GAHC010031852023

2025:GAU-AS:2649-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : ITA/5/2023

1.THE PRINCIPAL COMMISSIONER OF INCOME TAX,
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
AAYAKAR BHAWAN, G.S. ROAD, GUWAHATI- 781005.

2: THE ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE-1, GUWAHATI, OFFICE OF THE ASSISTANT COMMISSIONER
OF INCOME TAX, CIRCLE-1, AAYAKAR BHAWAN,
G.S. ROAD, GUWAHATI- 781005.

.....Appellants

-VERSUS -

ROHIT KARAN JAIN,
402, 4TH FLOOR, RAHEJA HEAVEN PRANANJALI,
10TH ROAD, JVPD SCHEME, JUHU
MUMBAI- 400049, MAHARASTRA.

....Respondent

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) **:** Mr. S.C. Keyal, Advocate.

For the Respondent(s) **:** Ms. P. Jain, Advocate (through video-conferencing), Mr. H. Betala and Ms. P.K. Khakolia, Advocates.

Date of Hearing **:** 11.03.2025.

Date of judgment **:** 13.03.2025.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

This appeal is preferred on behalf of the appellants being aggrieved with the order dated 07.04.2022 passed by the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati (hereinafter referred to as "ITAT") in I.T.A. No.324/GAU/2019 for the Assessment Year 2014-2015 in respect of the sole respondent.

2. This Court, vide order dated 09.10.2023, has admitted this appeal on the following substantial questions of law:

> "*1. Whether on facts and circumstances of the case, the Hon'ble Tribunal was justified in confirming findings of the Ld. CIT (appeal) that the assessment for A.Y. 2014-2015 is not abated ?*
> *2. Whether on facts and circumstances of the case, the Hon'ble Tribunal was correct in law holding that the assessment for a Assessment Year is not abated when no assessment order was passed prior to passing order u/s 153A of the Income Tax Act?"*

3. The brief facts of the case are that the sole respondent submitted Income Tax Returns under Section 139(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Income Tax Act") on 31.07.2014 declaring income of Rs.2,00,080/-. However, a search and seizure operation under Section 132 of the Income Tax Act was conducted on the residential premises of the sole respondent on 02.06.2016 and thereafter, in continuation of that, on 11.07.2016 again a search was conducted. On the basis of the search results, the case was selected for scrutiny under Section 153A of the Income Tax Act and a notice was issued to the sole

respondent to file Return of Income within 15 days. In compliance of the notice under Section 153A of the Income Tax Act, the respondent e-filed his return of income and thereafter, proceedings were carried out and ultimately, the Assessing Officer has issued Assessment Order dated 31.12.2018 and assessed the income of the assessee at Rs.4,25,30,080/-.

4. The relevant portions of the impugned Assessment Order dated 31.12.2018 are reproduced hereunder:

> "*12. As stated above, a search and seizure operation was conducted in the CMJ Group of cases on 02/06/2016. In the course of search, statement of Shri Karan Jain was recorded on oath on 02.06.2016, wherein in reply to Q. No.7 to 16, he also admitted the fact of routing the unaccounted cash of the family by way of bogus LTCG/STCG in the regular books of account. Further, Shri Rohit Jain, the chairman of the CMJ group also accepted the fact of routing unaccounted cash of the family by the way of accommodation entry of LTCG/STCG in his statement on oath u/s 132(4) of the Act dtd. 11/07/2016. In this regard,* ***Shri Rohit Jain, Chairman of the group also disclosed Rs.14,21,00,000/- on account of pre-arranged bogus capital gain/loss in the hands of various family members in the respective years vide his disclosure petition dated 29/08/2016 as detailed below****:*

Financial year	*Name of the assessee*	*Amount (Rs.)*
2013-14	*Reshmi Jain*	*4,30,20,000*
	Karishma Jain	*4,23,20,000*
	Karan Jain	*4,23,30,000*
2014-15	*Reshmi Jain*	*37,00,000*
	Karishma Jain	*90,10,000*
	Karan Jain	*17, 20,000*
	Total:	*14,21,00,000*

> *Shri Karan Rohit Jain also accepted the disclosure of Rs.4,40,50,000/- is*

his hand in his sworn statement u/s 131 of the Act on 09/09/2016.

13. However on perusal of the Return of Income for the period under consideration, it is seen that the disclosed amount of Rs.4,23,30,000/- for the financial year 2013-14 relevant to the assessment year 2014-15 was neither incorporated in the Return nor offered for tax during period under consideration. As such, vide show cause notice dtd. 05/11/2018, Shri Rohit Jain, Chairman of the CMJ Group was show caused as to why the Rs.4,23,30,000/- should not be added to the total income of the assessee as disclosed by him vide disclosure petition dtd. 29/08/2016.

In reply, Shri Rohit Jain, Chairman of the CMJ Group submitted a retraction petition dtd. 07/12/2018 along with an affidavit stating that the disclosure was made under coercion and threat.

However, the assessee has not been able to produce any evidence, documentary or circumstantial, in support of the averment of coercion, threat etc.

In this regard reliance is made on the decision of various hon'ble judicial authorities as under:

In the case of the ***KTMS Mohammed, 197 ITR 196 (1992), the SC*** *while throwing further light on the evidentiary value of the retracted statement said that retracted statement has to be seen with great circumspection. The statement, if obtained by any inducement, threat, coercion or by any improper means, must be rejected. At the same time, it is to be noted that, merely because a statement is retracted, it cannot be recorded as in-voluntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise, etc. to establish that such improper means have been adopted.*

In P.S. Barkathali v. Directorate of Enforcement, New Delhi AIR 1981 KER 81, the hon'ble High Court observed as under:

"*Even though the statement was subsequently retracted, the significance of admission in the first place cannot be under-mined. It is well established that mere bald retraction cannot take away the importance and evidentiary value of the original confession, specially in view of the fact that in this case, the deponent of the statement had provided the minute details relating to the transactions. It appears that the retraction*

statement was made purely to avoid clutches of law which had caught up with him and laid bare his nefarious activities."

14. It is thus clear that even in criminal jurisprudence, the retracted statement shall not carry the evidentiary value, unless it is shown by independent evidence that the original statement was obtained under coercion, duress or influence, mistaken belief of law or facts or otherwise proved erroneous by the deponent.

As such a rebuttal letter along with para wise reason for the non acceptance of the retraction petition was issued and served to Shri Rohit Jain, Chairman of the CMJ Group on 07/12/2018.

However considering the principle of natural justice, summon u/s 131 of the Act dtd. 17/12/2018 was issued to Shri Karan Rohit Jain to explain the transactions along with supporting documents. In reply, Shri Rohit Jain, Chairman of the CMJ Group appeared on behalf Shri Karan Jain and his statement was recorded on oath u/s 131 of the Act on 21/12/2018 relevant part of the same is reproduced below:

> *Q. No.11:- I am showing you the statement of Shri Karan Jain recorded on oath u/s 132(4) of the Income Tax Act, 1961 wherein he admitted that your family member has booked bogus LTCG by pre arranged manner to route the unaccounted income. The same was also admitted in your statement u/s 132(4) of the Income Tax Act, 1961 dtd. 11/07/2016. Please offer your comment.*
>
> *Ans. It was a force submission as such I stand by my affidavit and retraction petition submitted to your office on 07/12/2018. Further my family members Shri Karan Jain, Smt. Reshmi Jain and Miss Karishma Jain have also submitted their affidavit dtd. 15/11/2016 in this regard as on today which denies the forced statements taken from them by the department.*

However the deponent has not been able to produce any evidence, documentary or circumstantial, in support of the averment of coercion, threat etc.

It has been discussed in earlier paras why a scrip is considered to be

penny stock. The value as well as the trend of trading that determines a scrip whether it is penny stock or not. In the instant case, the details in regard to scrip, trend of trading, prices of shares over a certain period, background of the company etc. all these features are well discussed to show that the shares are nothing but penny stock.

Summing up the above facts, it appears that the assessee is basically a salaried person and does not bear even minimum interest and information in regard to the share trading. In his statement recorded on oath u/s 132(4) on 02.06.2016, he has admitted the fact of routing the unaccounted income of the family by way of pre-arranged long term capital gain in the regular books of the account of the assessee. The same had also been accepted by Shri Rohit Jain, Chairman of the CMJ Group. Further unaccounted income of Rs.4,23,30,000/- had also been disclosed in the hand of the assessee as tabulated above vide disclosure petition dtd. 29/08/2016 which was subsequently admitted by the assessee in his statement on oath.

15. <u>CONCLUSION</u>

15.1. In view of the discussion made above and considering the facts and circumstances of the case, the following facts become manifestly clear:-

i) That some unscrupulous operators in the capital market were running a scheme of providing entries of LTCG for a commission.

ii) The financial result of the Penny Stocks used for the purpose clearly indicate that its quoted price at the peak was the result of rigging.

iii) The above mentioned facts have been independently also been confirmed by SEBI.

iv) That such schemes are prevalent for converting black money into white is common knowledge, independently confirmed by SEBI.

v) That a large number, brokers/sub-brokers and individuals availed of the benefits of the scheme and took entries of LTCG ores.

vi) Many such individuals have voluntarily without any enquiry by any authority have voluntarily withdrawn their claim and filed

revised return.

vii) As per the Investigation Report of the Directorate of Income Tax (Investigation), Kolkata statements of brokers, operators, director of paper companies that has bought these shares, directors of Penny stock companies all confess to such a scheme with detailed modus operandi which tallies with actual transactions.

viii) The assessee is one such beneficiary who has taken entry of LTCG.

ix) The assessee as well as the Key Person of Comfort Securities Ltd Shri Anil Agarwal, admitted the fact of booking pre-arranged LTCG in their sworn statement.

x) Exactly similar entries have been taken by other family members of the assessee for the period under consideration whose cases are under scrutiny under the same Range.

xi) Further from data received from BSE India (As per annexure-A) it is evident that the trading in these shares are at a pre-determined time between pre-determined brokers at a pre-determined price; there is virtually no scope of any genuine trader in share to buy or sell these shares.

xii) Thus whoever has benefitted from transaction in these shares have transacted in accordance with the scheme and has admittedly converted his unaccounted cash equal to the sale proceeds of share in to while in the guise of exemption under section 10(38) of the Income Tax Act, 1961.

xiii) With so much of evidence against the assessee, the onus was on assessee to prove that his transactions were genuine and that he had not availed benefit of the aforementioned scheme to convert black money into white.

xiv) In Sumati Dayal vs. Commissioner of Income Tax .... the Supreme Court observed and I quote,

"It is no doubt true that in all cases in which a receipt is sought

to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. [See: Parimisetti Seetharamamma (supra) at P.5361. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to Income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is, prima facie, evidence against the assessee, viz. the receipt of money, and if he falls to rebut, the said evidence being un-rebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the Department cannot, however, act unreasonably."

15.2. In the case the assessee has shown credit exempt income of Rs.4,23,23,713/- on sale of share of M/s Rutron International Limited, as is evident from the investigation the actual source of this credit is the unaccounted cash of the assessee. The assessee was asked to explain the source of this credit. The explanation offered that it is sale proceeds of shares are found to be not satisfactory. The assessee did not even furnish the purchase details of the shares, copy of demat account, contract notes. The background of the scheme given in the beginning of the order clearly shows that both the requirements are in-built in the scheme and does not ipso facto prove genuineness of transaction. The SEBI after thorough investigation has certified that such transactions are rigged and are carried out to convert Black money into white. That being so, the credit in the bank account of the assessee cannot be treated as explained and is therefore, liable to be added under section 68 of the Act. The evidence gathered has to be evaluated in the background of what the hon'ble Supreme Court referred to as the test of preponderance of human probability judged on the basis of surrounding circumstances. That there was a scheme is not in doubt and that the assessee is a beneficiary is also an admitted fact. The onus was therefore, on the assessee to prove that either there was no such scheme and even if there was one, the benefit to the assessee was as a result of genuine transaction. The assessee has miserably failed to discharge this onus and therefore, the only inescapable conclusion is that like many other individuals assessee

has also taken entry of LTCG by paying cash.

It is obvious that the assessee himself knows his assets and liabilities and considering all the factors ***Shri Rohit Jain, Chairman of the group disclosed Rs.14,21,00,000/- on account of pre-arranged bogus capital gain in the hands of various family members in the respective years vide his disclosure petition dated 29/08/2016 which was subsequently confirmed by the assessee in his sworn statement.***

In view of the above the amount of Rs.4,23,30,000/- as disclosed by Shri Rohit Jain on account of so called Long term capital gain is added to Total income of the assessee within the meaning of section 68 of the Income tax Act, 1961. As the assessee has deliberately and wilfully concealed her unaccounted income, a conclusion which is obvious from the discussion made in the order, penalty under section 271(1)(c) is also initiated.

16. The total income of the assessee is computed as under in light of the discussions made in the foregoing paras:-

Returned income:	*Rs. 2,00,080/-*
Add: As discussed in para 15.2	*Rs.4,23,30,000/-*
Assessed Income *:*	*Rs.4,25,30,080/-"*

5. Being aggrieved with the Assessment Order dated 31.12.2018, the respondent preferred an appeal before the Commissioner of Income Tax (Appeals), Guwahati under Section 250 of the Income Tax Act, raising as many as 16 grounds.

6. The Commissioner of Income Tax (Appeals), vide order dated 08.04.2019, allowed the said appeal while recording a finding of fact that the Assessing Officer had invoked the jurisdiction under Section 153A of the Income Tax Act without there being any incriminating material whereas the law is well settled that in the absence of incriminating

material, a completed assessment cannot be opened invoking the powers under Section 153A.

7. The relevant portions of the judgment passed by the Commissioner of Income Tax (Appeals) are reproduced hereunder:

> *"The present legal position is that, in an assessment under Section 153A, in absence of any "**incriminating material**", the completed assessment has to be **reiterated**. In other words, the completed assessment **connot be disturbed** in the absence of "**Incriminating material**". Even if documents are available pertaining to the assessment year in question, but they have to additionally satisfy the requirement of law that "**there must be incriminating material**" and not merely some material. Hence, there can be no addition under Section 153A for a particular assessment year, in which the assessment is complete and is not pending, without there being some "**incriminating material**" qua that assessment which would justify such an addition.*
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> *From the above observation/averment of the AO as is clear from his letter dated 07/12/2018, which letter was written by the AO to Sh. Rohit Jain with regard to his retraction letter dated even date, it is crystal clear that the AO has not been able to refer to any material, much less any incriminating material as would even remotely indicate that there was any documentary evidence in the possession of the revenue, other than the department's own database or the confessional statement of the father of the Appellant.*
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> *Per Contra, during the course of appellate proceedings, the Appellant has vehemently stressed that in this case, there was no incriminating material with regard to the above addition.* ***Thus, in the absence of any reference to any incriminating material by the AO in the impugned order and considering the submissions of the Appellant as also the ratio of the above judgments, it has to be held that the impugned addition as not based on any incriminating evidence found during the course of search on the Appellant****.*
>
> *I note that there is absolutely no corroborative evidence found in the course of search by the search team or material evidence brought on*

record by the Ld. AO in order give credence to the statement recorded during search. Hence, I hold that no addition could be made merely by placing reliance on the statement recorded during search and also without reference to any incriminating document or material.

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For the above assessment year, I note that the Appellant had filed a return of income under Section 31/07/2014 wherein the Appellant had duly disclosed the impugned capital gain and claimed the exemption accordingly. Admittedly there was no regular assessment made on the Appellant for the above assessment year. Also the ***time limit for issuance as well as service of notice under Section 143/2)*** *of the Act in the case of the Appellant for the* ***above assessment year had already expired on 30/09/2015.*** *Thus as* ***on the date of Search*** *in the case of the Appellant, i.e. on* ***02/06/2016****, the assessment for the above* ***assessment year 2014-15*** *was a* ***completed assessment*** *and therefore following the ratio of the above judgments as discussed earlier, in the* ***absence of any incriminating documents or material****, the already completed assessment cannot be disturbed unless any* ***incriminating material*** *is found during the course of search. In this case, it is vivid that the* ***AO has not referred to any such incriminating material*** *found during the course of search in the impugned order. Thus, it is clear that the above addition has been made without reference to any incriminating material.*

Even at the cost of repetition, it is clear from the ratio of the above judgments, that the law is trite that in assessments under Section 153A, with regard to years where the assessment have been completed i.e. unabated assessment year, the scope of addition is to be restricted only to the extent of incriminating material found and there is no scope for any general or routine addition or disallowance. In view of the above facts, and in the absence of any reference to any incriminating material as regards the impugned addition, found during the course of search, I have no hesitation in holding that the impugned addition which has been made solely on the basis of a retracted statement and without reference to any incriminating material or document found during the course of search is outside the realm of the assessment proceedings under Section 153A of the Act.

In view of the above discussion, I find no hesitation in deleting

the impugned addition of Rs. 4,23,30,000/- as the same has been made for a year whose assessment stood already completed by virtue of expiration of time limit to issue a notice under Section 143(2) of the Act and without there being any reference to any incriminating material or document. The above grounds of appeal are, hereby, allowed.

While adjudicating the above grounds of Appeal, my decision has been rendered solely on the basis of the facts and observations stated by the AO in the impugned assessment order, submissions of the Appellant and the ratio of judgments relied upon and referred above. As is evident my above adjudication is purely legal in nature In this case, since the Appellant has not furnished the copies of Dmat Account, Contract Notes etc. as averred in the impugned order, these evidences filed before me have not been considered as these are additional evidences which have been filed without any petition under Rule 46A My above decision is based on the fact that the AO has not referred to any incriminating material or document while making the impugned addition in the hands of the Appellants and thus the impugned addition, in the absence of reference to any incriminating material and considering that in view of the ratio of the judgment in the case of Kabul Chawla, discussed per supra, the proceedings for the impugned assessment year were completed and could not have been disturbed."

8. Being aggrieved with the order dated 08.04.2019 passed by the Commissioner of Income Tax (Appeals), the appellant preferred an appeal, being ITA No.324/GAU/2019 before the ITAT.

The ITAT noted the grounds of appeal in para No.3 of the impugned order dated 07.04.2022, which are reproduced hereunder :

"*3. The grounds of appeal raised by the revenue are as under :*

"*1. That in the fact and circumstances of the case and the law in this matter, the Ld. CIT(A) is not justified in deleting the addition stating that the assessment for the Ay 2014-15 is non-abated and stood already completed despite the fact that the original assessment in this case for Ay 2014-15 against the return filed on 31.07.2014 was abated and the assessment u/s 153A r.w.s. 143(3) on 31.12.2018 is an abated*

assessment..

2. The Ld. CIT(A) was not justified in deleting the addition stating that in absence of any incriminating material the addition made by the AO in the impugned order is deleted while the original assessment in this case for Ay 2014-15 was abated."

9. The ITAT rejected both the above referred grounds vide impugned judgment dated 07.04.2022 and affirmed the findings of the Commissioner of Income Tax (Appeals).

10. The relevant portions of the impugned order dated 07.04.2022 passed by the ITAT are reproduced hereunder:

"11. The next issue is with regard to the Ld. CIT(A)'s finding that since there was no incriminating material and since the assessment year 2014-15 is an unabated proceeding, no addition was warranted without any incriminating material. The Id. AR drew our attention to the fact that the AO has made the addition only on the basis of a statement given by the assessee's father which was retracted within ten days. And the Ld. AR drew our attention to pages 96 to 105 of the paper book wherein the affidavit of the assessee retracting the statement is found to be reproduced wherein he alleged coercion and duress to obtain it. The Ld. AR drew our attention to the decision of the Hon'ble Delhi High court in the case of Pr. CIT, Delhi-2 Vs. Best Infrastructure (India) P. Ltd. (2017) 84 taxmann.com *287 (Delhi) (Paper book pages 73 to 93 to be checked) wherein the Hon'ble High Court has held that on the sole basis of the statement of the assessee when retracted subsequently, no addition should be made unless there is any material to support the addition. And in this case in hand, other than the retracted statement, no other evidence/material was relied upon by AO to make the addition in all the three appeals. In the light of the aforesaid facts, and by relying on the decision of the Hon'ble Delhi High Court in Kabul Chawla (supra) the Ld CIT(A) held that since there was no incriminating material against the assessee in respect the share transaction in question, no addition could have been made and deleted the addition. This action of Ld. CIT(A) has been challenged by the Revenue.*

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"14. Turning to the facts of the case, it is noted that only on the basis of retracted statements, the AO has made the addition. From a perusal of the assessment order, it is noted that there is no other incriminating material seized during search. Other than the retracted bald statement of assessee's father addition has been made by AO [which has been retracted within few days wherein assessee's father/assessee has alleged coercion/duresse obtaining it (refer page 19 of paper book)]. It is noted that other than the statement of his father which has been obtained under threat/coercion/duress [which has been retracted within few days] the AO has made the addition as undisclosed income the assesser's LTCG to the tune of Rs.4,40,50,000/-. However we find that other than the retracted statement there was no iota of evidence/material to substantiate the impugned additions. The Id. CIT(A) has given a finding of fact that other than the assessee's father's statement regarding the LTCG of assessee, there was no incriminating material found during search qua the assessee qua the AY 2014-15. In such a scenario, no addition was legally sustainable as held by the Hon'ble Delhi High court in Kabul Chawla (supra) and in this context it is noted that similar ratio was agreed upon in the case of Meeta Gutgutia (supra) Delhi High Court. And it is noted that several other High Courts have also come to similar conclusion either by following Kabul Chawla (supra) or otherwise. This includes the decisions of the Hon'ble Gujarat High Court in Pr CIT v. Soumya Constructions (P.) Ltd. [2016] 387 ITR 529[2017] 81 taxmann.com *292 (Guj); Pr. CIT v. Devangi alias Rupa [Tax Appeal Nos 54. 55 to 57 of 2017, dated 2-2-2017]; the Hon'ble Karnataka High Court in CIT v. IBC Knowledge Park (P) Ltd. [2016] 385 ITR 346/69* taxmann.com *108 (kar.); the Hon'ble Calcutta High Court in Pr. CIT v. Salasar Stock Broking Ltd. [GA No. 1929 of 2016, date 24-8-2016] and the Hon'ble Bombay High Court in CIT v. Gurinder Singh Bawa 12016] 386 ITR 483/12017] 79* taxmann.com *398. In Meeta Gutgutia (supra) the Hon'ble Delhi High Court has considered the entire gamut of the lis in hand and has analysed and the aforesaid legal position was reiterated that unless there is incriminating material qua each of the A Ys in which additions are sought to be made, pursuant to search and seizure operation, the assumption of jurisdiction under Section 153A of the Act would be vitiated in law for an unabated assessment.*

15. In the light of the aforesaid facts and the law discussed, we do not find any infirmity in the impugned order passed by the Ld CIT(A), so we

are inclined to dismiss the revenue appeal ITA No.324/GAU/2019."

11. During the course of hearing, learned counsel for the sole respondent has submitted that now it is well settled that in the absence of incriminating material, no addition can be made in respect of a completed assessment. It is contended that in the present case, the assessment was completed but the Assessing Officer without there being any incriminating material has passed the Assessment Order by invoking the provisions of Section 153A of the Income Tax Act, however, the same is not in accordance with law and therefore, the Commissioner of Income Tax (Appeals) as well as the ITAT has not committed any illegality in passing the impugned orders. It is further argued that the Commissioner of Income Tax (Appeals) as well as ITAT has recorded a finding of fact that no incriminating material was available on record and in the absence of the same, the Assessing Officer has erred in passing the Assessment Order while invoking the provisions of Section 153A of the Income Tax Act and the said finding of fact recorded by the Commissioner of Income Tax (Appeals) and ITAT is not liable to be interfered with and in such circumstances, no substantial question of law arises in this appeal and therefore, the present appeal is liable to be dismissed.

12. Learned counsel for the sole respondent has placed reliance on the decision of the Hon'ble Supreme Court rendered in (i) ***Principal Commissioner of Income tax, Central 3 Vs. Abhisar Buildwell (P) Ltd.***, reported in ***[2023] 149 taxmann.com 399*** (SC); (ii) ***Principal Commissioner of Income –tax Vs. Saroj Sudhir Kothari***, reported in ***[2023] 154 taxmann.com 360 (SC)***; (iii) ***Principal Commissioner of***

Income-tax (Central) 2 Vs. Jay Ambey Aromatics, reported in ***[2023] 156 taxmann.com 691 (SC)*** and (iv) ***Principal Commissioner of Income-tax Central 2 Vs. S.S. Con Build (P) Ltd.***, reported in ***[2023] 151 taxmann.com 317 (SC).***

13. The Hon'ble Supreme Court, in ***Abhisar Buildwell (P) Ltd.*** (supra), while affirming the view taken by the Delhi High Court in the case of ***Commissioner of Income Tax, Central III CIT Vs. Kabul Chawla, [2015] 61 taxmann.com 412/234 Taxman 300/ [2016] 380 ITR 573 (Delhi)*** as well as by Gujarat High Court in the case of ***Pr.CIT Vs. Saumya Construction (P.) Ltd. [2017] 81 taxmann.com 292/[2016] 387 ITR 529 (Guj.)*** has held as under:

> *"8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.*
>
> *9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961.*
>
> 9.1 *That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961. The erstwhile scheme of block assessment under Section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away*

with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 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. Section 153A of the Act reads as under:

> *'153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003, the Assessing Officer shall—*
>
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;*
>
> *(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:*
>
> ***Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*

Provided further *that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate.*

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided *that such revival shall cease to have effect, if such order of annulment is set aside*

Explanation.—For the removal of doubts, it is hereby declared that, —

([) save as otherwise provided in this section, Section 153-B and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.'

11. *As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would*

assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. 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 section 147/48 of the Act, subject to fulfillment of the conditions mentioned in section 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 section 147/148 of the Act has to be saved, otherwise the revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

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 assessments/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."

14. Mr. S.C. Keyal, learned counsel appearing for the appellants has frankly admitted that now the law is well settled that in the absence of incriminating material, no addition can be made in respect of a completed

assessment. However, Mr. Keyal has submitted that in the present case, the Assessing Officer has invoked Section 153A of the Income Tax Act on the basis of the incriminating material only and not otherwise. It is contended that the finding recorded by the Commissioner, Income Tax (Appeals) as well as by the ITAT to the effect that no incriminating material was available to the Assessing Officer to invoke the power provided under Section 153A is perverse and therefore, the same is liable to be interfered with.

15. We have considered the submission made on behalf of the learned counsel for the appellants and perused the material available on record.

16. On a perusal of the material available on record, we are of the view that the Commissioner of Income Tax (Appeals) as well as ITAT, after carefully scrutinizing the material collected by the Assessing Officer, has recorded a finding of the fact that other than the retracted statement no other evidence/material was relied upon by the Assessing Officer to invoke the addition. The Commissioner of Income Tax (Appeals) and the ITAT were of the view that the said piece of evidence, i.e. retracted statement cannot be termed as incriminating material.

17. Taking into consideration the above fact, we are of the view that the said finding of fact recorded by the Commissioner of Income Tax (Appeals) as well as ITAT is not liable to be interfered with in this appeal since this Court can only exercise jurisdiction when any substantial

question of law arises.

18. In view of the above discussion, it is held that the present appeal does not involve any substantial question of law and therefore, the same is dismissed, being devoid of merit.

JUDGE **CHIEF JUSTICE**

Comparing Assistant