

**IT : Where assessee challenged validity of assessment order for want of issue of notice under section 143(2), in view of fact that prior to completion of assessment for relevant year, a search was carried out in case of assessee and, thus assessee's income had to be determined as per provisions of section 153A, question raised by assessee became academic**

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**[2019] 104 taxmann.com 65 (Jaipur - Trib.)**

**IN THE ITAT JAIPUR BENCH 'A'**

**Deputy Commissioner of Income-tax, Central Circle, Ajmer**

**v.**

**Rajlaxmi Denim\***

**RAMESH C. SHARMA, ACCOUNTANT MEMBER**

**AND VIJAY PAL RAO, JUDICIAL MEMBER**

**IT APPEAL NO. 1134 (JP.) OF 2018**

**[ASSESSMENT YEAR 2015-16]**

**MARCH 5, 2019**

**Section [153A](#), read with sections [132](#) and [143](#), of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Scope of) - Assessment year 2015-16 - For relevant year, assessee filed its return declaring nil income - Assessee's case was selected for scrutiny and assessment order was passed under section 143(3) - Assessee challenged validity of assessment order for want of issue of notice under section 143(2) - Commissioner (Appeals) accepted assessee's objection and set aside assessment order - It was noted from records that prior to completion of assessment for relevant year, a search was carried out in case of assessee - Whether, on facts, pursuant to search proceedings, any proceedings of assessment or reassessment falling within six years prior to search stood abated and total income of assessee was required to be determined under section 153A - Held, yes - Whether in view of aforesaid, impugned order of Commissioner (Appeals) was not valid as assessment proceedings itself stood abated and, thus, question of validity of assessment for want of notice under section 143(2) did not arise - Held, yes - Whether, consequently, order passed by Commissioner (Appeals) was to be set aside and, matter was to be remanded back for computation of assessee's taxable income in accordance with provisions of section 153A - Held, yes [Paras 6 and 6.1] [Matter remanded]**

## **FACTS**

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- The assessee e-filed its return declaring total income of Rs. *NIL*. The said return was filed by the assessee with the ITO, Ward (3), Bhilwara. Accordingly, a notice under section 143(2) was issued by the ITO. A notice under section 142(1) was also issued fixing the hearing of scrutiny assessment. In response to the notice, the assessee filed written submissions.
- Subsequently, the case was transferred to the jurisdiction of Assessing Officer, *i.e.*, ITO, Ward (4), Bhilwara, who after issuing the notice under section 142(1) completed the assessment under section 143(3), whereby an addition was made under

section 68 on account of share premium received by the assessee-company.

- The assessee raised an objection against the validity of the assessment for want of notice under section 143(2) issued by the second Assessing Officer, *i.e.*, ITO, Ward (4), Bhilwara who had completed the assessment. The Commissioner (Appeals) accepted the contention of the assessee and quashed the assessment by holding that in absence of notice issued under section 143(2), the impugned assessment was illegal.
- On revenue's appeal:

## **HELD**

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- On perusal of the record, it is noted that there was a search and seizure action under section 132 in the case of the assessee. The assessee has not disputed the fact of search and seizure action under section 132. It is also not in dispute that on the date of search, the assessment for the year under consideration was pending. Though, the validity of the assessment is challenged by the assessee, however, once there is a search under section 132 and on the date of search, the assessment proceedings for the year under consideration were pending and assessment was not completed then in view of the provisions of section 153A read with 2nd proviso to sub-section (1) of section 153A any assessment pending on the date of initiation of search under section 132 or requisition under section 132A, as the case maybe, shall abate.
- The question arises whether the assessment completed by the Assessing Officer after the search and seizure action under section 132 will survive when the said pending assessment was already got abated by virtue of the search.
- It is incumbent upon the Assessing Officer to issue notice under section 153A for all the six assessment years falling within the period as prescribed under section 153A and thereafter has to determined the total income of the assessee in whose case a search or requisition has been initiated. It has been provided in second proviso to sub-section (1) of section 153A that any proceedings for the assessment or reassessment of the assessee which are pending on the date of initiation of search or making requisition shall abate. Therefore, the Assessing Officer is empowered to assess or reassess the total income of six assessment years relevant to the immediately preceding assessment year relevant to the previous year in which the search or requisition was made.
- The term 'assess' in section 153A is used in respect of the assessments which are pending as on the date of search and got abated whereas the term reassess is used in respect of those assessment years where the assessment was already completed and was not pending as on the date of search, therefore, in order to ensure that there cannot be more than one assessment order for the same assessment year determining total income of the assessee in respect of six assessment years only one determination of total income has been provided under section 153A.
- In terms of second proviso to section 153A, the Assessing Officer acts in his original jurisdiction for which the assessment has to be made. In other words the jurisdiction of the Assessing Officer under section 153A in respect of the assessments which were pending as on the date of search would be as his original jurisdiction for framing the regular assessment and not as a reassessment. The only consequence of the search and seizure action under section 132 in respect of assessment pending on the date of search is that the pending assessment shall stand abated and there cannot be two assessment orders. The second proviso also makes it clear that the assessment

