

## **Invocation of Section 153A on Reliance of Post Search Statement Unsustainable; Follows SC's Abhisar Buildwell judgement, Distinguished Kerala HC's Sreekumar**

### **Facts**

The assessee, engaged in the business of development of Special Economic Zone (SEZ) for information technology enabled services in Noida, U.P. filed its return of income on 30.09.2011 for the Assessment Year 2011-12. Search and seizure proceedings under section 132 of the Income tax Act 1961 (the Act), wherein notice was issued to the assessee for filing of return under section 153A consequent to search. The assessee requested the revenue to consider the original return filed for the purpose of section 153A.

In this return, the assessee had declared net profit of INR 1,55,13,39,200 and claimed the same as deduction under section 80IAB of the Act. However, the Assessing Officer (AO) disallowed the same and added it back to the income and additionally initiated penalty proceedings under section 271(1)(c) as well. The Commissioner of Income tax, Appeals [CIT(A)] partly allowed the appeal of the assessee, holding that initiation of section 153A was unsustainable as no incriminating material had been uncovered during the search.

Aggrieved, the revenue approached the Tribunal for relief, which dismissed its appeal.

Consequently, the matter reached the Hon'ble High Court for adjudication.

## **Ruling**

The Hon'ble High Court ruled in favour of the assessee by upholding the decisions of the Tribunal and the CIT(A). It analyzed the legal position regarding initiation of section 153A with respect to incriminating material found during search as illuminated in the case of CIT vs. Kabul Chawla (2015) 61 taxmann.com 412 (Del), later affirmed by the Hon'ble Supreme Court in PCIT vs. Abhisar Buildwell Pvt. Ltd. (2023) SCC OnLine SC 48, wherein it was held that in case of completed/unabated assessments, if no incriminating material is found by the AO during search, he cannot assess or reassess and ergo cannot make additions, instead he can choose to reopen such assessments under section 147/148 of the Act, subject the fulfillment of the conditions of such sections.

The Hon'ble court distinguished on facts the case of Dr. A.V. Sreekumar vs. CIT (2018) 90 taxmann.com 355 as in this case the said documents received by the revenue prior to search action were incriminating material by themselves, which had led to initiation of search action. The facts in the present case were monumentally different, as during the search proceedings against the assessee no incriminating material had been found and the material in the form of statement of Shri B.P. Singh now sought to be relied upon by the revenue had been recorded subsequent to the search action, opined the Hon'ble Court.

**Source: High Court, Delhi in PCIT vs. Oxygen Business Park Pvt. Ltd. Vide ITA 680/2023 dated December 8, 2023.**

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