the respondents have invoked and initiated proceedings under Section 153A of the Act, although neither there is any search initiated under Section 132 of the Act as against the petitioner nor it can be said that the search was conducted at its premises. Similar view has been taken by Gujarat High Court in Hitesh Ashok Vaswani and Subhash Khattar's cases (supra). Thus, the



proceedings initiated under Section 153A are found to be vitiated.

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Thus, when there was no search conducted under Section 132 and 132A of the Act as against the petitioner and only a panchnama reflects the name of the petitioner prepared at the registered office of M3M India Limited, the action of the respondents in passing second assessment order on 07.02.2024 on the basis of notice under Section 153A dated 05.01.2018 is held to be unjustified and without jurisdiction. Once the search and seizure was conducted and assessment order dated 28.02.2014 was passed by invoking Section 153A of the Act for the AY 2006-07 to 2012-13, fresh order without conducting search and seizure operation would not be sustainable in law. In view of the aforesaid findings and conclusions, we are satisfied that the entire proceedings initiated under Section 153A of the Act including notice issued on 05.01.2018 are liable to be quashed.”

In somewhat similar situation, Delhi High Court in ITA No. 680 of 2023 –

Principal Commissioner of Income Tax, Central -1 vs Oxyzen Business

Park Private Limited (formerly known as Achvis Softech Private Limited,

decided on 08.12.2023, held as under:-

“Also admittedly, in the present case, during the search action against the respondent/ assessee no incriminating material was found and the material in the form of statement of Shri B.P. Singh now sought to be relied upon by the appellant/ revenue was recorded subsequent to the search action. Therefore, the proposed question of law numbered 2.2 in the memo of appeal cannot be admitted as substantial question of law.”

17. In view of the above, we do not find any substantial question of law to be examined by this Court. All the pleas raised are purely factual



which have been examined by the ITAT as noticed by us and accordingly, we dismiss the appeal summarily.

- 18. The original file produced by the department in the Court be returned under proper receipt.
- 19. All pending applications shall stand disposed of.
- 20. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

22.10.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No