or reassessment if any relating to six assessment years referred into sub-section (1) of section 153A on the date of initiation of search under section 132 or requisition under section 132A, as the case maybe, shall abate and as per sub-section (2) of section 153A if any proceedings or any order of assessment or reassessment made under section 153A is annulled in appeal or any other legal proceedings then the assessment or reassessment relating to any assessment year which has abated under the second proviso would stand revive. Thus, any proceedings of assessment or reassessment falling within six years prior to the search or acquisition stood abated, and total income of the assessee was required to be determined under section 153A and not under the proceedings under section 143(3) which already stood abated by virtue of search. [Para 6]

- Thus, it is well settled that there will be only one assessment order in respect of each of six assessment years in which both the disclosed and undisclosed income would be brought to tax. The assessment or reassessment pending on the date of search shall abate and total income for such assessment years will have to be computed by the Assessing Officer as a fresh exercise. In the case in hand when the assessment proceedings were pending on the date of search on 27-8-2017 then the said proceedings initiated under section 143(3) stood abated by virtue of search under section 132(2) and the impugned order passed by the Assessing Officer is *non est*.
- Consequently the order passed by the Commissioner (Appeals) also becomes in fruituous when the assessment proceedings itself got abated and the only course of determination of the total income of the assessee is in the proceedings initiated under section 153A. Neither the assessee nor the Assessing Officer has brought this fact to notice of the Commissioner (Appeals) that a search and seizure action under section 132 was carried out in the case of the assessee during the pendency of the assessment proceedings. Therefore, the impugned order passed by the Assessing Officer as well as the Commissioner (Appeals) would otherwise not survive being *non est*. Accordingly, the total income of the assessee would be determined in the proceedings initiated under section 153A and there would be no consequence of the proceedings before the Tribunal. Since the order of the Commissioner (Appeals) was not valid as the assessment proceedings itself stood abated, the question of validity of assessment for want of notice under section 143(2) did not arise. Accordingly, the order of the Commissioner (Appeals) as well as the assessment order passed by the Assessing Officer was set aside. [Para 6.1]
- In the result, the appeal of the revenue is allowed. [Para 7]

## **CASE REVIEW**

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*CIT v. Anil Kumar Bhatia* [2012] 24 taxmann.com 98/211 Taxman 453 (Delhi) and *CIT v. Kabul Chawla* [2015] 61 taxmann.com 412/234 Taxman 300 (Delhi) (para 6.1) followed.

