REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6580 OF 2021

Principal Commissioner of Income Tax, Central-3 **…Appellant**

Versus

Abhisar Buildwell P. Ltd. **…Respondent**

Connected Appeals filed by the Revenue

CIVIL APPEAL NO. 4264 OF 2018
CIVIL APPEAL NO. 2648 OF 2020
CIVIL APPEAL NO. 6585 OF 2021
CIVIL APPEAL NO.3044 OF 2023
(@ S.L.P.(CIVIL) NO. 8453 OF 2023 @ DIARY NO. 20983/2020)
CIVIL APPEAL NO. 3045 OF 2023
(@ S.L.P.(CIVIL) NO. 8454 OF 2023 @ DIARY NO. 22709/2020)
CIVIL APPEAL NO. 6593 OF 2021
CIVIL APPEAL NO.3043 OF 2023
(@ S.L.P.(CIVIL) NO. 6063 OF 2022)
CIVIL APPEAL NO. 9097 OF 2022
CIVIL APPEAL NO. 741 OF 2023
CIVIL APPEAL NO. 6582 OF 2021
CIVIL APPEAL NO. 721 OF 2020
CIVIL APPEAL NO. 6611 OF 2021
R.P.(CIVIL) NO.223 OF 2023
in CIVIL APPEAL NO. 4484 OF 2018
DIARY NO. 25308/2020)

www.taxcode.in

CIVIL APPEAL NO. 9100 OF 2022
CIVIL APPEAL NO. 9106 OF 2022
CIVIL APPEAL NO. 9111 OF 2022
CIVIL APPEAL NOS. 565-566 OF 2023
CIVIL APPEAL NOS. 567-568 OF 2023
CIVIL APPEAL NO.824 OF 2023
(@ S.L.P.(CIVIL) NO. 2110 OF 2023)
CIVIL APPEAL NO. 541 OF 2023
CIVIL APPEAL NO. 540 OF 2023
CIVIL APPEAL NO. 14702 OF 2015
CIVIL APPEAL NO. 17533 OF 2017
CIVIL APPEAL NO. 6596 OF 2021
CIVIL APPEAL NO. 7028 OF 2021
CIVIL APPEAL NO. 7029 OF 2021
CIVIL APPEAL NO. 6610 OF 2021
CIVIL APPEAL NO. 7030 OF 2021
CIVIL APPEAL NO. 6608 OF 2021
CIVIL APPEAL NO. 6594 OF 2021
CIVIL APPEAL NO. 7338 OF 2019
CIVIL APPEAL NO. 6609 OF 2021
CIVIL APPEAL NO. 6605 OF 2021
CIVIL APPEAL NO. 1505 OF 2020
CIVIL APPEAL NO. 734 OF 2020
CIVIL APPEAL NO. 7016 OF 2021
CIVIL APPEAL NO. 7017 OF 2021
CIVIL APPEAL NO. 7015 OF 2021
CIVIL APPEAL NO. 6584 OF 2021
CIVIL APPEAL NO. 6589 OF 2021
CIVIL APPEAL NO. 7026 OF 2021
CIVIL APPEAL NOS. 9098-9099 OF 2022
CIVIL APPEAL NO. 3053 OF 2018
CIVIL APPEAL NO. 7014 OF 2021
CIVIL APPEAL NO. 6583 OF 2021
CIVIL APPEAL NO. 7027 OF 2021
CIVIL APPEAL NO. 6899 OF 2021

Connected Appeals filed by the Assessees

CIVIL APPEAL NO. 15617 OF 2017
CIVIL APPEAL NO. 10267 OF 2017
CIVIL APPEAL NOS. 7738-7739 OF 2021
CIVIL APPEAL NOS. 7736-7737 OF 2021
CIVIL APPEAL NOS. 7732-7735 OF 2021
CIVIL APPEAL NO. 10266 OF 2017
CIVIL APPEAL NO. 10268 OF 2017
CIVIL APPEAL NOS. 7740-7743 OF 2021

J U D G M E N T

M.R. SHAH, J.

1. As common question of law and facts arise in this group of appeals, they are being disposed of by this common judgment and order.

Civil Appeal No. 6580 of 2021 and other connected appeals as mentioned above have been preferred by the Revenue. However Civil Appeal No. 15617 of 2017 and other allied appeals as mentioned above have been preferred by the respective assessees challenging the order passed by the respective High Courts taking the view that in case any incriminating material is found during search then even completed assessments can be

assessed or reassessed taking into consideration the incriminating material and other material in possession of the Assessing Officer.

1.1 For the sake of convenience, Civil Appeal No. 6580 of 2021 filed by the Revenue be treated and considered as the lead matter.

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 assessees 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.

3. Shri N. Venkataraman, learned Additional Solicitor General of India has appeared on behalf of the Revenue and S/Shri Arvind P. Datar, Kavin Gulati, Preteesh

Kapoor, learned Senior Advocates and Shri Ved Jain, learned counsel have appeared on behalf of the respective assessees.

