आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 1031 & 1032/JP/2018
निर्धारण वर्ष/Assessment Year: 2010-11 & 2011-12

Rakesh Kumar Jain, Opp.- Jain Mandir, Om Vilas Building, Bal Mandir Road, Kota.	बनाम Vs.	D.C.I.T., Central Circle, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACWPJ 1914 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by: Shri P.C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख/ Date of Hearing : 26/09/2019
उदघोषणा की तारीख/ Date of Pronouncement : 30/09/2019

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the separate orders dated 22/06/2018 of ld. CIT(A)-2, Udaipur for the A.Y. 2010-11 and 2011-12.

2. Firstly, I take ITA No. 1031/JP/2018.

In this appeal, the assessee has raised following grounds of appeal:

"1. The ld. CIT(A) has erred on facts and in law in upholding the action of A.O. in treating the agricultural income of Rs. 96,000/- as income from other sources and thereby confirming the addition of the same.

1.1 The ld. CIT(A) has erred on facts and in law in confirming the above addition in the assessment framed U/s 153A even when the assessment proceedings for the year under consideration has not abated and no incriminating material relating to the same was found in search.

2. The assessee craves to amend, alter and modify any of the grounds of appeal.

3. The appropriate cost be awarded to the assessee."

3. Since the assessee has raised legal issue regarding the validity of addition made by the A.O. in the assessment proceedings U/s 153A of the Income Tax Act, 1961 (in short, the Act) for want of any incriminating material found or seized during the course of search and seizure action U/s 132 of the Act, therefore, the first issue of validity of addition made by the A.O. is taken up for consideration and adjudication. The assessee is an individual and subjected to the search and seizure action U/s 132(1) of the Act carried out on 03/3/2016 at various premises of Shubham Group, Kota to which the assessee belongs. Pursuant to the search and seizure action, the A.O. issued notice U/s 153A of the Act for six assessment years preceding the assessment year in which the search was conducted including the assessment year under consideration. The assessment was completed U/s 153A read with Section 143(3) of the Act on 05/12/2017 whereby the A.O. has made addition of Rs. 96,000/- on account of agricultural income treated the same as income from other

sources. The assessee challenged the action of the A.O. before the ld. CIT(A) and also raised issue of validity of addition for want of any incriminating material. However, the ld. CIT(A) rejected the said objection of the assessee on the ground that the Hon'ble supreme Court has admitted the SLP filed by the department in the case of Kabul Chawla and M/s All Cargo Global Logistics.

4. Before the Tribunal, the ld AR of the assessee has submitted that the original assessment for the year under consideration was not pending as on the date of search but it was concluded prior to the search and therefore, when no incriminating material was found and seized during the course of search indicating any undisclosed income or excess claim of agricultural income then the addition made by the A.O. by treating the agricultural income as income from other sources is not sustainable in law. In support of his contention, he has relied upon the various decisions as under:

(i) Jai Steel (India) Vs ACIT (2013) 88 DTR 1
(ii) Saumya Construction Pvt. Ltd. (2016 387 ITR 529 (Guj)
(iii) PCIT Vs Meeta Gutgutia (2017) 395 ITR 526 (Del)
(iv) ITAT Jaipur Bench in the case of Shri Banna Lal Jat Vs ACIT in ITA No. 474 to 476/JP2018, order dated 24/04/2019

5. On the other hand, the ld DR has relied upon the orders of the authorities below and submitted that once the A.O. is required to assessee or reassess the income for six assessment years immediate preceding to the assessment year in which search is conducted then the income which is found to be liable to tax is required assessment in the proceedings U/s 153A of the Act. There is no bar under the provisions of Section 153A that the A.O. again assess the income which came to his knowledge during the course of assessment proceedings.

6. I have considered the rival submissions as well as relevant material on record. There is no dispute that as on the date of search i.e. 3/3/2016, the assessment for the year under consideration was not pending and therefore, it is not a case of abatement of assessment. Consequently, under the provisions of Section 153A of the Act, the A.O. was required to reassess the income of the assessee. It is also not in dispute that no incriminating material either found or seized or reference was made by the A.O. in the assessment proceedings revealing any income assessable to tax which was declared by the assessee as agricultural income. Once the assessee has declared this income in the original return of income and the assessment was not completed as on the date of search then in absence of any incriminating material found or seized during the course of search and seizure action, no addition can be made by the A.O. in

respect of income already declared by the assessee in the original return of income. There are binding precedents on this issue including the judgment of the Hon'ble Jurisdictional High Court in the case of Jai Steel (India) Vs ACIT (supra) as well as the decision of Hon'ble Delhi High Court in the case of PCIT Vs Meeta Gutgutia (supra). This issue has been considered by the Coordinate Bench of this Tribunal in the case of Shri Banna Lal Jat Vs ACIT (supra) in para 5 as under:

"5. We have considered the rival submissions as well as the relevant material on record. The original return of income for the assessment years 2010-11 & 2011-12 were filed by the assessee on 29.09.2010 and 26.09.2011 declaring total income of Rs. 1,23,12,260/- and Rs. 1,60,73,870/- respectively. The return of income for the assessment year 2010-11 was processed U/s 143(1) and the return of income for the assessment year 20111-12 subjected to scrutiny assessment year U/s 143(3) of the Act vide order dated 25.03.2014. There was a search U/s 132 of the Act on 10.10.2014 in the case of the assessee. There is no dispute that as on the date of search the proceeding for the assessment years 2010-11 & 2011-12 were not pending and therefore, the assessment for these two years were not got abated by virtue of search and seizure action U/s 132 of the IT Act. It is also not in dispute that in the return of income filed U/s 139(1) of the Act the assessee declared the long term capital gain of Rs. 11,31,564/- and Rs. 8,53,677/- for the assessment years 2010-11 & 2011-12 respectively though the same was

claimed as exempt U/s 10(38) of the Act. Thus, the facts emerged from the record clearly manifest that the assessee declared these transactions of purchase and sale of shares and consequential long term capital gain in the original return of income filed U/s 139(1) of the Act for these two assessment years. Since, the assessment years 2010-11 & 2011-12 were not pending as on the date of search on 10.10.2014 therefore a question arises whether the addition can be made by the AO in the proceedings U/s 153A of the Act in the absence of any incriminating material indicated such undisclosed income. At the outset, we note that the Assessing Officer in the assessment order passed U/s 153A of the Act has not made any reference to any incriminating material found or seized during the course of search and seizure action, however the addition is made based on the statement of the assessee recorded U/s 132(4) of the Act. The AO has also not disputed that there was no incriminating material found or seized during the course of search and seizure action U/s 132 of the Act. However, the Assessing Officer has rejected the objection of the assessee by placing the reliance on the decision of the Hon'ble Kerala High Court in case of E.N. Gopakumar vs. CIT 75 taxmann.com 215. The relevant findings of the AO are as under:-

"It is also relevant to mention here that in the case of E.N. Gopakumar vs. Commissioner of Income-tax (Central) [2016] 75taxmann.com 215 (kerala), the Hon'ble High Court held that Assessment proceedings generated by issuance of a notice under section 153A(1)(a) can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in

search under section 132 onbasis of which notice was issued under section 153A(1)(a). Considering the decision of the Hon'ble High Court of Kerala (supra), the issue relating to exempted long term capital gain is considered while finalizing assessment u/s 143(3) r.w.s. 153A of the Act.

As the assessee has himself surrender the claim of exemption u/s 10(38) of the Act, such claim of the assessee of Rs. 11,31,564/- is disallowed and added back to the total income of the assessee."

The ld. CIT(A) though referred to various decisions relied upon the assessee on the point that no addition can be made in the reassessment framed U/s 153A of the Act in the absence of any incriminating material however, the ld. CIT(A) has confirmed the addition made by the AO on the ground that the SLP filed by the Revenue in case of Kabul Chawla, M/s All Cargo Global Logistics were admitted by the by the Hon'ble Supreme Court. We find that the Hon'ble Supreme Court in case of PCIT vs. Meeta Gutgutia 257 Taxman 441 (SC) has also dismissed the SLP filed by the Revenue against the decision of Hon'ble of Delhi High Court wherein the decision in case of Kabul Chawla was followed. There are series of decisions on this point by various Hon'ble High Courts including the jurisdictional High Court and therefore, the decisions which have not been reversed by the Hon'ble Supreme Court are binding precedent for this Tribunal as well as for the ld. CIT(A). Though the Assessing Officer can make the addition to keep the issue alive as the Revenue has challenged the same of the decisions before the Hon'ble Supreme Court. The Coordinate Bench of this Tribunal in case of DCIT vs. M/s

A.M. Exports (supra) while considering an identical issue has held in para 8 as under:-

"8. We have considered the rival submissions as well as relevant material on record. The first aspect involved in the matter is sustainability of the addition made by the Assessing Officer without any incriminating material found or seized during the course of search and seizure action. There is no dispute that the original return of income filed by the assessee U/s 139(1) of the Act on 11/10/2010 was not pending assessment as on the date of search on 03/4/2013. Therefore, the assessment was completed U/s 143(1) and it was not abated due to the search and seizure action U/s 132 of the Act on 03/4/2013. The order of the Assessing Officer is based on the statement of the assessee recorded U/s 132(4) of the Act and specifically the question No. 77. It is pertinent to note that during the course of search and seizure action, the statement of the assessee was being recorded from 04/4/2013 to 05/4/2013 and as many as 78 questions were put to the assessee. The statement of the assessee recorded U/s 132(4) runs into about 50 pages. The statement of the assessee was recorded from 12.00 noon on 04/4/2013 and continued up to 1.00 a.m. on 05/4/2013. After the break, the recording of statement again resumed at 7.50 a.m. on 05/4/2013 we note that up to question No. 67 were recorded on 04/4/2013 and up to 1.00 a.m. on 05/4/2013 and thereafter the statement of the assessee was again resumed in the morning of 05/4/2013 and continued up to question No. 78. It is manifest from the statement recorded U/s 132(4) of the Act that repeated questions were asked about the genuineness of the loans taken by the assessee during the financial year 2009-10 relevant to the assessment year under consideration and the assessee has given the answer and stated that all these loans are genuine and taken through banking channel and the assessee also repaid these loans prior to the date of the search. These transactions are very much part of the regular

books of account of the assessee. However, the search team again put question to the assessee as question No. 77 in which the assessee has stated that the assessee has checked the details of the loans from M/s Dipnarayan Vyapar Pvt. Ltd. for which the assessee received cash and the same was declared as undisclosed income for the year of the search. We find that prior to that the assessee was also asked question No. 34 to 36 and question No. 39. Even after the statement recorded U/s 132(4) of the Act, the Investigation Wing again summoned the assessee U/s 131 of the Act for conducting post search enquiry and the statement of the assessee was recorded on 30/05/2013 wherein in response to question No. 12, the assessee clarified that the earlier statement of the assessee in question No. 77 was not a correct statement regarding the loan taken from M/s Dipnarayan Vyapar Pvt. Ltd.. Thus, for understanding of the issue, all the relevant questions put to the assessee and answered to them are to be read conjointly. Hence, we quote question No. 34 to 36 and question No. 39 of assessee's statement recorded U/s 132(4) dated 04/4/2013 and question No. 77 of statement recorded U/s 132(4) on 05/4/2013 and question No. 12 and reply of the statement of the assessee recorded U/s 131 of the Act in post search investigation by the ADIT as under:-

प्र.34 *मैं आपसे आपकी भागीदारी फर्म ए.एम.एक्सपोटर्स बुक में निम्नलिखित अनसिक्योरर्ड लोन क्रेडिटर्स के लेजर दिखा रहा हूँ–*

(i) Interlink saving & finance Pvt. Ltd. 57 Adarsh Nagar, Rishikesh, dehradun, Uttranchal.

(ii) Parmatma Developers Pvt. Ltd., 101, Balaram Dey Street, Gr Floor, Kolkata

(iii) Rameshwar Finvest Pvt. Ltd., 101 Balaram Dey Street, Kolkata

(iv) Sri Ram Tie Up Pvt. Ltd., 2, Banarashi Ghosh, 2nd Bye Lane, Kolkata

(v) _____do _____

(vi) Tara Vinimay Pvt. Ltd., 101, Balaram Dey Street, G. Floor, Kolkata

(vii) Victor Project Pvt. Ltd., 2 Mullick Street, Ist Floor, Kolkata

(viii) Yatan Traders Pvt. Ltd., 62/1, Hriday Krishna Banerjee Lane, Howrah.

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In reply to the question No. 34, the assessee has clearly stated that the transaction of loan from all the parties were taken on interest in the F.Y. 2009-10 and these were repaid in the F.Y. 2011-12. Thereafter a specific question was put to the assessee regarding the loan taken from M/s Dipnarayan Vyapar Pvt. Ltd. as question No. 39 and in reply to the same, the assessee stated that the loan was taken about three years back on interest but the assessee was not able to remember the person through whom the loan was taken. Therefore, there was no ambiguity in the reply to question No. 39 except that the assessee was not able to tell the name of the person who helped the assessee in procuring the loan. Since the Investigation Wing was not satisfied with the answers of the assessee as they could not extract the statement which can be used against the assessee, therefore, question were continuously put to the assessee for two days and it is a matter of record that the assessee was grilled up to 1.00 a.m. on the night of 04/4/2013 and again restarted in the morning at 7.50 a.m. and the question No. 77 was again asked specifically regarding loan from M/s Dipnarayan Vyapar Pvt. Ltd. in reply to that the assessee has explained that after trying to remember for continuously for two days and hoping the cooperation from the department, he said that he received cash against the said loan which was declared as undisclosed income for the year of search. The Investigation Wing was still not satisfied with the statement of the assessee and again called the assessee for further investigation on 30/5/2013 and thereafter on 21/6/2013. The assessee was again put the question about the loan taken from M/s Dipnarayan Vyapar Pvt. Ltd., in reply, the

assessee explained that on repeated instances of the investigation team and due to exhausted mind, the assessee given an incorrect reply to question No. 77 recorded U/s 132(4) of the Act on 05/4/2013 and again stated that after verifying the books of account, the said loan was taken on interest and was also repaid both the transactions are through banking channel. Thus, having regard to the background of the circumstances in which statement of the assessee regarding said transaction of loan from M/s Dipnarayan Vyapar Pvt. Ltd. was recorded and finally statement recorded in post search inquiry we are of the view that the assessee finally clarified the issue in the statement recorded U/s 131 of the Act and therefore, there was no admission on the part of the assessee. Except the statement of partner of the assessee, there was nothing incriminating found or seized during the course of search and seizure action, therefore, the statement of the assessee recorded during the search and post search enquiry has to be read together and the outcome of the said statement is that the assessee has never admitted any bogus transaction except the misunderstanding due to continuous grilling by the Investigation Wing and due to mentally exhausted, the assessee given some inconsistent reply to question No. 77 which was subsequently clarified in question No. 12 of the statement recorded by the investigation Wing in the post search enquiry U/s 131 of the Act. Even otherwise, all these statements are only regarding one transaction of loan that cannot be applied to the entire transactions of loan taken from 12 parties. Therefore, except the statement of the assessee to question No. 77, which was subsequently clarified in question No. 12, there was nothing in the shape of any material or document much less incriminating material with the Assessing Officer to make the addition to the total income of the assessee. If the statement of the assessee is read in toto then there will be no admission regarding any of the loan transactions being an accommodation entry. Therefore, the question arises whether in absence of any incriminating

material, the Assessing Officer can make any addition to the total income of the assessee when the assessment was not abated due to the search and seizure action. The Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (supra) has considered and observed in para 37 and 38 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 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.*

Conclusion

38. *The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.*

Thus, the Hon'ble High Court has ruled that the Assessing Officer while making the assessment U/s 153A of the Act can make the addition only on the basis of some incriminating material unearthed during the course of search or requisition of documents, which were not produced or not already disclosed or made known in the course of original assessment. In the case in hand, all the transactions were duly recorded in the books of account. Even the loans were already paid during the F.Y. 2011-12 and therefore, these transactions were disclosed and known in the course of original assessment/return of

income. Hence in absence of any incriminating material, the Assessing Officer cannot make any addition to the total income of the assessee. In the subsequent decision, the Hon'ble Delhi High Court in the case of Pr.CIT Vs. Meeta Gutgutia (supra) has held in para 57 to 72 as under:

57. *The question whether unearthing of incriminating material relating to any one of the AYs could justify the re-opening of the assessment for all the earlier AYs was considered both in Anil Kumar Bhatia (supra) and Chetan Das Lachman Das (supra). Incidentally, both these decisions were discussed threadbare in the decision of this Court in Kabul Chawla (supra). As far as Anil Kumar Bhatia (supra) was concerned, the Court in paragraph 24 of that decision noted that "we are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We therefore express no opinion as to whether Section 153A can be invoked even under such situation". That question was, therefore, left open. As far as Chetan Das Lachman Das (supra) is concerned, in para 11 of the decision it was observed:*

"11. Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or Information available with the Assessing Officer which can be related to the evidence found. This, however, does not mean that the assessment under Section 153A 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."

58. *In Kabul Chawla (supra), the Court discussed the decision in Filatex India Ltd. (supra) as well as the above two decisions and observed as under:*

"31. What distinguishes the decisions both in CIT v. Chetan Das Lachman Das (supra), and Filatex India Ltd. v. CIT-IV (supra) in their application to the present case is that in both the said cases there was some material unearthed during the search, whereas in the present case there admittedly was none. Secondly, it is plain from a careful reading of the said two . decisions that they do not hold that additions can be validly made to income forming the subject matter of completed assessments prior to the search even if no incriminating material whatsoever was unearthed during the search.

32. Recently by its order dated 6th July 2015 in ITA No. 369 of 2015 (Pr. Commissioner of Income Tax v. Kurele Paper Mills P. Ltd.), this Court declined to frame a question of law in a case where, in the absence of any incriminating material being found during the search under Section 132 of the Act, the Revenue sought to justify initiation of proceedings under Section 153A of the Act and make an addition under Section 68 of the Act on bogus share capital gain. The order of the CIT (A), affirmed by the ITAT, deleting the addition, was not interfered with."

59. *In Kabul Chawla (supra), the Court referred to the decision of the Rajasthan High Court in Jai Steel (India) v. Asstt. CIT [2013] 36 taxmann.com 523/219 Taxman 223. The said part of the decision in Kabul Chawla (supra) in paras 33 and 34 reads as under:*

'33. The decision of the Rajasthan High Court in Jai Steel (India), Jodhpur v. ACIT (supra) involved a case where certain books of accounts and other documents that had not been produced in the course of original assessment were found in the course of search. It was held where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration while

computing the total income under Section 153A of the Act. The Court then explained as under:

"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."

34. The argument of the Revenue that the AO was free to disturb income de hors the incriminating material while making assessment under Section 153A of the Act was specifically rejected by the Court on the ground that it was "not borne out from the scheme of the said provision" which was in the context of search and/or requisition. The Court also explained the purport of the words "assess" and "reassess", which have been found at more than one place in Section 153A of the Act as under:

"26. The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess'-have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word assess has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as

they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents."

60. *In Kabul Chawla (supra), the Court also took note of the decision of the Bombay High Court in CIT v. Continental Warehousing Corpn (Nhava Sheva) Ltd. [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.) which accepted the plea that if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment under Section 153A and 153C of the Act. The legal position was thereafter summarized in Kabul Chawla (supra) 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 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."*

61. *It appears that a number of High Courts have concurred with the decision of this Court in Kabul Chawla(supra) beginning with the Gujarat High Court in Saumya Construction (P.) Ltd. (supra). There, a search and seizure operation was carried out on 7th October, 2009 and an assessment came to be framed under Section 143(3) read with Section 153A(1)(b) in determining the*

total income of the Assessee of Rs. 14.5 crores against declared income of Rs. 3.44 crores. The ITAT deleted the additions on the ground that it was not based on any incriminating material found during the course of the search in respect of AYs under consideration i.e., AY 2006-07. The Gujarat High Court referred to the decision in Kabul Chawla (supra), of the Rajasthan High Court in Jai Steel (India) (supra) and one earlier decision of the Gujarat High Court itself. It explained in para 15 and 16 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 or 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 connected With something round 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.

** ** **

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of an the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as. the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court In the case of CIT v. Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be

disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years ; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.'

62. *Subsequently, in Devangi alias Rupa (supra), another Bench of the Gujarat High Court reiterated the above legal position following its earlier decision in Saumya Construction (P.) Ltd. (supra) and of this Court in Kabul Chawla (supra). As far as Karnataka High Court is concerned, it has in IBC Knowledge Park (P.) Ltd.(supra) followed the decision of this Court in Kabul Chawla (supra) and held that there had to be incriminating material qua each of the AYs in which additions were sought to be made pursuant to search and seizure operation. The Calcutta High Court in Salasar Stock Broking Ltd. (supra), too, followed the decision of this Court in Kabul Chawla (supra). In Gurinder Singh Bawa (supra), the Bombay High Court held that:*

"6. . . . . once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

63. *Even this Court has in Mahesh Kumar Gupta (supra) and Ram Avtar Verma (supra) followed the decision in Kabul Chawla (supra). The decision of this Court in Kurele Paper Mills (P.) Ltd. (supra) which was referred to in Kabul Chawla (supra) has been affirmed by the Supreme Court by the dismissal of the Revenue's SLP on 7th December, 2015.*

The decision in Dayawanti Gupta

64. *That brings us to the decision in Smt. Dayawanti Gupta (supra). As rightly pointed out by Mr. Kaushik, learned counsel appearing for the Respondent, that there are several*

distinguishing features in that case which makes its ratio inapplicable to the facts of the present case. In the first place, the Assessees there were engaged in the business of Pan Masala and Gutkha etc. The answers given to questions posed to the Assessee in the course of search and survey proceedings in that case bring out the points of distinction. In the first place, it was stated that the statement recorded was under Section 132(4) and not under Section 133A. It was a statement by the Assessee himself. In response to question no. 7 whether all the purchases made by the family firms, were entered in the regular books of account, the answer was:

"We and our family firms namely M/s. Assam Supari Traders and M/s. Balaji Perfumes generally try to record the transactions made in respect of purchase, manufacturing and sales in our regular books of accounts but it is also fact that some time due to some factors like inability of accountant, our busy schedule and some family problems, various purchases and sales of Supari, Gutka and other items dealt by our firms is not entered and shown in the regular books of accounts maintained by our firms."

65. *Therefore, there was a clear admission by the Assessees in Smt. Dayawanti Gupta (supra) there that they were not maintaining regular books of accounts and the transactions were not recorded therein.*

66. *Further, in answer to Question No. 11, the Assessee in Smt. Dayawanti Gupta (supra) was confronted with certain documents seized during the search. The answer was categorical and reads thus:*

"Ans:- I hereby admit that these papers also contend details of various transactions include purchase/sales/manufacturing trading of Gutkha, Supari made in cash outside Books of accounts and these are actually unaccounted transactions made by our two firms namely M/s. Asom Trading and M/s. Balaji Perfumes."

67. *By contrast, there is no such statement in the present case which can be said to constitute an admission by the Assessee of a*

failure to record any transaction in the accounts of the Assessee for the AYs in question. On the contrary, the Assessee herein stated that, he is regularly maintaining the books of accounts. The disclosure made in the sum of Rs. 1.10 crores was only for the year of search and not for the earlier years. As already noticed, the books of accounts maintained by the Assessee in the present case have been accepted by the AO. In response to question No. 16 posed to Mr. Pawan Gadia, he stated that there was no possibility of manipulation of the accounts. In Smt. Dayawanti Gupta (supra), by contrast, there was a chart prepared confirming that there had been a year-wise non-recording of transactions. In Smt. Dayawanti Gupta (supra), on the basis of material recovered during search, the additions which were made for all the years whereas additions in the present case were made by the AO only for AY 2004-05 and not any of the other years. Even the additions made for AYs 2004-05 were subsequently deleted by the CIT (A), which order was affirmed by the ITAT. Even the Revenue has challenged only two of such deletions in ITA No. 306/2017.

68. *In para 23 of the decision in Smt. Dayawanti Gupta (supra), it was observed as under:*

"23. This court is of opinion that the ITAT's findings do not reveal any fundamental error, calling for correction. The inferences drawn in respect of undeclared income were premised on the materials found as well as the statements recorded by the assessees. These additions therefore were not baseless. Given that the assessing authorities in such cases have to draw inferences, because of the nature of the materials - since they could be scanty (as one habitually concealing income or indulging in clandestine operations can hardly be expected to maintain meticulous books or records for long and in all probability be anxious to do away with such evidence at the shortest possibility) the element of guess work is to have some reasonable nexus with the statements recorded and documents seized. In tills case, the differences of opinion between the CIT (A) on the one hand and the AO and ITAT on the other cannot be the sole basis for

disagreeing with what is essentially a factual surmise that is logical and plausible. These findings do not call for interference. The second question of law is answered again in favour of the revenue and against the assessee."

69. *What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.*

70. *The above distinguishing factors in Smt. Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.*

71. *For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.*

Conclusion

72. *To conclude:*

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04?

(ii) Question (ii) is answered in the affirmative i.e., in favour of the Assessee and against the Revenue. It is held that with reference to AY 2004-05, the ITAT was correct in confirming the orders of the

CIT (A) to the extent it deleted the additions made by the AO to the taxable income of the Assessee of franchise commission in the sum of Rs. 88 lakhs and rent payment for the sum of Rs. 13.79 lakhs?

The said decision of Hon'ble High Court was challenged by the revenue before the Hon'ble Supreme Court, however, the SLP of the revenue was dismissed vide order dated 02/7/2018 reported supra. Thus, the Hon'ble High Court has reiterated its view as taken in the case of CIT Vs. Kabul Chawla (supra) and specifically held that once the assessment has attained the finality i.e. is not pending then the same cannot be subject to tax in proceedings U/s 153A of the Act except some incriminating material are gathered in course of search or during the proceedings U/s 153A of the Act. The Hon'ble Jurisdictional High court in the case of Jai Steel (India) Vs ACIT (supra) has also considered this issue in para 22 to 26 as under:

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.

25. *The argument of the learned counsel that the AO is also free to disturb income, expenditure or deduction de hors the incriminating material, while making assessment under Section 153A of the Act is also not borne out from the scheme of the said provision which as noticed above is essentially in context of search and/or requisition. The provisions of Sections 153A to 153C cannot be interpreted to be a further innings for the AO and/or assessee beyond provisions of Sections 139 (return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263 (revision of orders) of the Act.*

26. *The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or*

making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.

Thus, the Hon'ble High Court has held that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents. The ld. CIT(A) has decided this issue in para 7 to 7.7 as under:

"7. I have perused the order of the AO and submissions made in this regard. I have also gone through the various case laws cited by the AR. For the sake of convenience the legal ground is adjudicated 1st as it goes to the root of the matter.

7.2 In support of the additional ground taken/ contention raised detailed written submission are made wherein the appellant has challenged the legal validity of the addition made in the order framed u/s 143(3)/153A. It is submitted that such additions cannot be made as they are not relatable to any incriminating seized material found during the course of search. The appellant has cited following judgments in support of the contention taken:

1) Jay Steel limited vs. ACIT (88 DTR 1) [Raj HC]
2) Kabul Chawla vs. ACIT 380 ITR 573 (Del HC)
3) Continental warehousing Corporation 374 ITR 645 etc.

7.3 I have perused the order of the AO and submissions made in this regard. Perusal of assessment order passed u/s 143(3)/153A shows that all the additions made by the AO are not relatable to any seized material. I also find that for the A.Yr the assessment stood completed on the date of search.

7.4 The issue of additions made by the AO in the assessment u/s 143(3)/153A without any reference to incriminating seized material was considered by the Hon'ble Rajasthan High court in the case of ***Jai Steel limited vs. ACIT (88 DTR 1).*** *The*

Hon'ble court was of the view in case of completed assessments no addition can be made if no incriminating seized material is found during the course of search. The relevant observation of the judgment is reproduced below:

"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 just In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or 13 D.B. INCOME TAX APPEAL NO.53/2011 Jai Steel (India), Jodhpur vs. Assistant Commissioner of income Tax, Jodhpur (Along with other 16 similar matters) reassessment can be made."

7.5 Similar view point was expressed by the Hon'ble Delhi High court in the case of ***Kabul Chawla vs. ACIT 380 ITR 573 (Del HC).*** *The relevant observation of Hon'ble court could be seen in para 37 & 38 of order, same is reproduced below:*

Para 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 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.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.0n the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

7.6 The issue of additions made by the AO while framing the assessment u/s 143(3)/153A, if no incriminating material is found during the course of search was considered by Hon'ble Gujarat High court in the case of Soumya construction PL Vs CIT 387 ITR 529. In its order dated 14/03/2016 Hon'ble court has categorically stated that, in cases of completed assessment, if no incriminating material is found then no additions can be made in the assessment framed u/s 153A of the act. The relevant para no. 18 8s 19 of the court order can be referred to.

Similar view of also taken in the following judgments, including by Hon'ble Jaipur ITAT Hon'ble ITAT Jaipur in many cases:

a. Continental warehousing Corporation 374 ITR 645
b. PCIT vs. Meeta Gutgutia 152 DTR 153
c. Vijay Kumar D Agarwal V/s DCIT in IT(SS)A Nos. 153,154,155 & 156/Ahd/2012

d. Ratan Kumar Sharma vs. DCIT ITA 797 & 798 /Jaipur/2014
e. Vikram Goyal vs. DCIT ITA 174/Jaipur/2017 etc
f. Jadau Jewellers & Manufacturer PL Vs ACIT (686/Jaipur/2014)
g. Prateek Kothari Vs. ACIT (312/Jaipur/2015.

7.7 Considering the above I am of the view that as the additions made by AO are without any reference to the seized material, they are not legally tenable. The same are therefore directed to be deleted. The legal ground taken by the appellant is thus allowed. The appellant succeeds on legal ground."

In view of the above facts and circumstances as well as in the light of binding precedents as discussed in the forgoing paragraphs, we do not find any error or illegality in the impugned order of the ld. CIT(A) qua this issue."

Thus, it is clear that this Tribunal is taking a consistent view by following various binding precedents that in absence of any incriminating material found or seized during the course of search, the addition cannot be made by the A.O. in the proceedings U/s 153A of the Act when the assessment for the year under consideration was not pending as on the date of search. Thus, following the earlier decision of this Tribunal as well as judgment of the Hon'ble Jurisdictional High Court and the other judgments relied upon by the ld AR, I hold that the addition made by the A.O. on account of agricultural income treating the same as income from other sources in absence of any incriminating material is not sustainable and the same is deleted.

7. Since the facts and circumstances of the appeal being ITA No. 1032/JP/2018 for the A.Y. 2011-12 are identical to the appeal for the A.Y. 2010-11, therefore, the finding given in the appeal for the A.Y. 2010-11 shall apply mutatis mutandis to the A.Y. 2011-12.

8. In the result, both these appeals of the assessee are allowed.

Order pronounced in the open court on 30th September, 2019

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 30th September, 2019
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- Shri Rakesh Kumar Jain, Kota.
2. प्रत्यर्थी/ The Respondent- The D.C.I.T., Central Circle, Kota.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 1031 & 1032/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar