



Newsflash

Supreme Court rules that no additions can be made u/s 153A for completed/unabated assessments in the absence of any incriminating material found during search u/s 132



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1. Background

- 1.1 In the case of ***Principal Commissioner of Income Tax-IV vs Abhisar Buildwell Private Limited***, the Hon'ble Supreme Court of India has ruled, while hearing a batch of appeals with common questions of law and facts, **that no additions can be made under section 153A of the Income-tax Act, 1961 ('ITA') for completed/unabated assessments in the absence of any incriminating material found during search**, reaffirming the principles laid down by the Hon'ble High Court of Delhi in the case of ***CIT (Central)-III vs. Kabul Chawl (2015) 61 taxmann.com 412 (Delhi)***.
- 1.2 The central issue in this batch of appeals was the scope of section 153A of the ITA. While hearing the case, the Supreme Court noted that some High Courts ruled that the assessing officer ('AO') is competent to consider all material on record, including that discovered during the search, and assess total income. However, according to some High Court decisions, if no assessment proceeding is pending on the date the search is initiated, the AO may consider only the incriminating material discovered during the search and is barred from considering any other material derived from any other source.
- 1.3 Section 153A empowers the AO to assess or reassess the 'total income' in cases where the search is carried out under section 132, or a requisition is made under section 132A. It provides a framework for conducting an assessment proceeding as a result of a search under section 132 or a requisition under section 132A of the Act. It further provides that assessment/reassessment pending on the date of search would abate and a single assessment would be under section 153A only.

2. Contentions of the Revenue

- 2.1 The main argument of the Revenue was that according to section 5, the total income of a resident assessee includes all income from whatever source derived and therefore, the AO is competent to consider all the material that is available on record, including that found during the search and assess 'total income'.
- 2.2 Further, the AO to determine the 'total income' needs to collect information from the assessee as well as third parties and search under section 132 is a tool for collecting

information relating to tax evasion by the assessee, and the information gathered from all of these sources, including search and seizure, is used to assess the total income. Therefore, if any taxable income is left out, the resultant figure would be partial income and not total income.

- 2.3 The revenue further contended that the term 'total income' used in section 153A requires the AO to assess or reassess the assessee's total income in the proceeding initiated under section 153A for six assessment years and is not limited to any undisclosed income or incriminating material only seized during a search under section 132 or requisition under section 132A.
- 2.4 It was also submitted that once a search or requisition is initiated, all pending assessments or reassessments would abate and get subsumed into section 153A and AO is required to pass separate order for the six-assessment years after assessing total income of the assessee and it is not only confined to any undisclosed income or to any incriminating material seized on account of initiation of search under section 132 or requisition under section 132A.
- 2.5 Therefore, in the absence of any statutory mandate, any interpretation that provides the scope of assessment under section 153A should be limited to the incriminating material found during the search is wholly erroneous and unsustainable.

3. Contentions raised by the Assessee

- 3.1 The provisions of section 153A only mandate assessing officers to assume jurisdiction to issue a notice under section 153A of the Act in consequent to search under section 132 or requisition under section 132A. However, jurisdiction to assess or reassess the income should not be assumed merely based on 'search' particularly when no incriminating material is unearthed during search.
- 3.2 The assessment proceeding 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 ITA.
- 3.3 The provisions of section 132 or section 132A can be resorted to where the assessee is not likely to disclose his income, or the specified officer has reason to believe that person is in possession of any money, bullion, jewellery or other valuable article or thing etc. which have not been disclosed by the assessee.
- 3.4 The provision providing limitation period for section 143 assessment gets defeated if revenue is permitted to reopen the completed assessment based on the material other than incriminating material found in search. Also, the same will render the expression "search" and "requisition" used in Section 153A otiose.

- 3.5 The search, and requisition is done under limited circumstances as provided in their respective section, 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.
- 3.6 The object of section 132 or section 132A is to unearth income which the assessee has not or is not likely to disclose. Therefore, section 153A should be interpreted in light of the object of these sections which is to bring under tax undisclosed income which is found during the course of or pursuant to the search or requisition.
- 3.7 Explaining the intention of the law, it was stated that AO only has power to make assessment in respect of assessments which were pending as on date of search and AO cannot disturb the assessment which has attained finality as there is no incriminating material unearthed during the search.

4. Decision by the Hon'ble Supreme Court ('SC')

- 4.1 The Apex court in its decision affirming the ruling of **Commissioner of Income Tax, Central-III v. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi)** and **Principal Commissioner of Income-Tax-IV vs. Saumya Construction Pvt. Ltd., (2016) 387 ITR 529 (Guj.)** held that no addition can be made in respect of completed assessment in absence of any incriminating material.
- 4.2 SC affirmed the contention of the assessee and stated that under new scheme of assessment of search cases, the intention of the legislation was to abandon the scheme of two parallel assessments and tax total income of the assessee i.e., undisclosed income as well as regular income at the normal rate of tax as against any special rate.
- 4.3 The assessment under section 153A is triggered by conducting of a valid search under Section 132 of the Act or requisition made under section 132A of the Act. The very purpose of the search, which is a prerequisite for invoking the provisions of sections 153A/153C, is detection of undisclosed income i.e., the income which cannot be detected in ordinary course of regular assessment. Accordingly, it can be construed that since the prerequisite of making assessment under section 153A of the Act is valid conduct of search under section 132 or requisition under section 132A.
- 4.4 Search is conducted where there is a possibility that the assessee has some undisclosed income which is not offered to tax by him or there is existence of any incriminating material. Therefore, it can be concluded that the foundation for making search assessments under Sections 153A/153C can be triggered only if there is existence of incriminating material showing undisclosed income detected as a result of search.

4.5 Providing the interpretation of section 153A of the Act, the SC stated that, in consequence of search assessment under section 153A of the Act, 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.

4.6 The intention of the legislature 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 the last six years preceding the search.

Therefore, as per true interpretation of section 153A of the Act, 1961, if during the search any incriminating material is found, the AO would have jurisdiction to assess or reassess the 'total income' taking into consideration such 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.

4.7 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.

4.8 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 based on 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.

4.9 Further, Revenue has filed a Miscellaneous Application seeking clarification to initiate the reassessment proceedings under section 147/148 of the Act. However, SC declined to entertain the said application and directed the Revenue to file an appropriate review petition.

5. Our comments

5.1 The Hon'ble Supreme Court's decision upholding the principles established by the Hon'ble High Court of Delhi in the case of Kabul Chawla provides significant relief to the assessee where the assessment was initiated under section 153A in response to a search under section 132 or requisition under section 132A and no incriminating material was discovered. However, the AO attempted to assess the entire income in the case of a completed assessment, which was nothing more than a review of its own order.

5.2 However, it is important to note that vide Finance Act 2021, in case of search, survey or requisition cases initiated or made or conducted, on or after 1st April 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment. Consequently, all the proceedings shall be required to be made under section 147 of the Act instead of section 153A and 153C of the Act.

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