

IN THE SUPREME COURT OF INDIA

CIVIL/CRL/APPELLATE/ORIGINAL JURISDICTION

XIV-A

SPECIAL LEAVE PETITION (CIVIL/CRL.) No. OF 202

CIVIL/CRIMIAL/APPEAL/WRIT PETITION No. 6580 OF 2021

CIVIL/CRIMINAL/MISC. PETITION No. OF 202

IN THE MATTER OF :

.....PETITIONER(S)
Pr. C.I.T

VERSUS.....
Abhisar Bhatnagar P. Uel.
RESPONDENT (S)

INDEX

SI. No.	Particulars	Copies	Court Fees
1.	<i>Filing An Application for</i>		<i>120/-</i> <i>10/-</i>
2.	<i>Clarification of the</i>		
3.	<i>Judgment Dated: 21/1/23</i>		
4.	<i>for Petitioner</i>		
5.	<i>with v/A</i>		
6.			
7.	<i>Mr. Anbhog Kumar Sinha Adv.</i>		
8.			
9.			
10.			

TOTAL Rs.

130
[Raj Bahadur Yadav]

Advocate for the Petitioner(s)/Respondent(s)
 Appellant(s)/Caveator/Intervenor
 Central agency Section

New Delhi

Sohn - 21/1/2023

Dated :

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL/APPELLATE/ORIGINAL JURISDICTION
CIVIL/CRIMINAL//W.P./T.P. APPEAL NO. OF 20

Principal Commissioner of Income Tax Petitioner (s)

Abhishek Buidwell P Ltd. Respondent (s)

VAKALATNAMA

The President of India do hereby appoint and retain Raj Bahadur Yadav, Advocate for the Supreme Court for the aforesaid Petitioner/Appellant/Respondent to act and appear in the above Petition/Appeal and on behalf of the said Petitioner/Appellant/Respondent to conduct and prosecute the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in Taxation and application for review, to file and obtain return of documents and to deposit and receive to respond him to take all necessary steps on behalf of the said Petitioner/Appellant/ Respondent in the above matter. The president of India agrees to rectify all acts done by the aforesaid Advocate in pursuance of this Authority.

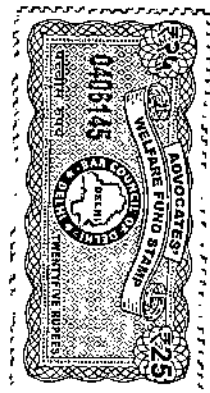
IN WITNESS WHEREOF these presents are duly executed by the Secretary to the Government of India.

Accepted & Identified.

Raj Bahadur Yadav,
Advocate on Record
Supreme Court of India
Central Agency Section

MEMO OF APPEARANCE

Abhishek Tripathy
Dy. Director of Income Tax
(L & R) Supreme Court Cell
New Delhi



To,

The Registrar,
Supreme Court of India,
New Delhi.

Sir,

Please enter my appearance for the above-named Petitioner (s) - Plaintiff(s) - Defendant(s)/- Opposite Party-Respondent (s) -Appellant (s) - in the above mentioned Petition-Case-Appeal-Matter.

Raj Bahadur Yadav
Yours faithfully,
(Raj Bahadur Yadav)
Advocate, Supreme Court of India
Central Agency Section

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MA OF 2023

IN

CIVIL APPEAL NO 6580 OF 2021

IN THE MATTER OF:

Principal Commissioner of Income Tax

... Appellant

Versus

Abhisar Buildwell P Ltd

... Respondent

AN APPLICATION FOR CLARIFICATION OF THE

JUDGMENT DATED 24.04.2023

ON BEHALF OF THE APPELLANT

Paper Book

(For Index Kindly See Inside)

ADVOCATE FOR THE APPELLANT: RAJ BAHADUR YADAV

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2.	Annexure P1 True copy of the judgment rendered by this Hon'ble Court on 24.04.2023 in Civil Appeal 6580 of 2021 and connected matters in the case of <i>Principal Commissioner of Income Tax v. Abhisar Buildwell P Ltd</i>	10-68

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MA OF 2023

IN

CIVIL APPEAL NO 6580 OF 2021

IN THE MATTER OF:

Principal Commissioner of Income Tax

... Appellant

Versus

Abhisar Buildwell P Ltd

... Respondent

AN APPLICATION FOR CLARIFICATION OF THE JUDGMENT DATED

24.04.2023 ON BEHALF OF THE APPELLANT

To The Hon'ble Chief Justice of India

And His Companion Justices of the

Hon'ble Supreme Court of India

The Humble Application of the

Appellant Above Named

MOST RESPECTFULLY SHOWETH:

1. This Hon'ble Court had delivered an important judgement having an all-India ramification in a batch of Income Tax matters, on 24.04.2023 the lead matter being CA No. 6580 of 2021, *Principal Commissioner of Income Tax Central – III v. Abhisar Buildwell Pvt. Ltd.* A copy of the judgment is annexed herewith and marked as **Annexure P1 (Pages 10 to 68)**.

2. Through Para 14 of the said judgement this Hon'ble Court had concluded as under:

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 assessment/ 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.

3. It is a common fact that in all these proceedings besides incriminating materials found during the search, there may also be material which the AO would have found from other sources and which may require addition and such additions have in fact been made in the assessment proceedings already as part of the 153A assessment. There may be cases where during the course of the assessment proceedings under 153A, the AO or the appellate authorities may come to a conclusion that in a given case no incriminating materials was found during the search. In such cases, as per the ratio laid down by this Hon'ble Court, the addition based on material found otherwise than during the search may not survive and the AO would have to take recourse to the provision of section 147 of the Act in order to assess such income.

4. Considering this fact, this Hon'ble Court while upholding the aspect that the 153A proceedings should fail in the absence of incriminating materials found during the search, had also saved the powers of assessment for rest of the issues in the following manner.

5. Vide paragraph 11, this Hon'ble Court had held as follows:

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.

6. Again vide para 14 sub clause 4 this Hon'ble Court had concluded as under:

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

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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.

7. Two aspects are evidently clear from this judgement.

a) If no incriminating material was found during the search, proceedings under Section 153A would fail in cases where no assessment/reassessment proceeding was pending on the date of initiation of the search.

b) In such cases, the AO would have recourse to the provision of Section 147 of the Act for assessing income based on material coming to the AO's notice otherwise than during the search.

8. This Hon'ble Court has rejected the contention of the Revenue that, even in cases where no incriminating material had been found during the search, the AO should make complete assessment of 'total income' including income based on material coming to the AO's notice from sources other than the search. While doing that, however, it has also saved the AO's power to do assessment under Section 147/148 for assessing such income.

9. It is in these circumstances the Revenue is moving this petition seeking clarification before this Hon'ble Court. It is a matter of fact that the amended Section 153A came into force in 2003 till it got substituted in 2021. Assessments therefore under 153A could have been passed during this period covering almost 18 years. Having initiated proceedings under Section 153A the assessing officers would have completed the proceedings by bringing to tax such incomes the source materials of which could have been gathered by the AO other than the search and inspite of having found no incriminating materials, would have completed the assessments under section 153A

bringing these incomes to tax, since the AO was under a *bona fide* belief that all incomes must be part of the assessment made under section 153A.

10. This judgement rendered by this Hon'ble Court had quite rightly taken cognisance of this fact and had therefore saved the same under S.147/148 of the Act. However the findings in paragraph 11 and 14 needs little more clarity as to whether the same would cover all assessments done so far under 153A and such of those incomes which are outside the ambit of incriminating materials seized during the search.

11. This should not be left to either the revenue or the assesseees for further interpretation as that would again generate fresh set of litigations which would again be carried for decades to attain finality.

12. This Hon'ble Court having found the need to save the power to assess such incomes other than those on which no incriminating material was found during search, the necessary machinery provision also should be saved and protected for all these assessment orders passed so far as there may be issues of limitation and procedure which may come into question.

13. Section 150 of the Income tax act provides for cases where assessment is to be carried out in pursuance of an order on appeal. The section provides as follows:

"150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."

Essentially, there is power available under the Act to the AO to make an assessment or reassessment or recomputation in consequence of or to give effect to any finding



or direction contained in an order passed by a Court. This power is limited to the extent that no such assessment or reassessment or recomputation can be made now if it could not have been made at the time the order which was the subject-matter of the appeal was made. The power saved by this Hon'ble Court in the instant judgement to assess the income other than those on which no incriminating material was found during search should be exercisable in the context of Section 150 of the Act.

14. This Hon'ble Court had disposed off yet another batch on 25.04.2023 (Civil Appeal 6634 of 2021 being the lead matter) against appeals filed by the Revenue where assessments had been passed under Section 153C of the Act. This Hon'ble Court while dismissing the Revenue appeals had again saved the power to assess or reassess such of those incomes which are outside the ambit of those wherein no incriminating material was found during the search either in the hands of the assessee or third parties. Since the issue relating to income which are otherwise taxable and gathered by the AO from other sources other than incriminating material during the search either in the premises of the assessee or third parties, this aspect remains common for assessments both under Section 153A and Section 153C.

PRAYER

15. In the light the above, the Revenue most respectfully seeks and prays for the following clarifications for such assessments passed under Section 153A and 153C of the Income Tax Act;

a) This Hon'ble Court may clarify that the waiver of limitation as stipulated in section 150(2) is to be read in respect of the date of issue of notice for reassessment under section 148 (i.e.) if as on the date the assessment under section 153A or section 153C was passed, a notice under section 148 could have been issued as per the law then in force, then fresh proceedings for reassessment of such income not arising from the incriminating material found in search can now be initiated pursuant to the findings of this Hon'ble Court in the present appeals/application and may further clarify as follows:

(i) that the findings in para 11 and 14 would apply to all the proceedings pending in all the forums including before this Hon'ble Court.

(ii) that eventhough the appeals of the Revenue are dismissed in respect of assessments passed under 153A and 153C, in the absence of incriminating material found during the search, in respect of such income which was found to have escaped assessment other than through incriminating material, the assessing officers would be entitled to reassess such income in terms of Section 147/148 read with section 150.

(iii) that the Assessing officer, may if found necessary initiate fresh proceedings within 60 days from date of disposal of this application following the procedure stipulated in section 147-151 of the Act as is in force now.

b) Pass any other orders as deemed fit in the interest of justice

Filed By

Raj Bahadur Yadav

Advocate for the Appellant

Drawn On: 25.04.2023

Filed On: 26.04.2023