## **CASES REFERRED TO**

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*Abhishek Jain v. ITO* [2018] 94 taxmann.com 355/405 ITR 1 (Delhi) (para 4), *Elite Pharmaceuticals v. ITO* [2016] 73 taxmann.com 69/242 Taxman 345 (Cal) (para 4), *Bal Chand Jain & Sons v. Dy. CIT* [2014] 41 taxmann.com 524/221 Taxman 123 (Mag.) (All.) (para 4), *Karandhai Tamil Sangam v. Joint/Addl. CIT* [2018] 97 taxmann.com 50/172 ITD 272 (Chennai - Trib.) (para 4), *CIT v. Anil Kumar Bhatia* [2012] 24 taxmann.com 98/211 Taxman 453/352 ITR 493 (Delhi) (para 6), *Jai Steel (India) v. Asstt. CIT* [2013] 36 taxmann.com 523/219 Taxman 223 (Raj.) Para 6) and *CIT v. Kabul Chawla* [2015]

**B.K. Gupta**, (CIT) *for the Appellant*. **O.P. Bhateja**, (ITP) *for the Respondent*.

## **ORDER**

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**Vijay Pal Rao, Judicial Member.** -This appeal by the revenue is directed against the order dated 26/7/2018 of Id. CIT(A), Ajmer for the A.Y. 2015-16. The revenue has raised following grounds:

- "1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in quashing the assessment order and not considering the facts that the assessee filed return with the ITO, Ward-3, Bhilwara and the same ITO issued notice u/s 143(2). Therefore, notice u/s 143(2) was issued validly by the ITO, Ward-3, Bhilwara. Subsequent to issue of notice case was transferred to ITO, Ward-4, Bhilwara who has ultimately passed the order u/s 143(3) of the I.T. Act.
2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in quashing the assessment order and in not considering the provisions of section 124(3) of the II Act wherein it is provided that if an assessee questions the jurisdiction of an assessing officer he has to raise objection within one month of the issue of notice u/s 143(2). However, no such objection was raised by the assessee and assessee filed reply to questionnaire before the ITO, Ward-3, Bhilwara on 26.05.2016 and before the ITO, Ward-4, Bhilwara is on 27.11.2017.
3. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified quashing the assessment order and in not considering the provisions of section 292BB, wherein it is provided that if an assessee appearing in proceedings and co-operated in any inquiry to an assessment and has not raised any objection about such issue of notice then he shall be precluded from doing so later on after completion of assessment.
4. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in quashing the entire assessment proceedings on technical ground without going in to the merit of the case.
5. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in admitting and deciding the appeal filed by the assessee when the assessee has not approached the CIT(A) with clean hands by not disclosing either before the AO or before the CIT(A) the fact of search & seizure action u/s 132(1) of the Income tax Act having carried out in the case of the assessee on 27.08.2017, during the pendency of assessment proceedings.
6. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in not declaring that owing to the search & seizure action in the case of the assessee carried out on 27.08.2017, the pending assessment u/s 143(3) got abated in accordance with the provisions of 2nd proviso to section 153A(1) of the Income tax Act.
7. Whether on the facts and circumstances of the case and in law, it was not incumbent upon the CIT(A) to decide the merits of the additions to the total income of the assessee made by the assessing officer despite holding the

assessment u/s 143(3) to be invalid in the absence of any notice u/s 143(2) of the Income tax Act issued by ITO, Ward-4, Bhilwara.

The appellant craves, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

2. The assessee e-filed its return of income on 28/9/2015 declaring total income of Rs. NIL. The said return was filed by the assessee with the ITO, Ward (3), Bhilwara, accordingly, a notice U/s 143(2) of the Income Tax Act, 1961 (in short the Act) was issued by the ITO, Ward (3), Bhilwara on 10/5/2016. A notice U/s 142(1) of the Act was also issued on 11/5/2016 fixing the hearing of scrutiny assessment on 26/5/2016. In response to the notice, the assessee filed written submissions on 26/5/2016 thereafter the case was transferred to the jurisdiction of Assessing Officer i.e. ITO, Ward (4), Bhilwara, who after issuing the notice U/s 142(1) of the Act completed the assessment U/s 143(3) of the Act on 29/12/2017. Whereby an addition of Rs. 20.50 crores was made U/s 68 of the Act on account of share premium received by the assessee company.

3. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and also raised an objection against the validity of the assessment for want of notice U/s 143(2) of the Act issued by the second A.O. i.e. ITO, ward (4), Bhilwara who has completed the assessment. The Id. CIT(A) accepted the contention of the assessee and quashed the assessment by holding that in absence of notice issued U/s 143(2) of the Act, the impugned assessment is illegal. The other grounds raised by the assessee were not adjudicated by the Id. CIT(A). Thus, the grievance of the revenue is that once the assessee has filed return of income with the ITO Ward (3), Bhilwara who has duly issued notice U/s 143(2) of the Act and was acknowledged by the assessee by filing the details and written submissions then in absence of any objection raised by the assessee against the jurisdiction of the ITO Ward (3), Bhilwara, the subsequent transfer of the jurisdiction from one ITO to another ITO cannot be challenged by the assessee. Therefore, the assessment proceedings were transferred from one ITO to another ITO at the stage where it was pending before the first ITO and it would resume from that very stage as it was pending at the time of transfer.

4. Before us, the Id CIT-DR has relied upon a series of decisions on this point as under:

- (i) *Abhishek Jain v. ITO* [\[2018\] 94 taxmann.com 355/405 ITR 1 \(Delhi\)](#)
- (ii) *Elite Pharmaceuticals v. ITO* [\[2016\] 73 taxmann.com 69/242 Taxman 345 \(Cal\)](#).
- (iii) *Bal Chand Jain & Sons v. Dy. CIT* [\[2014\] 41 taxmann.com 524/221 Taxman 123 \(Mag.\) \(Allahabad\)](#)
- (iv) *Karandhai Tamil Sangam v. Joint/Addl.CIT* [\[2018\] 97 taxmann.com 50/172 ITD 272 \(Chennai - Trib.\)](#).

The Id CIT-Dr has also advanced the arguments at length on the point that once the notice U/s 143(2) of the Act was issued by the ITO Ward (3), Bhilwara then no second notice was required to be issued by the ITO Ward (4), Bhilwara on transfer of jurisdiction.

5. On the other hand, the Id AR of the assessee has reiterated its contention as raised before the Id. CIT(A) and submitted that when the ITO Ward (3), Bhilwara was not having the jurisdiction over the assessee at the time of issuing notice U/s 143(2) of the Act then the assessment completed by the ITO Ward (4), Bhilwara without issuing the fresh notice U/s 143(2) of the Act is invalid for want of jurisdiction. In support of his contention, he has relied upon the series of decisions on the point that an assessment completed without issuing notice U/s 143(2) of the Act is invalid.

6. We have considered the rival submissions as well as the relevant material on record. On carefully

perusal of the record, we note that there was a search and seizure action U/s 132 of the Act in the case of the assessee on 27/8/2017. This fact is revealed by the revenue in grounds No. 5 and 6 raised in this appeal. The assessee has not disputed the fact of search and seizure action U/s 132 of the Act on 27/8/2017. It is also not in dispute that on the date of search on 27/8/2017, the assessment for the year under consideration was pending. Though, the validity of the assessment is challenged by the assessee, however, once there is a search U/s 132 of the Act and on the date of search i.e. on 27/8/2017, the assessment proceedings for the year under consideration were pending and assessment was not completed then in view of the provisions of Section 153A read with 2nd proviso to sub-section (1) of Section 153A of the Act any assessment pending on the date of initiation of search U/s 132 or requisition U/s 132A of the Act, as the case may be, shall abate. For ready reference, we quote Section 153A of the Act as under:

153A . [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such 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 [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years] :

**Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years] :

**Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or 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 [and for the relevant assessment year or years]:]

**[Provided also** that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the

- form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
  - (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

*Explanation 1.*—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

*Explanation 2.*—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]

[2] 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 [Principal Commissioner or] Commissioner:

**Provided** that such revival shall cease to have effect, if such order of annulment is set aside.]

*Explanation.*—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

The Id CIT-DR has filed a letter of the Assessing Officer whereby it has been stated that the proceedings U/s 153A of the Act has been initiated by issuing the notice on 31/10/2018 and therefore, the assessment proceedings U/s 153A of the Act are pending before the Assessing Officer. The Id counsel for the assessee has not disputed all these facts of initiation of proceedings U/s 153A and the assessment proceedings in pursuant to the search are pending before the Assessing Officer. Therefore, the question arises whether the assessment completed by the Assessing Officer after the search and seizure action U/s 132 of the Act on 27/8/2017 will survive when the said pending assessment was already got abated by virtue of the search. This issue was initially considered by the Hon'ble Delhi High Court in the case of *CIT v. Anil Kumar Bhatia* [\[2012\] 24 taxmann.com 98/211 Taxman 453/352 ITR 493](#) and held in para 22 as under:

"22. In the light of our discussion, we find it difficult to uphold the view of the Tribunal expressed in Para 9.6 of its order that since the returns of income filed by the assessee for all the six years under consideration before the search took place were processed under Section 143(1)(a) of the Act, the provisions of Section 153A cannot be invoked. The Assessing Officer has the power under Section 153A to make assessment for all the six years and compute the total income of the assessee, including the undisclosed income, notwithstanding that the assessee filed returns before the date of

search which stood processed under Section 143(1)(a). The other reason given by the Tribunal in the same paragraph of its order that no material was found during the search is factually unsustainable since the entire case and arguments before the departmental authorities as well as the Tribunal had proceeded on the basis that the document embodying the transaction with Mohini Sharma was recovered from the assessee. While summarizing the contentions of the assessee in Paragraph 5 of its order, the Tribunal itself has referred to the contention that no document much less incriminating material was found during the search of the assessee's premises, except one unsigned undertaking for loan. Again in Paragraph 10 of its order, while dealing with the assessee's contention against the addition of Rs. 1,50,000/- being unexplained loan given to Mohini Sharma, the Tribunal has stated that it has analyzed "the subject document carefully, recovered from search" suggesting that the document was recovered during the search from the assessee. The Tribunal has even proceeded to delete the addition of Rs. 1,50,000/- as well as the notional interest on merits, holding that the document was unsigned, that Mohini Sharma was not examined by the income tax authorities and there was no corroboration of the unsigned document. If it is not in dispute that the document was found in the course of the search of the assessee, then Section 153A is triggered. Once the Section is triggered, it appears mandatory for the Assessing Officer to issue notices under Section 153A calling upon the assessee to file returns for the six assessment years prior to the year in which the search took place. There are contradictions in the order of the Tribunal. We are unable to appreciate how the Tribunal can say in Para 9.6 that no material was found during the search and at the same time in Paragraph 10 deal with the merits of the additions based on the document recovered during the search which allegedly contain the loan transaction with Mohini Sharma. Therefore, both the reasons given by the Tribunal for holding that the assessments made under Section 153A were bad in law do not commend themselves to us. The result is that the first substantial question of law is answered in the negative, in favour of the Revenue and against the assessee."

Therefore, it is incumbent upon the Assessing Officer to issue notice U/s 153A of the Act for all the six assessment years falling within the period as prescribed U/s 153A of the Act and thereafter has to determine the total income of the assessee in whose case a search or requisition has been initiated. The Hon'ble High Court has held in specific terms that it has been provided in second proviso to sub-section (1) of Section 153A that any proceedings for the assessment or reassessment of the assessee which are pending on the date of initiation of search or making requisition shall abate. Therefore, the Assessing Officer is empowered to assess or reassess the total income of six assessment years relevant to the immediately preceding assessment year relevant to the previous year in which the search or requisition was made. The term assess in Section 153A is used in respect of the assessments which are pending as on the date of search and got abated whereas the term reassess is used in respect of those assessment years where the assessment was already completed and was not pending as on the date of search, therefore, in order to ensure that there cannot be more than one assessment order for the same assessment year determining total income of the assessee in respect of six assessment years only one determination of total income has been provided U/s 153A of the Act. The Hon'ble Jurisdictional High Court in the case of *Jai Steel (India) v. Asstt. CIT* [\[2013\] 36 taxmann.com 523/219 Taxman 223 \(Raj\)](#) had also occasion to consider this issue in para 14 to 24 as under:

14. It would be relevant to notice the provisions of Section 153A of the Act, which reads as under:—

"153A. Assessment in case of search or requisition. - (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer



shall—

- (a) issue notice to such 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), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

**Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

**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 case 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.

(2) 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:

**Provided** that such revival shall cease to have effect, if such order of annulment is set aside.

*Explanation.* - For the removal of doubts, it is hereby declared that—

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

15. A plain reading of the above provision would reveal that if a search or requisition is initiated after 31.05.2003, the AO is under an obligation to issue notice to such person, who has been subjected to search/requisition to furnish the return of income of six years immediately preceding the year of search. The AO is then required to assess or reassess total income of the said six years and, out of the six years, if any assessment or reassessment is pending on the date of initiation of the search, the same would abate i.e. pending proceedings qua the said assessment year shall not proceed thereafter and the assessment has to be made under Section 153A(1)(b) of the Act read

with the first proviso thereunder.

16. Further provisions have been made contemplating a situation where an assessment made under sub-section (1) is annulled in appeal or other legal proceedings. The Section starts with a non obstante clause, which removes the restrictions upon the AO from assuming jurisdiction to reopen the assessment under Sections 147, 148 and 151 etc.

17. Prior to introduction of Sections 153A to 153C, Chapter XIVB of the Act took care of the assessments to be made in cases of search and seizure, which were called 'block assessment', whereby, a single assessment was required to be in respect of a period of block of ten years prior to the assessment year, in which, the search was made. After the introduction of Sections 153A to 153C, a single block assessment concept has been given a go bye and now the AO has been given the power to assess or reassess the 'total income' of the six years in question in separate assessment orders.

18. To consider the rival submissions made at the Bar in the context of the present case and the substantial question of law framed, the scope of 'assessment and reassessment of total income' under Section 153A(1)(b) and the first and second proviso have to be considered. Further, for answering the above issues, guidance will have to be sought from Section 132(1) of the Act, as Section 153A of the Act cannot be read in isolation, inasmuch as, the same is triggered only on account of any search/requisition under Sections 132 or 132A of the Act. If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and, found in the course of search, such books of account or other documents have to be taken into consideration while assessing or reassessing the total income under the provisions of Section 153A of the Act. Even in a case where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration. The requirement of assessment or reassessment under the said section has to be read in the context of Sections 132 or 132A of the Act, inasmuch as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is only in the context of the abated assessment under second proviso which is required to be assessed.

19. The underline purpose of making assessment of total income under Section 153A of the Act is, therefore, to assess income which was not disclosed or would not have been disclosed. The purpose of second proviso is also very clear, inasmuch as, once a assessment or reassessment is 'pending' on the date of initiation of search or requisition and in terms of Section 153A a return is filed and the AO is required to assess the same, there cannot be two assessment orders determining the total income of the assessee for the said assessment year and, therefore, the proviso provides for abatement of such pending assessment and reassessment proceedings and it is only the assessment made under Section 153A of the Act would be the assessment for the said year.

20. The necessary corollary of the above second proviso is that the assessment or reassessment proceedings, which 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 such cases, where the assessments already stands completed, the AO can reopen the assessments or reassessments already made without following the provisions of Sections 147, 148 and 151 of the Act and determine the total income of the assessee.

21. The argument raised by the counsel for the appellant to the effect that once a notice under Section 153A of the Act is issued, the assessments for six years are at large both for the AO and assessee has no warrant in law.

22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:

- (a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;
- (b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and
- (c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made.

Though such a claim by the assessee for the first time under Section 153A of the Act is not completed, the case in hand, has to be considered at best similar to a case where in spite of a search and/or requisition, nothing incriminating is found. In such a case though Section 153A of the Act would be triggered and assessment or reassessment to ascertain the total income of the person is required to be done, however, the same would in that case not result in any addition and the assessments passed earlier may have to be reiterated.

23. The reliance placed by the counsel for the appellant on the case of Anil Kumar Bhatia (supra) also does not help the case of the assessee. The relevant extract of the said judgment reads as under:—

"19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can 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.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note to the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub-section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer

under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

21. 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 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 case 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 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." (Emphasis supplied)

24. The said judgment also in no uncertain terms holds that the reassessment of the total income of the completed assessments have to be made taking note of the undisclosed income, if any, unearthed during the search and the income that escaped assessments are required to be clubbed together with the total income determined in the original assessment and assessed as the total income. The observations made in the judgment contrasting the provisions of determination of undisclosed income under Chapter XIVB with determination of total income under Sections 153A to 153C of the Act have to be read in the context of second proviso only, which deals with the pending assessment/reassessment proceedings. The further observations made in the context of de novo assessment proceedings also have to be read in context that irrespective of the fact whether any incriminating material is found during the course of search, the notice and consequential assessment under Section 153A have to be undertaken.

Thus, the Hon'ble High Court has concurred with the view of Hon'ble Delhi High Court in the case of *Anil Kumar Bhatia (supra)* and held that the assessment or reassessment which stand abated in terms of second proviso to Section 153A of the Act, the Assessing Officer acts in his original jurisdiction for which the assessment has to be made. In other words the jurisdiction of the Assessing Officer U/s 153A of the Act in respect of the assessments which were pending as on the date of search would be as his original jurisdiction for framing the regular assessment and not as a reassessment. The only consequence of the search and seizure action U/s 132 of the Act in respect of assessment pending on the date of search is that the pending assessment shall stand abated and there cannot be two assessment orders. The second proviso also makes it clear that the assessment or reassessment if any relating to six assessment years referred into in sub-section (1) of Section 153A of the Act on the date of initiation of search U/s 132 or requisition U/s 132A of the Act, as the case may be, shall abate and as per sub-section (2) of Section 153A of the Act if any proceedings or any order of assessment or reassessment made U/s 153A of the Act is annulled in appeal or any other legal proceedings then the assessment or reassessment relating to any assessment year which has abated under the second proviso would stand revive. Thus, any proceedings of assessment or reassessment falling within six years prior to the search or acquisition stand abated, the total income of the assessee is required to be determined U/s 153A of the Act and not under the proceedings U/s 143(3) which already stood abated by virtue of search.

**6.1** The Hon'ble Delhi High Court has again considered the issue of abatement of pending assessments by virtue of search and seizure action U/s 132 of the Act in the case of *CIT v. Kabul Chawla* [\[2015\] 61 taxmann.com 412/234 Taxman 300/\[2016\] 380 ITR 573](#), the legal proposition laid down by the Hon'ble High Court has been summarized in para 37 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 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.

Thus, it is a consistent view taken by the Hon'ble Delhi High Court as well as the Hon'ble Jurisdictional High Court that there will be only one assessment order in respect of each of six assessment years in which both the disclosed and undisclosed income would be brought to tax. The assessment or reassessment pending on the date of search shall abate and total income for such assessment years will have to be computed by the Assessing Officer as a fresh exercise. In the case in hand when the assessment proceedings were pending on the date of search on 27/8/2017 then the said proceedings initiated U/s 143(3) stood abated by virtue of search U/s 132(2) of the Act and the impugned order passed by the A.O. is nonest. Consequently the order passed by the Id. CIT(A) also becomes infructuous when the assessment proceedings itself got abated and the only course of determination of the total income of the assessee is in the proceedings initiated U/s 153A of the Act. We further note that neither the assessee nor the Assessing Officer has brought this fact to notice of Id. CIT(A) that a search and seizure action U/s 132 of the Act was carried out in the case of the assessee during the pendency of the assessment proceedings. Therefore, the impugned order passed by the Assessing Officer as well as the Id. CIT(A) would otherwise not survive being nonest. Accordingly, the total income of the assessee would be determined in the proceedings initiated U/s 153A of the Act and there would be no consequence of the proceedings before us. Since the order of the Id. CIT(A) is not valid as the assessment proceedings itself stood abated and the question of validity of the assessment for want of notice U/s 143(2) of the Act does not arise. Accordingly, we set aside the order of the Id. CIT(A) as well as the assessment order passed by the Assessing Officer.

**7. In the result, appeal of the revenue is allowed.**

sunil

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\*Matter remanded.