3.1 Shri N. Venkataraman, learned ASG has made the following submissions on behalf of the Revenue:

i) It is submitted that under the Act, 1961, the charging section is section 4. It is submitted that thus the income tax is tax on 'total income.' It is submitted that the term 'total income' has been defined in section 2(45) of the Act, 1961, which means the total amount of income referred to in section 5 and computed in the manner laid down in the Act. It is submitted that as per section 5 of the Act, 1961, the 'total income' of any previous year of a person who is a resident includes all income from whatever source derived. It is submitted that therefore the income tax is a tax on all income from whatever source derived in the case of a resident-assessee. Therefore, if any taxable income is left out, the resultant figure would be 'partial income' and not 'total income'. It is submitted that any interpretation of any provision of the Act, 1961 which seeks to exclude any portion of the 'total income' from the ambit of taxation runs contrary to the scheme of taxation and hence is impermissible. It is submitted that thus the

income tax is a tax on 'total income,' the assessee furnishes a return of 'total income' (as per Section 139 of the Act, 1961) and the AO assesses 'total income' only.

ii) It is next submitted that while considering the issue involved, the manner and mode of passing assessment/re-assessment orders is required to be considered. It is submitted that section 139 of the Act, 1961 requires an assessee to furnish his return of total income for the previous year. The return is processed under section 143(1). Sub-sections (2) and (3) contain provision for assessment of 'total income' by the AO. It is submitted that there is a possibility that income chargeable to tax has escaped assessment in the first instance. Section 147 of the Act, 1961 enables the AO to assess or reassess the case and bring to tax such income also. Thus, the Act, 1961 contains elaborate machinery to facilitate determination of 'total income' and collection of tax thereon.

iii) It is further submitted that the AO, in order to determine 'total income' correctly, needs to collect information from the assessee as well as third parties. The Statute contains many provisions enable the Department to collect information relating to the

assessee, directly as well as indirectly, so as to enable it to detect tax evasion and make proper assessment of 'total income'. Section 132 of the Act, 1961 is such a provision which enables to conduct 'search and seizure'. It is submitted that section 132 of the Act, 1961 is a tool for collecting information relating to tax evasion by an assessee. There are other provisions to ensure that the assessees are assessed correctly on their 'total income', namely, sections 142, 131, 133, 133A and 285BA. It is submitted that apart from this, the Department keeps getting information relating to assessee from various sources, viz.:

(i) Suspicious Transaction Report from the Financial Intelligence Unit (FIU)

(ii) Information from other taxation authorities viz. GST, and Law Enforcement Agencies, viz. ED, etc.

(iii) Information from foreign tax jurisdictions under Automatic Exchange of Information as well as on request basis under Tax Treaties and International conventions.

(iv) Gathering of documents and evidence from and based on third party sources.

(v) It also collects information available in public domain and gets the same from informants, tax evasion petitions, etc.

It is submitted that the information collected from all these sources, including search and seizure, is eventually to be used for assessing 'total income'.

iv) Shri N. Venkataraman, learned ASG has taken us to the scheme of assessment in a search case. It is submitted that for the period prior to 30/06/1995, initially, there was no special provision for assessment of search cases. Those assessments were made in accordance with the regular provisions relating to assessment of income, i.e., section 143(3) or section 147 of the Act, 1961. Therefore, the assessment took into considering the incriminating material found during the search as well as that coming to the AO's notice from any other source.

It is submitted that thereafter the Finance Act, 1995 introduced a special procedure for assessment of search cases. A set of provisions comprising of Sections 158B to 158BG was introduced by Chapter XIV-B – Special procedure for assessment of search cases. The salient features of Chapter XIV-B are as follows:

(i) Any search initiated u/s 132 or 132A of the Act after 30th June, 1995, the AO shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B.

(ii) It mandated the assessment of the total undisclosed income relating to the block period to be taxed at the rate

specified under Section 113 of the Act as the income of the block period, irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

(iii) Section 158B(a) defines “block period”-

“block period” means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted under section 132 or any requisition was made under section 132A and also includes the period up to the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made:

Provided that where the search is initiated or the requisition is made before the 1st day of June, 2001, the provisions of this clause shall have effect as if for the words “six assessment years,” the words “ten assessment years” had been substituted;”

(iv) Section 158B(b) defines “Undisclosed Income”:

“undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents

wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false."

(v) Consequently, post 30-06-1995, Assessing Officers are allowed to assess:

A. Undisclosed income

B. For the block period which is 6 years if the search is prior to 01.06.2001 and 10 years post 01.06.2001.

C. At the rate specified in Section 113.

D. The explanation to Section 158B(a) also mandated that the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period.

E. The total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period.

F. The income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

(vi) Section 158BB provides the computation mechanism of undisclosed income of the block period which is as follows:

(i) What can be taxed under this Chapter is only undisclosed income of the block period.

(ii) This undisclosed income should form part of the total income. However, this chapter permits independent and separate assessment for undisclosed income for the block period and therefore cannot include the total income forming part of the regular assessment.

(iii) In other words, both the income forming part of the regular assessment/reassessment falling under Section 143/147 respectively, and the assessment on undisclosed income for block period would constitute together the total income.

