NC: 2025:KHC:34452-DB
ITA No. 103 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

INCOME TAX APPEAL NO. 103 OF 2025

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX
CENTRAL, 3RD FLOOR,
C.R. BUILDING, QUEENS ROAD,
BENGALURU-560 001.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-2(4),
3RD FLOOR, C.R BUILDING,
QUEENS ROAD,
BENGALURU-560 001.

…APPELLANTS

(BY SRI. Y V RAVIRAJ,ADVOCATE)

Digitally signed by SUMATHY KANNAN
Location: High Court of Karnataka

AND:

1. M/S ATRIA WIND (KADAMBUR) PVT LTD
NO.11, 1ST FLOOR, COMMISSARIAT ROAD,
ASHOK NAGAR,
BENGALURU-560 025.
REP BY ITS MANAGING DIRECTOR

…RESPONDENT

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961 PRAYING TO A) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, B) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU, IN ITA No.692/BANG/2024 DATED 15.10.2024 FOR ASSESSMENT YEAR 2017-18 ANNEXURE-A AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2(4) BENGALURU.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU,CHIEF JUSTICE)

1. The Revenue has filed the present appeal under Section 260-A of the Income Tax Act, 1961 [**the Act**], impugning an order dated 15.10.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.692/Bang/2024 in respect of assessment year [AY] 2017-18.

2. The assessee had filed the said appeal [ITA No.692/Bang/2024] before the learned ITAT, impugning an order dated 30.03.2022 passed by the Commissioner of Income Tax (Appeals)-15, Bengaluru [**CIT(A)**] under Section 153A read with Section 143(3) of the Act in respect of the AY 2017-18. The assessment made was premised on a search conducted in the office premises of the assessee [M/s. Atria Wind (Kadambur) Pvt. Ltd.], on 17.12.2020, under Section 132 of the Act. It was noted that thereafter notice under Section 153A of the Act was issued. The Assessing Officer [AO] determined the total income of the assessee at ₹1,89,11,81,757/-. The said determination was based on an addition of a sum of ₹1,91,95,68,251/- made on account of capital gains. During the previous year relevant to AY 2017-18, a partnership firm namely M/s. Perpetual Investments, was converted into a private company [the assessee]. The said conversion entailed the transfer of the entire assets and liabilities from the partnership firm to the assessee company. Whereas the assessee claimed that the conversion of the partnership firm to a company, did not entail transfer of its capital assets as envisaged under Section 2 (47) of the Act; the AO did not accept the same and held

that the conditions as specified under Section 47(xiii) of the Act were not fully satisfied and therefore, the benefit of excluding the transfer of assets as a transfer for the purpose of capital gains, was not available.

3. The assessee controverted the said contention and had asserted that all conditions as specified in Section 47 (xiii) of the Act were duly complied with. And, appealed the re-assessment order. However, the CIT(A) had rejected the assessee's appeal. This led the assessee to file an appeal before the learned ITAT.

4. The learned ITAT has allowed the appeal on two grounds. First it found that on merits, the assessee had complied with the conditions as stipulated under Section 47(xiii) (a) and (c) of the Act. The said conclusions are based on factual findings and we find no infirmity with the same. The AO had also rejected the assessee's contention on the ground that the shares issued in the assessee firm to the erstwhile partners was not in the same ratio. However, we note that there is no subsequent analysis to establish the same.

5. Second, that no incriminating material was found during the search proceedings and therefore no reassessment of income for

the relevant assessment year could be made under Section 153A of the Act.

6. Insofar as the jurisdiction to reassess the income under Section 153A of the Act, without any incriminating material being found is concerned; the said issue is covered by the decision of the Supreme Court in ***CIT v. Abhisar Buildwell (P) Ltd. : ([2024] 2 SCC 433)***. The Supreme Court had expressly upheld the decisions of the Gujarat High Court in ***CIT v. Saumya Construction (P) Ltd. : 2016 SCC Online Guj 9976*** and the decision of the Delhi High Court in ***CIT v. Kabul Chawla : 2015 SCC Online Del 11555*** holding that no reassessment under Section 153A or 153C could be done in absence of any incriminating material found in a search under Section 132 of the Act or by requisition under Section 132A of the Act. The relevant extract of the said decision is set out below.

> **"22.** We have heard the learned counsel for the respective parties at length.
>
> **23.** The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the

jurisdiction of the AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132-A or not i.e. 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 1961 Act or not.

24. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132-A, the assessment has to be done under Section 153-A of the 1961 Act and the AO thereafter has the jurisdiction to pass assessment orders and to assess the "total income" taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

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26. In *Kabul Chawla* [*CIT* v. *Kabul Chawla*, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] , the Delhi High Court, while considering the very issue and on interpretation of Section 153-A of the 1961 Act, has summarised the legal position as under : (SCC OnLine Del para 38)

"*Summary of the legal position*

38. On a conspectus of Section 153-A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

(*i*) Once a search takes place under Section 132 of the Act, notice under Section 153-A(1) will have to be

mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

(*ii*) Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

(*iii*) The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the "total income" of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs 'in which both the disclosed and the undisclosed income would be brought to tax'.

(*iv*) Although Section 153-A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment 'can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.'

(*v*) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word "assess" in Section 153-A is relatable to abated proceedings (i.e. those pending on the date of search) and the word "reassess" to completed assessment proceedings.

(*vi*) Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153-A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

(*vii*) Completed assessments can be interfered with by the AO while making the assessment under Section 153-A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

27. Thereafter in *Saumya Construction* [*CIT* v. *Saumya Construction (P) Ltd.*, 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] , the Gujarat High Court, while referring the decision of the Delhi High Court in *Kabul Chawla* [*CIT* v. *Kabul Chawla*, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] and after considering the entire scheme of block assessment under Section 153-A of the 1961 Act, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no addition can be made by the AO and the AO has no jurisdiction to reopen the completed assessment. In paras 15 and 16, it is held as under : (*Saumya Construction case* [*CIT* v. *Saumya Construction (P) Ltd.*, 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] , SCC OnLine Guj)

"*15*. On a plain reading of Section 153-A 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 132-A of the Act. Once a search or requisition is made, a mandate is cast upon the assessing officer to issue notice under Section 153-A 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 153-A of the Act is linked with search and requisition under Sections 132 and 132-A 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 153-A 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 132-A, as the case may be, shall abate. Sub-section (2) of

Section 153-A 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 153-A, 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 153-A of, the Act is annulled in appeal or any other proceeding.

16. Section 153-A 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 153-A 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 *Jai Steel (India)* v. *CIT* [*Jai Steel (India)* v. *CIT*, 2013 SCC OnLine Raj 1939] , 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 153-A of the Act."

28. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in *Kabul Chawla* [*CIT* v. *Kabul Chawla*, 2015 SCC

OnLine Del 11555 : (2016) 380 ITR 573] and the Gujarat High Court in *Saumya Construction (P)* [*CIT* v. *Saumya Construction (P) Ltd.*, 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] , taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

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33. As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, 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 153-A, the assessment or reassessment, 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 132-A, as the case may be, shall abate. As per sub-section (2) of Section 153-A, 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 reopen the completed/unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153-A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A 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 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 153-A 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.

34. 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 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A 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 153-A, 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, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

35. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High

> Court in *Kabul Chawla* [*CIT* v. *Kabul Chawla*, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] and the Gujarat High Court in *Saumya Construction* [*CIT* v. *Saumya Construction (P) Ltd.*, 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] 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.

7. In the present case, the learned ITAT had noted that the materials found during the search were essentially board resolutions, a note prepared by Advocates, M/s King and Partridge, and valuation report of the fixed assets, documents including deeds of retirement, the copies of indenture for reconstitution of the firm, and retirement-cum-release of partnership firm. None of those documents could be construed as incriminating. The learned ITAT had rightly found that the said documents were documents maintained in the course of business. There is also no allegation that any of those documents were concealed by the assessee. Clearly, in said circumstances the reassessment under Section 153-A of the Act cannot be sustained.

8. We find no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed.

9. Pending applications also stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C M JOSHI)
JUDGE

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