

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 110 of 2017****With****TAX APPEAL NO. 111 of 2017****With****TAX APPEAL NO. 115 of 2017****With****TAX APPEAL NO. 116 of 2017**

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PRINCIPAL COMMISSIONER OF INCOME TAX, AHMEDABAD

3,....Appellant(s)

Versus

DIPAK JASHVANTLAL PANCHAL....Opponent(s)

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Appearance:

MR.VARUN K.PATEL, ADVOCATE for the Appellant(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE M.R. SHAH**

and

**HONOURABLE MR.JUSTICE B.N. KARIA****Date : 14/02/2017****ORAL ORDER**  
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.00. As common question of law and facts arise in this group of appeals and are between the same parties but with respect to different assessment years, all these appeals are decided and disposed of by this common order.

2.00. Feeling aggrieved and dissatisfied with the impugned common judgement and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as "the learned tribunal") in I.T.A.

Nos.371/AHD/2011, 372/AHD/2011 and 373/AHD/2011 and Cross Objection No.125 of 2011, by which the learned tribunal has partly allowed the said appeals preferred by the common assessee and has deleted the additions made by the A.O., made under section 153(A) of the Income Tax Act, 1961 for the A.Ys. 2000-2001 to 2004-2005, revenue has preferred present Tax Appeals with the following proposed questions of law :-

**“[a] Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in narrowing down the scope of assessment u/s. 153(A) in respect of completed assessment by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax ?**

**[b] Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding the scope of section 153(A) is limited to assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income, that comes to the notice of the Assessing Officer ?**

**[c] Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in limiting the scope of Section 153(A) only to undisclosed income when as per the section the Assessing officer has to assess the total income of the six assessment years ?**

**[d] Whether the findings of the Tribunal that no incriminating material is found is perverse inasmuch as incriminating documents were found, though pertaining to the other Assessment years which could be linked with the present Assessment Year?"**

3.00. Facts leading to the present appeals, in nutshell, are as under :-

3.01. That a warrant of authorization under section 132(1) of the Act was issued and executed in the case of the assessee on 10/2/2006. Thereafter, proceedings under section 153(A) of the Act were initiated and notice under section 153(A) of the Act was issued and served upon the assessee in lieu of which returns were filed.

3.02. The assessments were made under section 153(A) read with section 143(3) of the Act for the A.Ys. 2000-2001 to 2004-2005.

3.03. That the A.O. made additions under section 153(A) of the Act on the basis of incriminating materials found / recovered at the time of search.

3.04. Feeling aggrieved and dissatisfied with the additions made by the A.O. under section 153(A) on the basis of incriminating material found during the search operation conducted on 10/2/2006, the assessee preferred appeals before the learned C.I.T.(A). And the learned C.I.T.(A). dismissed the appeals preferred by the assessee and confirmed the additions made by the A.O. under section

153(A) of the Act.

3.05. Feeling aggrieved and dissatisfied with the impugned order passed by the learned C.I.T.(A) confirming the additions made by the A.O. under section 153(A) of the Act, the assessee preferred appeals before the learned tribunal. It was contended before the learned tribunal that the assessment for the A.Ys. 2000-2001 to 2004-2005 could not have been made under section 153(A) of the Act as no incriminating material was found at the time of search to reopen the completed assessment.

3.06. Accepting the submissions made on behalf of the assessee and relying upon the decision of the Delhi High Court in the case of **Commissioner of Income Tax Versus Kabul Chawla** reported in **380 ITR 573**, the learned tribunal has allowed the appeals preferred by the assessee and has deleted the additions made under section 153(A) of the Act for the A.Ys. 2000-2001 to 2004-2005.

3.07. Feeling aggrieved and dissatisfied with the impugned judgement and order passed by the learned tribunal in directing to delete additions made by the A.O. under section 153(A) of the Act for the A.Ys. 2000-2001 to 2004-2005, revenue has preferred present appeals with the aforesaid proposed questions of law.

4.00. We have heard Mr. Varun Patel, learned counsel appearing on behalf of the revenue. We have perused and considered the assessment orders passed under section 153(A) of the Act as well as the order passed by the learned

CIT(A) as well as the impugned judgement and order passed by the learned tribunal. The learned tribunal has deleted the additions made under section 153(A) of the Act, made on the basis of incriminating material found during the search, on the ground that under section 153(A) of the Act in respect of undisclosed income and undisclosed assets detected during the search could be brought to tax. In support of the above, the learned tribunal has heavily relied upon the decision of the Delhi High Court in the case of Kabul Chawla (supra).

4.01. Identical question came to be considered by the Division Bench of this Court in the case of **Principal Commissioner of Income Tax-2 Versus Jay Infrastructure and Properties Pvt. Ltd.** rendered in Tax **Appeal No. 740 of 2016** and considering the earlier decision of the Division Bench in the case of **Principal Commissioner of Income Tax -4 vs. Saumya Construction Pvt. Ltd.** rendered in **Tax Appeal No.24 of 2016** in which, it is specifically held that the A.O. while framing the assessment under Section 153(A) of the Act for the block period may make addition considering the incriminating material found for the year under consideration only which was collected during the search. The Division Bench in the case of Saumya Construction Pvt. Ltd. (supra) in paragraph Nos. 15, 16 and 19 has observed and held as under:

*15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment*

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

*required to be determined under section 153A of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.*

16. *Section 153A bears the heading Assessment in case of search or requisition. It is well settled as held by the Supreme Court in a catena of decisions that the heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the legislature is clear viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of **Jai Steel (India), Jodhpur v. Assistant Commissioner***

**of Income Tax** (*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 all 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, an 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), Jodhpur v. Assistant Commissioner of Income Tax** (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 **Commissioner of Income-tax-1 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."*

4.02. Similar view has been taken by this Court recently in the case of **The Principal Commissioner of Income Tax-1 Versus Devangi Alias Rupa** in **Tax Appeal No.54 of 2017**.

4.03. Considering the facts and circumstances of the case, it cannot be said that the learned tribunal has committed any error in deleting the additions made under section 153(A) of the Act for the A.Ys. 2000-2001 to 2004-2005 and/or any substantial question of law arise. In view of the aforesaid binding decisions of this Court in Tax Appeal Nos.749/2016 & 54/2017, we see no reason to interfere with the impugned judgement and order passed by the learned tribunal. No substantial question of law arise in this group of

appeals.

5.00. In view of the above and for the reasons stated above and considering the binding decisions of this Court in the case of Jay Infrastructure and Properties Pvt Ltd (supra) and Saumya Construction Pvt. Ltd. (supra) and decision of the Delhi High Court in the case of Kabul Chawla (supra), we see no reason to interfere with the impugned judgment and order passed by the learned Tribunal. No substantial question of law arise in this group of appeals. Hence, all these appeals deserve to be dismissed and are accordingly dismissed.

Sd/-  
**(M.R. SHAH, J.)**

Sd/-  
**(B.N. KARIA, J.)**

Rafik..