(iv) However, the streams of assessment are independent and separate. The regular assessment/reassessment would be under Section 143/147 respectively. Whereas, the assessment of undisclosed income for block period would be a separate assessment under Section 158BC(c).

(v) Three things are therefore clear. The spirit of the Income Tax Act is to tax total income. The regular assessment/reassessment form one stream u/s 143/147 and, the block assessment of the undisclosed income as yet another stream of undisclosed income.

(vi) As a result of two separate assessments for computation of total income and taxation on it, Section 158BB allowed the following exclusions in computing the undisclosed income of block period to be assessed u/s 158BA which are:

a. Assessment under Section 143 (assessment), Section 144 (best judgment assessment), and Section 147 (reassessment).

b. Where returns have been filed u/s 139 or notices have been issued u/s 142(1) or u/s 148, but assessments have not been made till the date of search requisition, based on the income disclosed in such returns.

c. Likewise, Section 158B(b) (Clauses c to f) proceeds to excludes other possible permutations. The bottom line being, if the income is either disclosed or period for disclosure is yet to get over, or assessed or reassessed or gets settled before the settlement commission, or an assessment of undisclosed income has been made already under clause c of section 158C.

d. Section 158BB(3) imposed the burden on the assessee to prove that any undisclosed income had already been disclosed in any return of income filed by the assessee, before the commencement of search or of the requisition, as the case may be.

e. In short, assessment on undisclosed income for block period is an independent assessment from the rest of the assessments all of which put together would rest in assessment in total income.

(vii) Section 158BC provides the procedure for block assessment and determine the undisclosed income of the block period in the manner laid down in Section 158BB and the provisions of Section 142, Sub-Sections

2 and 3 of Section 143, Section 144 and Section 145 of the Act and the AO would proceed to pass an assessment order and determine the tax payable u/s 158BC(c) of the Act. In other words, the order of assessment on undisclosed income of block period gets passed u/s 158BC(c) of the Act and the manner of computation shall be in accordance with Section 158BB of the Act.

(viii) Section 158BD provides the assessment of undisclosed income of any other person. Section 158BE provides the time limit for competition of block assessment. Section 158BF refers to the inapplicability of the various provisions relating to interest and penalties, and section 158BG identifies the competent authorities who can pass block assessment orders.

(v) It is submitted that the scheme under Chapter XIV-B, referred to hereinabove, was in place for about eight years but failed to yield the desired outcome. Therefore, the same came to be replaced by another scheme by Finance Act, 2003. It is submitted that the salient features of the special procedure introduced in 2003 were as below:

(i) The scheme of parallel assessments were given a go-by. There was to be a single assessment of 'total income', incorporating undisclosed income

found during the search as well as that found from any other source.

(ii) The concept of 'block period' was given a go-by. The concept of 'assessment year' as the temporal unit was restored.

(iii) Assessment had to be made u/s 153A, not under Sections regularly employed for assessment/reassessment, i.e. Section 143(3)/147.

(iv) Assessment u/s 153A was to be mandatory and automatic in a case where search had been conducted.

(v) Assessments u/s 153A were to be made for each of the six assessment years preceding the assessment year relevant to the previous year in which the search was conducted.

(vi) As mentioned above, the second proviso stipulated that assessment/reassessment for any assessment year (out of the 6 assessment years referred to above) pending on the date of the initiation of the search would abate and a single assessment would be made u/s 153A only.

It is submitted that the following are the salient features of Section 153A of the Act, 1961:

(i) Section 153A is a non-obstante provision to Sections 139, 147, 149, 151 and 153 and the jurisdictional cause of

action to initiate proceeding under this Section would be where a search is initiated u/s 132 or books of accounts, other documents or any assets are requisitioned u/s 132 of the Act after 31st May, 2023.

(ii) The jurisdictional requirement to initiate proceedings u/s 153A would be a search u/s 132 or a requisition u/s 132A.

(iii) To permit the AO to issue notices for each assessment year falling within six assessments years.

(iv) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous years in which such a search is conducted or requisition is made.

(v) The AO shall assessee or reassess in respect of each assessment year falling within six assessment years and not as a block, and for relevant assessment year/years.

(vi) Section 153A(2) states that if an order of assessment or reassessment made u/s 153A(1) stands annulled in appeal or any other legal proceeding, the assessments and reassessments which had abated under the second proviso to Sub pending on the date of initiation of such u/s 132 or requisition u/s 132A shall abate.

(vii) Section 153A(2) states that if an order of assessment or reassessment made u/s 153A(1) stands annulled in appeal or any other legal proceeding, the assessments and reassessments which had abated under

the second proviso to Sub-Section 1 shall stand revived w.e.f. the date of receipt of the order of such annulment.

(viii) This revival is notwithstanding anything contained under Sub-Section 1 of Section 153A or Section 153. The proviso to Section 153A(2) states that such a revival shall again cease to have effect if the order of annulment which gave rise to said revival is set aside.

(vi) It is submitted that therefore the spirit of the Act, 1961 is to assess the total income. The earlier regime allowed parallel assessments namely regular assessment/reassessment independently and simultaneously allowed assessment of undisclosed income for the block period under Chapter XIV-B. Whereas the new regime has abandoned the parallel assessment scheme and made it into one unified assessment, once a search gets initiated under section 132 or books or requisition under section 132A. It is submitted that in the absence of any search under section 132 or a requisition under section 132A, the assessment of 'total income' should be carried out under section 143, 144 and 147, i.e., regular assessment, best judgment assessment and reassessment. It is submitted that prior to the new

scheme, when a search gets initiated or a requisition happens, the normal assessment/reassessment was allowed to be carried on without any interference and a block assessment of undisclosed income was allowed to be made independently. However, the new scheme brought w.e.f. 01.06.2003 has dismantled this structure and Section 153A conceives the following sequence:

a. The jurisdictional exercise of power to initiate proceedings u/s 153A would commence only upon initiation of a search u/s 132 or a requisition u/s 132A and not before that.
b. Once a search gets initiated or a requisition is made, the assessment process under every other provision of the Income Tax Act would abate.
c. This is clear by virtue of the expression employed in Section 153A(1) “Notwithstanding anything contained in Section 139, 147, 148, 149, 151 and 153.” Being a non-obstinate provision, Section 153A overrides all these provisions.

It is submitted that to what extent does the override operate is also brought clearly by Section 153A in the following manner:

I. 153A(1)(b) allows assessment and reassessment of total income of Six assessment years immediately preceding the assessment year relevant to the previous year in which such a

search is conducted or requisition is made and for the assessment year/years.

II. Parliament has chosen the expressions “asses” or “reassess” the total income.

III. It is the total income and not the undisclosed income that requires to be assessed u/s 153A. The expression “undisclosed income” which was defined under erstwhile scheme Section 158B(b) has not found a reference or mention under the new scheme.

IV. Likewise, each year in the six years in question needs to be assessed independently and not as a block which again was defined under the erstwhile scheme u/s 158B(a), which is conspicuous by its absence under the new scheme.

V. Therefore, twin conditions need to be satisfied under Section 153A(1)-

A. Assessments have to be completed year wise and not for block period and

B. Assessments have to be made for the total income and not just for the undisclosed income.

(vii) It is submitted that once this is evident and clear, the scope of interpretation of the second proviso to section 153A(1) read with Section 153A(2) becomes clear and unambiguous. It is submitted that as per the

scheme of Section 153A of the Act, 1961, two parallel assessments have to be avoided. Therefore, any assessment under Section 143, 144 and 147 pending on the date of initiation of search u/s 132 or making of requestion u/s 132A has to abate, and the same needs to be subsumed into Section 153A(1). The second proviso using the expression "shall abate" should be read with the expressions "assessment" or "reassessment" employed in the very same proviso, i.e., it must be read with the expression employed in Section 153A(1)(b) "assess or reassess the total Income" and finally with the expression "notwithstanding" appearing as the opening phrase u/s 153A(1) of the Act.

(viii) It is submitted that the expression "assessment" or "reassessment" appearing in the second proviso and the expressions "assess or reassess the total income" appearing in Section 153A (1)(b) have been employed carefully by the Parliament to convey clear and distinct intentions. It is submitted that the expression "assessment" or "reassessment" appearing in the second proviso refers to the pending assessments under sections 143, 144 and 147 which would abate. It is submitted that whereas "assess or reassess the total income" appearing in Section

153A(1)(b) signifies not the pending assessment or reassessment, but the assessment to be made under section 153A for six assessment years. It is submitted that again the Parliament has been extremely careful in not employing the expression 'total income' in the second proviso which expression has been carefully employed under section 153A(1)(b) of the Act, 1961. The omission in the second proviso and the inclusion under Section 153A(1)(b) is extremely significant. The omission under the second proviso is necessary since those pending assessments gets abated upon an initiation of a search under section 132 or a requisition under section 133, since the total income is to be assessed or reassessed again consequent to search or requisition. However, when it comes to section 153A(10(b) it authorises the AO to assess or reassess the 'total income' consequent to search or requisition.

(ix) It is submitted that once a search or requisition is initiated, all pending assessments or reassessments would abate. They would get subsumed into the assessment/reassessment to be passed under section 153(1)(b) and the AO will pass one assessment order for each of the six assessment years subsuming all pending assessments and reassessments and such an

order under section 153(1)(b) would be for the 'total income' for each of the six assessment years. It is submitted that should the order of assessment or reassessment under sub-section 1 get annulled, the abated proceedings shall stand revived.

(x) Making above submissions, it is submitted that the assessment under section 153A is not a block assessment; it is not confined to any undisclosed income; it is not confined only to any incriminating material seized on account of initiation of search under section 132 or requisition under section 132A; the jurisdictional fact or requirement to pass orders under section 153A(1)(b) is initiation of a search under section 132 or requisition under section 132A and not the seizure of any incriminating material finding out an undisclosed income. It is submitted that in the absence of any statutory mandate, any interpretation that the scope of assessment under section 153A should be limited to the incriminating material found during the search is wholly erroneous and unsustainable, particularly considering the fact that Section 153A requires assessment of 'total income' and the statute bars resort to the regular provisions, viz., section 143(3)/147 for assessing the income that may be

relatable to the material coming on the AO's record from sources other than the search.

(xi) It is submitted that when section 153A requires assessment of 'total income', can it be interpreted so as to exclude a part of the 'total income' while making the assessment? It is submitted that if income based on incriminating material from sources other than the search is excluded from assessment under section 153A, how can the same be brought to tax? It is submitted that the language and meaning of Section 153A is plain and unambiguous, i.e., if search under section 132 of the Act, 1961 is conducted in a case, assessment of 'total income' for each of the six assessment years pending the assessment year relevant to the previous year in which such search is conducted, has to be made. It is submitted that therefore the decision of the Special Bench of the Tribunal in the case of ***All Cargo Global Logistics Ltd. v. Deputy Commissioner of Income Tax, (2012) 18 ITR (Trib.) 106 (ITAT/Mum) dated 06.07.2012*** and the decision of the Delhi High Court in the case of ***Commissioner of Income Tax, Central-III v. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi) dated 28.08.2015*** are not in consonance with the plain

language and meaning of Section 153A and in the process, defeats the very purpose of the 'charging section' of the Act.

4. Learned counsel appearing for the respective assessees have made the following submissions:

i) It is submitted that the core issue that arises in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of assessing officer to make assessment is confined to incriminating material found during the course of search under Section 132 of the Act or not, i.e., whether any addition can be made by the assessing officer in absence of any incriminating material found during the course of search under section 132 of the Act, 1961 or not.

ii) It is submitted that it is the case on behalf of the Revenue that the jurisdiction to assess the total income under section 153A arises upon 'search' under section 132 and that the jurisdiction is not contingent upon unearthing incriminating material during the course of search. To the aforesaid, it is submitted that while the jurisdiction to issue notice under section 153A may arise consequent to search, however, jurisdiction to

assess or reassess the income cannot be assumed merely on the basis of 'search' particularly when no incriminating material is unearthed during the course of search. It is submitted that the assessment under section 153A is not the same as regular assessment under section 143(3) as is being contested by the Revenue. It is submitted that under the scheme of the Act, 1961, there are different provisions to make assessment, namely, (1) regular assessment under section 143(3); (2) best judgment assessment under section 144; (3) reassessment in case of income having escaped assessment under section 147; and (4) assessment under section 153A in consequence of search under section 132.

iii) It is submitted that the assessment under section 153A is a special procedure for assessment in consequence of search and is distinct from regular scrutiny assessment under section 143(3) or reassessment under section 147 of the Act, 1961. It is submitted that section 153A bears the heading "assessment in case of search or requisition". That assessment under section 153A is required to be made after a search under section 132 or requisition under section 132A. That the crucial words "search" and

"requisition" appear in the substantive provision and the provisos of Section 153A is accordingly to be read in light of such provisions relating to search and requisition , i.e., sections 132 and 132A. That both the provisions 132 and132A contemplate search and requisition where the assessee is not likely to disclose his income and the said provisions can be resorted to only in the circumstances stated therein. That section 132(1)(c) entitles the Revenue to carry out search in case the specified officer has reason to believe that any person is in possession of any money, bullion, jewellery or other valuable article or thing etc. which have not been disclosed for the purpose of the Act. That object of both the provisions, namely, sections 132 and 132A is to unearth the income which the assessee has not or is not likely to disclose. It is submitted that since the assessment under section 153A is linked with search and requisition under sections 132 and 132A of the Act, 1961, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition.

iv) It is next submitted that now, in case time limit to make regular assessment under section 143(3) is

pending or an assessment is underway as on the date of search, the said assessment shall get abated and the AO will have jurisdiction to carry out assessment in respect of such abated assessment *dehors* any incriminating material. However, in respect of completed/unabated assessments, under section 153A of the Act, 1961, an assessment has to be made in relating to the search or requisition, namely, in relation to material disclosed during the search or requisition. It is submitted that in case the Revenue is permitted to make assessment in respect of any issue despite the fact that no incriminating material is found during the course of search, the same would lead to the expression "search" and "requisition" used in Section 153A being rendered otiose. Not only that, search will become a tool to enlarge limitation period for making regular assessment under section 143(3), which is not permissible. It is submitted that it is the settled position of law that what cannot be done directly, cannot be done indirectly.

v) It is submitted that search and requisition can be undertaken in limited circumstances stated under sections 132 and 132A to unearth the income which the assessee has not or is not likely to disclose. Even in

a case where there are *bona fide* reasons to believe that the aforesaid circumstances stated in sections 132 and 132A are present, however, upon undertaking the search, if no incriminating material whatsoever is unearthed, it naturally follows that the very belief that the circumstances exist stands contradicted. In such circumstances, the contention of the Revenue that the AO shall still have the jurisdiction to make addition on any issue, despite no incriminating material having been found, shall tantamount to abuse of the process of law and cannot be accepted. It is submitted that only on the satisfaction of the conditions mentioned in sections 132 and 132A and on recording reasons to believe, there can be search or requisition. It is submitted that therefore in case no incriminating material is found during the course of search, the very reasons to believe forming the basis of search stands vitiated and the search action may say to be bad in the eye of the law. Consequently, the jurisdiction to assess or reassess ought to be read in a restricted manner in such circumstances, i.e., the jurisdiction to assess or reassess ought to be restricted to only incriminating material unearthed during the course of search.

vi) It is further submitted that the 'total income' under section 153A in respect of unabated assessments to be read in light of sections 132 and 132A as the context requires so and omission of expression "undisclosed income" has no bearing.

vii) As regards the contention on behalf of the Revenue that earlier scheme of block assessment under Section 158BA envisaged assessment of "undisclosed income" whereas first proviso to Section 153A(1) envisages assessment of "total income" which manifests the intention of the legislation to bring to tax "total income", under Section 153A of the Act *de hors* any incriminating material, it is submitted that the said submission is without appreciating the object behind introducing the 153A regime as well as without appreciating the fact that definition of "total income" under Section 2 is qualified by the expression "unless the context otherwise requires."

viii) It is submitted that the erstwhile scheme of block assessment under Section 158BA envisaged assessment of "undisclosed income" for two reasons. First reason was that there were two parallel assessments envisaged under the erstwhile regime i.e. (i) block assessment under Section 158BA to assess

the undisclosed income and (ii) the regular assessment in accordance with the provision of the Act to make assessment qua income other than undisclosed income. Second reason was 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.

ix) It is submitted that under Section 153A 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. It is for such reason that distinction made earlier qua undisclosed income vis-a-vis other income had been done away with under the regime of Section 153A and it is for that reason that the procedure for separate assessments qua undisclosed income and income other than undisclosed income has been done away with. The omission of word “undisclosed income” in Section 153A does not mean that assessment consequent to search in the absence of any incriminating material being found during the course of search, the AO shall assume jurisdiction to

assess income *de hors* incriminating material in respect of unabated assessments as is being contested by the Revenue. The provision of 153A still have to be read in light of Sections 132 and 132A. This intention of the legislation is also manifestly evident from a plain reading of second proviso to sub-section (1) of Section 153A as well as from sub-section (2) of Section 153A of the Act.

x) It is submitted that the second proviso to sub-section (1) of Section 153A provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under Section 132 or requisition under Section 132A, as the case may be, shall abate. Thus, where an assessment is pending as on date of search, the same 'abates' and such assessments then can be made by following the procedure under Section 153A and the Revenue shall have the power to assess "total income" in accordance with the provision of the Act. Accordingly, by way of this second proviso, the intention of the legislation to do away with two separate assessments is achieved.

xi) Further, to give this second proviso force and to enable the Revenue to make assessment qua "total

income" as against just undisclosed income, in the proceedings under Section 153A itself, the expression "total income" has been used in first proviso to Section 153A(1). Here, for the purpose of abated assessments, the expression "total income" shall undisputedly derive its meaning from definition of "total income" provided under Section 2 which means that the Revenue shall be permitted to make assessment qua total income. Had the expression "total income" not been used in the first proviso, the Revenue would have not been able to bring to tax income other than undisclosed income even qua the abated assessments. However, in contrast to abated assessments, in case of completed assessments, where no assessment was pending as on date of search, it is pertinent to mention that no two assessments were taking place in the first place itself. Only one assessment took place in the earlier block assessment regime wherein only undisclosed income could be brought to tax that too when incriminating material was unearthed.

xii) It is further submitted that, in cases of unabated assessments where no incriminating material whatsoever was unearthed, no addition could be made in the erstwhile regime as well. It is humbly submitted

that the intention of the Parliament was to never tinker with such category of cases in the 153A regime. This is because when no two assessments were taking place in respect of such category of cases, there was no question of doing away with the requirement of two parallel assessments. In such category of cases, the expression “total income” cannot be construed literally as per the definition provided under Section 2 as the same would not only be contrary to the objective of the legislation (which is to do away with two parallel assessments) but also manifestly arbitrary as despite no incriminating material being found and despite assessment having been completed earlier, the Revenue will indulge into roving enquiry to tinker with earlier assessment in the garb of assessment under Section 153A. That cannot be permissible and become a tool to bypass the period of limitation for regular assessment.

xiii) It is submitted that the expression “total income” in such category of cases of completed assessments, where no incriminating material is found, ought to be interpreted, not as per definition provided under Section 2, but in light of the objective of Sections 132 and 132A, as the context so requires. Since the assessment under

Section 153A of the Act is linked with search and requisition under Sections 132 and 132A of the Act wherein the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition, the expression "total income" for the purpose of first proviso Section 153A(1) is to be read in such context and consequently, the expression "total income" for the purpose of completed assessment cannot be read to give unfettered powers to the Revenue to tinker with the unabated assessments *de hors* any incriminating material. In such cases, the expression "total income" shall be read to mean as under:

A. If an assessment has been made earlier, the "total income" as per the assessment order is considered as the "total income" for the purpose of Section 153A.

B. Where no assessment has been made earlier but time limit to initiate assessment proceedings have expired, the return is treated as final (Refer: ***Chintels India Limited Versus DCIT, [2017] 397 ITR 416 (Del)***]. Accordingly, total income as per such return shall be treated as total income for the purpose of Section 153A in such cases.

xiv) It is submitted that thus, the expression "total income" under Section 153A in respect of completed

assessment, when read in light of Sections 132 and 132A, shall mean the total income as per assessment order passed under Section 143(3) where assessment had been made earlier or; total income as per return where no assessment was made earlier but time limit to issue notice under Section 143(2) has expired.

xv) Insofar as the words used ‘total income’ in section 153A of the Act, 1961, it is submitted that before insertion of the new scheme of assessment under Section 153A, there was a concept of block assessment in respect of the search period. There was one assessment for the block period in respect of the undisclosed income found during the search. This undisclosed income was being taxed at a special rate of 60% and that is why, such income was being identified separately as against the regular income for each of the assessment year. The above concept was given a go-by on introducing this new scheme of assessment under section 153A which provided that assessment will be made for each of the assessment year separately and the income found undisclosed during the search will be taxed at the normal rate. Hence, in section 153A, it has been stated that ‘total income' will be assessed. This means that while computing tax

liability, income disclosed as well as undisclosed income found during the course of search will be clubbed to determine the ‘total income’ and tax to be computed on the basis of such ‘total income’. Thus, on the basis of the expression 'total income' in section 153A, the contention of the Revenue that the AO gets power to assess ‘total income’ which will include even income without there being any incriminating material found during the search in respect of assessments which have not abated is not tenable. It is submitted that the meaning of the expression ‘total income’ here will be income originally assessed and the income found during the course of the search. On the basis of this expression 'total income’, the AO cannot get jurisdiction to make an assessment in respect of other material available on record despite no incriminating material being found during the course of the search. It is submitted that therefore when the purpose of the search is to collect information and in case no material is found in the search for the particular assessment year, there is no justification for tinkering with the unabated assessment. It is submitted that therefore in case no incriminating material is found during the search, that jurisdiction comes to an end and AO

cannot use that opportunity to bring to tax income on the basis of the material available on record.

xvi) It is submitted that further as per sub-section (2) of section 153A of the if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. It is submitted that only the proceedings that have been abated shall be revived. The proceedings for other assessment years are not revived even if there is any income that has escaped assessment. Meaning thereby, that intention of the legislation is to only give power to AO for making assessments, which he was earlier having in respect of assessments, which were pending as on date of search and not the other assessments. It is submitted that had the intention of legislature as is being contended On behalf of the Revenue that AO has power to make additions in those assessment years where there is no incriminating material, the legislature would have provided that in case of annulled assessments, in the case of unabated assessments, the AO shall on the basis of the additions

made earlier will be empowered to reframe those assessments as well. It is submitted that restricting annulled assessments to only abated assessments, is putting the wheel back to a situation as if there was no search.

4.1 The submissions on behalf of the assessees in a tabulated form thus are as under:

S.N.	Particulars	Assessment u/s 143(3) pending and abated	Reassessment u/s 147 pending and abated	Unabated assessments
i.	No Incriminating found in material search.	AO entitled to assess entire income, a pending regular assessment stood abated.	Scope of assessment u/s 153A must be restricted to grounds of reopening of assessment, which was pending on date of search and stood abated as a result of search. AO not entitled to go beyond	No assessment u/s 153A in absence of any incriminating material. Originally concluded assessment which has attained finality cannot be disturbed more so when no material

			scope of pending assessment.	found in search.
ii.	No incriminating material found in search. + Information/ document from sources other than search available with AO	AO entitled to assess entire income, as pending regular assessment stood abated.	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) additional specific information coming to knowledge AO through modes other than search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.	Assessment u/s 153A in absence of any incriminating material may be dropped. Post dropping of proceedings u/s 153A, Revenue may, basis other information, proceed u/s 147 and/or 263 subject to satisfaction of jurisdictional conditions under the said provisions.
iii.	Incriminating material found during search only on issue 'A'. No other information/material available or found from any external sources.	AO entitled to assess entire income, as pending regular assessment stood abated. AO also	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A	Assessment u/s 153A to be restricted to Issue A relating to which incriminating material is found during

		entitled to assess entire income and not just issue A.	detected during search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.	search. Original concluded assessment which has attained finality cannot be disturbed, in context of issues in relation to which no documents are found in search.
iv.	Incriminating material found during search only on Issue 'A' + Other information/material available or found from any external sources (not in search) in respect of Issue 'B'.	AO entitled to assess entire income including Issue A and/or Issue B.	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A detected during search; and (c) issue B for which information available. AO not entitled to reopen entire assessment and undertake	Assessment u/s 153A could only be done in respect of issue A relating to which incriminating material is found during search. On conclusion of assessment u/s 153A, Revenue may, basis other information, proceed u/s 147 and/or 263.

			roving/fishing enquiries.	

4.2 Learned counsel for the respective assessees have relied upon the following decisions of this Court as well as various High Courts in respect of their submission that no addition can be made in respect of completed assessment in absence of incriminating material:

Sl. No.	Name of case	Citation
1.	Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society	(2017) 397 ITR 344 (SC) : (2018) 11 SCC 490
2.	Principal Commissioner of Income Tax-4 Vs. Saumya Construction	(2016) 387 ITR 529 (Gujarat)
3.	Principal Commissioner of Income Tax, Ahmedabad Vs. Dipak Jashvantlal Panchal	2017 (2) TMI 862 (Gujarat)
4.	Commissioner of Income Tax-II, Thane Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.	(2015) 374 ITR 645 (Bombay)
5.	Pr. Commissioner of Income Tax (Central), Bangalore and Ors. Vs. M/s. Delhi International Airport Pvt. Ltd. and Ors.	(2022) 443 ITR 382 (Karnataka)
6.	Commissioner of Income Tax (Central)-III Vs. Kabul Chawla	(2016) 380 ITR 573 (Delhi)
7.	Principal Commissioner of Income Tax, Central -2, New	(2017) 395 ITR 526 (Delhi)

	Delhi Vs. Meeta Gutgutia	
8.	Chintels India Ltd. Vs. Deputy Commissioner of Income Tax – Circle -8, Delhi	(2017) 397 ITR 416 (Delhi)
9.	Sri. S.M. Kamal Pasha Vs. The Deputy Commissioner of Income-Tax Central Circle – 6 (3) (2) Bangalore	(2022 (8) TMI 966 (Karnataka)
10.	Principal Commissioner of Income Tax-2 Vs. Jay Infrastructure and Properties Pvt. Ltd.	2016 (10) TMI 1022 (Gujarat)
11.	Smt. Jami Nirmala Vs. Principal Commissioner of Income Tax	(2021) 437 ITR 573 (Orissa)
12.	Smt. Smrutisudha Nayak Vs. Union of India	(2021) 439 ITR 193 (Orissa)
13.	Commissioner of Income Tax, Kolkata Vs. Veerprabhu Marketing Limited	(2016) 388 ITR 574 (Calcutta)
14.	Principal Commissioner of Income Tax-2, Kolkata Vs. M/s. Salasar Stock Broking Ltd.	2016 (8) TMI 1131 (Calcutta)
15.	Pr. Commissioner of Income Tax-Central, Jaipur Vs. Smt. Daksha Jain, Sirohi	2019 (8) TMI 474 (Rajasthan)
16.	Dr. A.V. Sreekumar Vs. The Commissioner of Income Tax, Kochi and Assistant Commissioner of Income Tax, Calicut	(2018) 404 ITR 642 (Kerala)

5. We have heard learned counsel for the respective parties at length.

The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether

the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under Section 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132A, the assessment has to be done under Section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi

High Court in the case of ***Kabul Chawla (supra)***, which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of ***Saumya Construction (supra)***, which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of ***Pr. Commissioner Of Income Tax v. Mehndipur Balaji,*** **2022 SCC OnLine All 444 : (2022) 447 ITR 517** has taken a contrary view.

7.1 In the case of ***Kabul Chawla (supra)***, the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under:

> **Summary of the legal position**
>
> 38. 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 153A(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 153 A 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."

7.2 Thereafter in the case of ***Saumya Construction (supra)***, the Gujarat High Court, while referring the decision of the Delhi High Court in the case of ***Kabul Chawla (supra)*** and after considering the entire scheme of block assessment under Section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

> "15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A 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. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is

to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading “Assessment in case of search or requisition”. It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of

the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India)* v. *Asst. CIT* (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

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.

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961. The erstwhile scheme of block assessment under Section 158BA 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 158BA 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 153A came to be inserted and brought on the statute. Under Section 153A 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 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C 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 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 153A of the Act, 1961, 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. Section 153A of the Act 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 132-A 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 132-A, as the case may be, shall abate.
>
> (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 153-B and Section 153-C, 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."

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.

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of

the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021

15. Insofar as the aforesaid Civil Appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under Section 143(1)(a) or 143(3) of the Act, 1961 and to re-assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

Civil Appeal Nos. 15617/2017, 10267/2017, 10266/2017 & 10268/2017

16. Insofar as the aforesaid appeals filed by the assessee – Dayawanti through legal heir against the impugned common judgment and order dated 27.10.2016 passed by the High Court of Delhi at New Delhi in ITA Nos. 357/2015, 358/2015, 565/2015 and 566/2015. The

question before the High Court was, whether the Income Tax Appellate Tribunal was justified in upholding the addition made on the basis of the incriminating material during the course of search.

16.1 In view of the aforesaid discussion and the reasoning, all these appeals filed by the assessee – Dayawanti through legal heir fail and the same deserve to be dismissed and are accordingly dismissed. No costs.

……J.
[M.R. SHAH]

NEW DELHI;
APRIL 24, 2023.

……J.
[SUDHANSHU DHULIA]