



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 164/2026, CM APPL. 13660/2026, CM APPL. 13661/2026
M/S TRIPLE S STOCK AND SHARES PVT LTD.....Appellant

Through: Mr. Deepankar Kumar and Ms.
Pankhuri Srivastava, Advs.

versus

ITO WARD-16(4) NEW DELHIRespondent

Through: Mr. Indruj Singh Rai, SSC, Mr.
Sanjeev Menon and Mr. Rahul Singh,
JSCs and Mr. Gaurav Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

%

13.03.2026

1. Having heard learned counsel for the parties, we are of the view that following substantial questions of law arise for consideration:-

(i) *Whether the Income Tax Appellate Tribunal was legally justified in holding that the assessment order did not abate?*

(ii) *Whether consequent to fresh assessment order for Assessment Year 2006-07 being passed on 26.12.2011, the earlier assessment order (dated 29.12.2008) stand re-opened and merged with the subsequent assessment order?*

2. Admit. Issue Notice. Mr. Indruj Singh Rai, learned Senior Standing Counsel for the Department-respondent accepts the notice.

3. Since the controversy in hand lies in a very narrow compass and the issue is covered by judgment of this Court rendered in the case of **Commissioner of Income Tax v. Anil Kumar Bhatia** reported in (2013) 352 ITR 493 so also by the judgment of Hon'ble the Supreme Court



rendered in the case of **Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell Private Limited** reported in (2024) 2 SCC 433, we propose to decide the appeals at this stage itself.

4. The facts appertain are that the Assessing Officer (*hereinafter referred to as 'AO'*) had initially passed an assessment order dated 29.12.2008 under Section 143(3) of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) and disallowed the short term capital loss, against which, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), which was dismissed vide order dated 20.03.2014. Thereafter, an appeal was preferred before the Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*).

5. In the meantime, a search was conducted at the appellant's premises on 26.03.2010 and an assessment under Section 153A and Section 143(3) of the Act of 1961, for block period of six years (which included Assessment Year 2006-07) was made on 26.12.2011.

6. Fortunately for the assessee, this time the AO did not disallow the short term capital loss and such issue came to be decided in assessee's favour in the sense that the subsequent AO did not give any finding in relation to allowability of the short term capital loss.

7. When the above referred appeal pending before the Tribunal came up for hearing, the assessee's counsel argued that the assessment order, which was passed on 29.12.2008, stood abated.

8. Such argument of the assessee did not find favour with the Tribunal and the Tribunal rejected appellant's appeal vide its impugned order dated 16.12.2024.

9. Mr. Deepankar Kumar, learned counsel for the appellant argued that



maybe the issue was not properly raised and argued before the Tribunal and it was argued at the behest of the appellant that the assessment order stood abated, but the fact situation and legal position is that once a fresh assessment order was passed for the block assessment period for the very same Assessment Year (2006-07), the earlier assessment made on 29.12.2008 stood re-opened and the same got merged in the subsequent order dated 26.12.2011, passed under Section 153A of the Act of 1961.

10. He argued that if the correct legal position is considered and dealt with in the light of the correct position of law as submitted, (in view of the judgment of this Court rendered in the case of **Anil Kumar Bhatia** (*supra*) and judgement of Hon'ble the Supreme Court rendered in the case of **Abhisar Buildwell Private Limited** (*supra*)), the appeal filed by the appellant before the Tribunal ought to have been disposed of as infructuous with the corresponding setting aside of the assessment order dated 29.12.2008 or with a finding that the same got merged.

11. Mr. Indruj Singh Rai, learned Senior Standing Counsel on the other end submitted that the Tribunal was justified in passing the impugned order dated 16.12.2024 in face of the submissions that were advanced on behalf of the appellant.

12. He argued that in any case, the appellant-assessee was incorrect to contend that the assessment order had abated. He argued that the assessment order stands abated only in cases of pending assessment proceedings. But since on the date of search and at the time of passing block assessment orders for six years, the assessment order had already been passed on 29.12.2008, it cannot be said that said assessment order got abated.

13. He further argued that the manner in which the issue has been put



forth now, (before this Court) is correct if tested in light of judgment of this Court rendered in the case of **Anil Kumar Bhatia** (*supra*) and judgement of Hon'ble the Supreme Court in the case of **Abhisar Buildwell Private Limited** (*supra*).

14. Heard learned counsel for the parties.

15. In the case of **Anil Kumar Bhatia** (*supra*), this Court has observed thus:-

“22. Now, there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub-section (1) of section 153A says that such proceedings "shall abate". The reason is not far to seek. Under section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but also the "total income" of the assessee in whose case a search or requisition has been initiated. Obviously, there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs, namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub-section (1) of section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the



assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made.”

16. Similarly in the case of **Abhisar Buildwell Private Limited** (*supra*) Hon'ble the Supreme Court has held thus:-

“30. That prior to insertion of Section 153-A in the statute, the relevant provision for block assessment was under Section 158-BA of the 1961 Act. The erstwhile scheme of block assessment under Section 158-BA envisaged assessment of “undisclosed income” for two reasons,



firstly that there were two parallel assessments envisaged under the erstwhile regime i.e.: (i) block assessment under Section 158-BA to assess the “undisclosed income”, and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the “undisclosed income” was chargeable to tax at a special rate of 60% under Section 113 whereas income other than “undisclosed income” was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, Section 153-A came to be inserted and brought on the statute. Under Section 153-A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the “undisclosed” income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153-A and in case of search, there shall be block assessment for six years. Search assessments/Block assessments under Section 153-A are triggered by conducting of a valid search under Section 132 of the 1961 Act. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of Sections 153-A/153-C is detection of undisclosed income by undertaking extraordinary power of search and seizure i.e. the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153-A/153-C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

31. On a plain reading of Section 153-A of the 1961 Act, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the 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 such search is conducted or requisition is made and assess or reassess the same.



34.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 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A 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 153-A, 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, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.”

17. In light of the above quoted portion of the judgment of this Court and Hon’ble the Supreme Court and on perusal of the scheme of Section 153A of the Act of 1961, we are of the considered opinion that upon a fresh assessment made under Section 153A for a particular year being passed, the previous assessment order(s) of block period become infructuous or unenforceable, irrespective of the fact whether or not the issue or demand



allowance/disallowance that was made previously has been dilated upon and incorporated. In other words, the earlier assessment order loses its very existence and they have to concede to the subsequent assessment made for that assessment year. Therefore, both question No. 1 and 2 are answered in affirmative. Resultantly, question No.1 is decided against the assessee but question No.2 is decided in favour of the assessee.

18. The appeal is therefore, allowed.

19. The order of the Tribunal dated 16.12.2024 is set aside.

20. It is hereby held that on passing of the subsequent assessment order under the block regime, the earlier assessment order stands re-opened and the previous order stands merged in the subsequent assessment order and becomes inoperative.

21. The earlier order dated 29.12.2008 became inoperative and hence it has to concede to the order dated 26.12.2011 and as there was no disallowance of the short term capital loss in case of the assessee (for the Assessment Year 2006-07) in the subsequent order, such position shall prevail.

22. All pending applications stand disposed of.

DINESH MEHTA, J.

VINOD KUMAR, J.

MARCH 13, 2026/cdf