

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA**

**[Coram : Bhavnesh Saini JM and Pramod Kumar AM]**

I.T.A. No.: 92/Agra/2014  
Assessment year: 2005-06

**Deputy Commissioner of Income Tax  
Central Circle, Agra**

.....**Appellant**

**Vs.**

**Kalyani Chaturvedi**  
505, Vaibhav Exotica,  
Surya Nagar, Agra [ PAN : ACUPC6044Q]

.....**Respondent**

**Appearances by:**

Waseem Arshad, *for the appellant*  
Prarthana Jalan, *for the respondent*

Date of concluding the hearing : June 20, 2014  
Date of pronouncing the order : July 04, 2014

**O R D E R**

**Per Pramod Kumar:**

1. This appeal, filed by the Assessing Officer, is directed against the order dated 11<sup>th</sup> October 2013, passed by learned CIT(A) in the matter of assessment under section 153 A of the Income Tax Act, 1961, for the assessment year 2005-06.

2. Grievances raised by the appellant Assessing Officer are as follows:

*"1. That the Ld. CIT(A), has erred in law and on facts in deleting the additions without appreciating the fact that the additions were made on the basis of seized papers containing unexplained expenditure/investment.*

*2. That the Ld. CIT(A) has erred in incorrectly applying the provision of decision 153A of the Act which provide the re-assessment of income for any relevant applicable year irrespective of the fact that there has been any relevant new material or not.*

*3. That the Ld. CIT(A) has erred in incorrectly applying the ratio of decision of Hon'ble High Court of Allahabad in the case of CIT vs. Smt. Shaila Agarwal reported at (2011) 346 ITR 146 where it was applicable with regards to 'abatement' of completed assessments only.*

4. That the Ld. CIT(A) has erred in law in deleting the addition without adjudicating on the merits of the assessment completed u/s 153A even though there was a valid search which has not been challenged.

5. That the Ld. CIT(A) has erred in law and facts in interpreting the content of section 147 regarding reason to believe into section 153 of the Act.

6. That the CIT(A) has exceeded the powers granted as per provision of section 251 by passing an order which is not in accordance with the explicit provision of section 153A of the I.T. Act, which he was duty bound to follow. The CIT(A) did not have any writ jurisdiction so as to enable him to travel beyond the power vested to him as per I.T. Act.

7. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.

8. That the appellant craves leave to add or amend any one or more of the ground of appeal as stated above as and when need for doing so may arise.”

3. To adjudicate on this appeal, only a few material facts need to be taken note of. A search was conducted on the assessee's premises on 24<sup>th</sup> February 2010. The present assessment order was passed as a result of these search proceedings. On the basis of certain entries, the Assessing Officer noted that the assessee has made investments of Rs 58,25,000 in certain properties. When Assessing Officer required the assessee to explain this investment, it was pointed out by the assessee that in the said investment was subject matter of original assessment proceedings and that the facts and circumstances of the case are totally identical. The AO was not impressed with this argument and he was of the view that only a sum of Rs 28,11,200 was considered as explained and the balance amount of Rs 30,13,800 deserves to be added to the income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) who deleted the additions so made by the Assessing Officer, and, while doing so and *inter alia*, observed as follows:

*7.3 I have considered the above facts of the case and the submission of the Ld. AR filed explaining the peculiar facts and circumstances of the case under which, three assessment orders have been passed for the same assessment year considering the same material and seized documents found during a search and seizure operation conducted in 2004 but for passing of three assessment orders, basis for first assessment order is made the first search operation conducted on 16.09.2004, for second assessment order, the case was reopened u/s 147 on the basis of same seized document that has already been considered while passing the first search order and the basis for third order has been made the second search operation but the income has been determined in the similar manner as it was done in the second order*

passed u/s 147 without discussing any fresh evidence found during the second search operation. In the order under appeal passed u/s 153A which is passed after second search operation conducted on 24.02.2010, no finding of the AO has been given with respect to any material found during the second search operation on the basis of which, he has again made the similar addition, which have already been made in the second assessment order passed u/s 147/143(3). As per the second proviso of section 153A, only the assessment or reassessment pending on the date of initiation of search u/s 132 shall abate. In this case, the search has taken place on 24.02.2010 much after the date of passing of the first search assessment order dated 29.12.2006 and the reopening was done on 30.03.2010 which is after the date of search. Therefore, on the date of search, no assessment proceeding for the assessment year under consideration was pending and hence, the issue considered in original assessment order could not have abated in the proceeding initiated u/s 153A after second search, unless any fresh material relating to these issues could have been gathered during second search operation but in the impugned assessment order relating to search assessment based on second search operation, the AD has not discussed any material as found during that search operation which could have justified for making of the same addition which had already been made in the assessment order dated 10.12.2010 passed u/s 147/143(3).

A circular No.7 of 2003 dated 05.09.2003 has been issued by the CBDT to explain the new procedure of search assessment as contained in section 153A/153C. In this circular, it has been clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search u/s 132 or requisition u/s 132A shall not abate. After relying on this circular, the Ahmedabad Bench of Hon'ble Tribunal in the case of **Meghmani Organics Ltd. Vs. Dy. Commissioner of Income Tax 129 TTJ 255 (Ahd)**, has clarified about not abating the completed assessment pending in appeal, revision or rectification and further relied on the decision of Hon'ble Supreme Court in case of **Purushottam Pottery Works Co. Ltd. Vs. ITO 106 ITR 1 (SC)**, for proper familiarization with law and another case of **CIT Vs. Sun Engineering Works (P) Ltd. (1992) 198 ITR 297 (SC)**, in which, it was held that the scope of reassessment is only with regard to the income escaping assessment and **the matter which have attained finality in original assessment cannot be re-agitated in reassessment proceeding and then after relying on these two decisions, it has been held by the Hon'ble Tribunal that if the assessee is precluded from re-agitating the issue in reassessment proceeding, in similar fashion, the AO is also precluded from re-agitating the issue which has attained finality in original assessment proceedings.** The original assessment proceedings are subject to further appeals. Therefore, as per section 153A, the same has not abated. Therefore, AO is precluded from re-agitating the issues that have attained finality in original assessment proceedings, though pending in for appeals. As far as the AO is concerned, his jurisdiction is ousted and is a "functus officio" as far as the original assessment is concerned.

In view of the above decision of Hon'ble Ahmedabad Tribunal and after reading the provisions of second proviso of section 153A along with circular no. 7 of 2003 of CBDT, it is very clear that the concluded issues in a original assessment, which has already been passed on the date of initiation of search & seizure operation u/s 132, cannot be re-agitated in search assessment u/s 153A unless any material relating to such issues has been found during search. **The Hon'ble ITAT Kolkata Bench in the case of LMJ International Ltd. Vs. CIT 119 TT J 214** has also held that where nothing incriminating is found in the course of search relating to any assessment years, the assessment for such years cannot be disturbed.

4. The Assessing Officer is aggrieved of the relief so granted by the learned CIT(A) and is in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

6. A plain look at the grounds of appeal shows that the Assessing Officer has challenged the order of the learned CIT(A) only on the jurisdictional issues whereas the relief is granted by the learned CIT(A) on merits as well. No doubt, as reproduced above, learned CIT(A) has decided the issue on jurisdictional issue, in favour of the assessee, but he did not leave it at that. In the end, and without prejudice to this decision, he decided the matter on merits in favour of the assessee as well. In these circumstances, and without a specific challenge to action of the CIT(A) on merits, the very appellate exercise is an exercise in futility. The appeal filed by the Assessing Officer must fail for this reason alone. In any event, the issue in appeal, on jurisdictional issue, seems to be covered in favour of the assessee by a coordinate bench of this Tribunal in the case of ACIT Vs KS Food Products ( ITA No. 519/Agra/2012; order dated 17<sup>th</sup> May 2013). We have noted that on the same issue the Assessing Officer had made an addition in the original assessment order under section 143(3) dated 29.12.2006 and the said addition was deleted by the learned CIT(A). The matter travelled further in appeal before this Tribunal, and the view so taken by the CIT(A) was upheld. The matter did not rest there. The assessment was reopened and a reassessment order under section 148 r.w.s. 143(3) was also passed on 10<sup>th</sup> December 2010, and the same issue was raised again, but this exercise also met the same fate once again. The

Assessing Officer has, in this backdrop, racked up the same issue yet again in the impugned order under section 153 A but then no fresh or incriminating material is found in this search proceedings either. Clearly, the scheme of Section 153 A does not permit such an exercise by the Assessing Officer. Learned Departmental Representative has not been able to point out our attention to any judicial precedent to support his case or demonstrate as to how the addition in respect of those very issues, which have received finality earlier and in respect of which no new or incriminating material is found, can be taken up in the course of proceedings under section 153 A on the basis of this search. In view of these discussions, as also bearing in mind entirety of the case, we approve very well reasoned conclusions arrived at by the learned CIT(A), and decline to interfere in the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today on 4<sup>th</sup> day of July, 2014.

Sd/-

**Bhavnes Saini**  
(Judicial Member)

Sd/-

**Pramod Kumar**  
(Accountant Member)

***Agra, the 4<sup>th</sup> day of July 2014.***

Copies to : (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *The Departmental Representative*  
(6) *Guard File*

*By order etc*

*Senior Private Secretary*  
*Income Tax Appellate Tribunal*  
*Agra bench, Agra*