

Presence of Incriminating Material Indispensable for Invoking Assessment Under Section 153A of the Income Tax Act 1961; Supreme Court Upholds Kabul Chawla Ruling

In its groundbreaking judgement on Monday, the Hon'ble Supreme Court of India redefined the scope of section 153A and 153C of the Income Tax Act.

Faced with the issue of "whether any 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 132 A of the Act, 1961 or not.", the Apex Court relied on the past precedents, Commissioner of Income Tax (Central)-III vs. Kabul Chawla (2016) 380 ITR 573 Delhi and Principal Commissioner of Income tax-4 vs. Saumya Construction (2016) 387 ITR 529 (Gujarat), wherein it was held that no addition can be made in respect of a completed assessment in the absence of any incriminating material.

The Hon'ble Court observed that search assessments or block assessments under section 153A are triggered by conducting a valid search under section 132 of the Act. Furthermore, the Hon'ble Court opined that the very purpose of search, which is a prerequisite for invoking the provisions of section 153A/153C, is detection of undisclosed income by undertaking extraordinary power of search and seizure, in other words, the income which cannot be detected in ordinary course of regular assessment. The Hon'ble Court held that *"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."*

Furthermore, the Apex Court noted that 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. As such, the Hon'ble Court decreed, *"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."*

The Hon'ble Court concluded its judgment by upholding the rulings of the abovementioned Delhi and Gujarat High Courts in the cases of Kabul Chawla and Saumya Construction respectively. In its order the Supreme Court summarized the key takeaways from its judgement, as highlighted below:

- *"That in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- *all pending assessments/reassessments shall stand abated;*
- *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*

- *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."*

Source: Principal Commissioner of Income Tax Central-3 vs. Abhisar Buildwell P.Ltd. vide Civil Appeal No. 6580 of 2021 dated April 24, 2023



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