

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI**  
**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.1570 & 1571/MUM/2024**  
**Assessment Years: 2016-17 & 2015-16**

Assistant Commissioner of Income Tax, Circle -7(2), Mumbai	Vs.	Mansha Agencies Pvt. Ltd. 106, Ask House, Mumbai Marol Co-op Industrial Estate, Andheri (East), Mumbai - 400059  (PAN : AAACM5842K)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Ms. Priyanka Sharma  
Revenue : Smt. Sanyogita Nagpal, CIT, DR

Date of Hearing : 04.07.2024  
Date of Pronouncement : 09.07.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These two appeals filed by the Revenue are against the order of Ld. CIT(A)-49, Mumbai, vide order No. ITBA/APL/S/250/2023-24/1060349426(1), dated 31.01.2024 passed against the assessment orders by Assistant Commissioner of Income Tax, Circle-7(2), Mumbai, u/s.143(3) r.w.s. 153A of the Income-tax Act, 1961 (hereinafter referred

to as “the Act”), dated 17/06/2021 for Assessment Years 2016-17 and 2015-16.

2. Grounds taken by the Revenue are reproduced as under:

1. *"Whether on the facts and in the circumstances of the case and in law, the Id.CIT(A) was right in not considering the statement recorded during the course of search/survey and incriminating document despite the fact that the discrepancy in claim of deduction was found and identified from books of a/c during the course of search/survey?"*

2. *"Whether on the facts and under the circumstances of the case and in Law, the Id. CIT(A), Mumbai has erred in deleting the disallowance u/s 14A of the Income Tax Act, 1961 thereby overlooking the computational procedure laid down in Rule 8D of the IT Rules, 1962 which has to be necessarily followed whenever disallowance u/s 14A was to be made?"*

3. Issues involved in both the appeals are common, except variance in amount, and they are disposed of by this consolidated order. We take up ITA No. 1570/Mum/2024 for the purpose of taking note of the fact of the case, observations and findings arrived at in this case shall apply *mutatis mutandis* to the second appeal in ITA No. 1571/Mum/2024.

4. Brief facts are that search & seizure operation u/s. 132(1) of the Act was conducted in the case of Mansha Group on 11.10.2018, wherein premises of the assessee was also covered. Consequent to the search action, ld. Assessing Officer issued notices u/s. 153A for the relevant six years. The assessment years before us, out of the six relevant years are 2015-16 and 2016-17. The assessment year wise details are as under:

<b>Assessment Year</b>	<b>Date of filing of return</b>	<b>Last date of issue of notice u/s 143(2)</b>	<b>Date of search</b>
2015-16	26.11.2015	30.09.2016	11.10.2018
2016-17	30.11.2016	30.09.2017	11.10.2018

5. In the course of assessment, ld. Assessing Officer noted that the assessee had sold stock at zero invoice value to one of its sister concern, i.e., M/s. Wine Cellar. Further, on perusal of the details filed by the assessee during the course of the search assessment proceedings, it was noticed that the total value of such sales was Rs.1,16,73,202/- during the relevant assessment year. In view of this, during the course of the assessment proceedings, the assessee was asked to furnish justification for sales of stock at zero invoice value to its sister concern. Relevant para 3.1 from the impugned assessment order is reproduced as under:

*“3.1 During the course of the search proceedings, it was noticed that the assessee had sold stock at zero invoice value to one of its sister concern - M/s. Wine Cellar. Further, on perusal of the details filed by the assessee during the course of the search assessment proceedings, it was further noticed that the total value of such sales was Rs.1,16,73,202/- during the relevant assessment year. In view of this, during the course of the assessment proceedings, the assessee was asked to furnish justification for sales of stock at zero invoice value to its sister concern during the relevant assessment year.”*

5.1. Ld. Assessing Officer further noted in para 4.1 in respect of disallowance made u/s.14A as under:

*“4.1 During the relevant assessment year, the assessee has earned Rs.7,78,367/- as share of profit from partnership firm which is exempt from income-tax. However, during the course of the search assessment proceedings, it was noticed that the assessee has not made any disallowance u/s. 14A of the Act in the Return of Income filed in response to notice u/s. 153A of the Act, even though the assessee has earned Exempt income during the relevant assessment year. In view of the same, the assessee was asked to show cause as to why disallowance u/s. 14A of the Act read with Rule 8D should not be made for the relevant year under consideration.”*

5.2. Assessee furnished its reply which did not find favour with the Ld. AO. He completed the assessment by making an addition of Rs.1,16,73,202/- by holding it as sales suppressed by the assessee and also made a disallowance of Rs.92,61,952/- u/s. 14A r.w.r. 8D.

5.3. Aggrieved, assessee went in appeal before the Id. CIT(A) before whom it was strongly contested that additions made by the AO are not based on any incriminating material found and seized during the course of search conducted in the case of the assessee. It was submitted that Ld. AO had not referred to any material found or seized by the officers of the Investigation Wing during the course of search which could be said to be incriminating in nature. Assessee submitted that the impugned assessment year is not an abated year considering the date of conduct of search and, therefore, recourse to the impugned assessment year was permissible to the AO only on the basis of incriminating material found or discovered during the course of search and which pertained to the year under consideration. Since nothing was found to this effect, no addition is warranted as made by the AO.

5.4. Ld. CIT(A) elaborately dealt with the contention raised by the assessee by referring to several judicial precedence and gave his observations and findings in favour of the assessee deleting the addition made by the Ld. AO. The said observations and findings given by the Ld. CIT(A) are reproduced as under:

*"18.4 From the above discussion, it is clear that the details submitted by the appellant during the course of assessment proceedings u/s. 153A and the financial statements of the appellant cannot be treated as "incriminating material". Even in the assessment order passed u/s. 153A of the Act by the learned AO, there is no reference made to any "incriminating or new material" based on which these two additions were made. These facts show that there was no "incriminating material" found during the course of search conducted u/s. 132 of the Act relating to the additions made. Hence, no addition can be made in absence of incriminating material for A.Y 2014-15, which is non-abated. Thus, the addition made on account of FOC sales to sister concern and the disallowance made u/s.14A of the Act read with Rule 8D cannot survive in view of the binding judicial decisions as discussed above.*

*19. In view of the discussion in the foregoing paragraphs, the AO is directed to delete the impugned additions/disallowances made in the assessment order. Ground No. 2 raised by the appellant for A.Y. 2014-15 is, accordingly, ALLOWED.....*

*.....20.2 Accordingly, following the decision for AY 2014-15, the additions/disallowances made by the AO in these years are also directed to be deleted and Ground No. 1 taken by the appellant in the appeals for A.Ys. 2013-14, 2015-16, 2016-17 & 2017-18 are also ALLOWED.”*

6. In the course of hearing before us, Ld. DR supported the order of Ld. AO. We take note of the recent decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.* reported in (2023) 149 taxmann.com 399 (SC) wherein the assessment framed u/s. 153A of the Act are liable to be quashed where additions have been made without reference to any incriminating material found in the course of search relating to the addition so made. On confrontation of this decision to the Ld. DR, nothing contrary was brought on record to dislodge the observations and findings arrived at by the Ld. CIT(A). Ld. Counsel for the assessee placed strong reliance on the order of the Ld. CIT(A) fortified by the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.* (supra).

7. We have considered the rival submissions. Perusal of the order of Ld. AO evidently demonstrate that there is no reference to any incriminating material found and seized during the course of search in respect of the addition towards suppressed sales and disallowance u/s 14A. The observations made by the Ld. AO are routine in nature which have been found from the accounts of the assessee and submissions made thereon. It is also undisputed that the year under consideration is an unabated year considering the date of conduct of search within the meaning of section 153A of the Act. Admittedly, no incriminating material has been referred to which has been found in the course of search of the assessee for the impugned assessment year. Accordingly, as relied on by the Ld. Counsel for the assessee, the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.* (supra) applies squarely to the facts of the present case.

7.1. The Hon'ble Supreme Court in para 14 in the above case has categorically held as follows :-

*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."*

8. In these circumstances, respectfully following the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)*, as no incriminating material has been unearthed during the course of search for the relevant assessment years, no addition can be made by the AO in the assessments. Consequently, the assessment orders passed for the impugned assessment years stand quashed.

9. Thus, the appeal vide ITA No.1570/Mum/2024 is dismissed. Since the identical issue is involved in the case of ITA No. 1571/Mum/2024 for AY 2015-16, which is also an unabated year

within the meaning of section 153A of the Act, our observations and findings given above applies *mutatis mutandis* and is also accordingly dismissed.

10. In the result, both the appeals of the revenue are dismissed.

Order is pronounced in the open court on 09 July, 2024

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 09 July, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai