**आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ , चण्डीगढ़**
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**
**BENCH 'B' CHANDIGARH**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND**
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 303/CHD/2019**
निर्धारण वर्ष / Assessment Year : 2012-13

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| Shri Satish Soin,<br>House No.31, Garden Enclave,<br>South City-II, Ludhiana. | बनाम<br>VS | The ACIT,<br>Central Circle-2,<br>Ludhiana. |
| स्थायी लेखा सं./PAN /TAN No: ADVPS6254N | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar &
Ms. Muskan Garg, CAs
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

तारीख/Date of Hearing : 26.05.2025
उदघोषणा की तारीख/Date of Pronouncement : 23.07.2025

**HYBRID HEARING**

**आदेश/ORDER**

**PER RAJPAL YADAV, VP**

The assessee is in appeal before the Tribunal against the order of the ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 28.11.2018 passed for assessment year 2012-13.

2. The assessee has taken three grounds of appeal out of which Ground Nos. 1 and 3 are general in nature which do not call for recording of any specific finding.

3. In Ground No.2, assessee has pleaded that ld. CIT (Appeals) has erred in confirming the addition of Rs.94,59,870/- by disbelieving the claim of the assessee regarding exemption u/s 10(38) on account of Long Term Capital Gain.

4. Though there is a delay in the appeal but before adverting to that aspect, we would like to take note of brief facts of the case. The assessee has filed his return of income declaring total income at Rs.6,69,848/-. This income has been declared as 'Business and Profession Income' from M/s Ram Lal Satish Kumar, Salary Income from Saber Packaging Pvt. Ltd. He has declared capital gain income from other sources. The AO passed a scrutiny assessment u/s 153A read with Section 143(3) of the Act on 31.03.2015 because a search was conducted at the premises of the assessee on 28.12.2012 u/s 132 of the Income Tax Act. This order was revised by the ld. Commissioner u/s 263 vide his order dated 22.02.2017. The ld. Commissioner was

of the view that claim of capital gain was not genuine and AO failed to examine this aspect. Consequently, after 263, fresh assessment order is being passed on 20.12.2017.

4.1 Appeal to the ld.CIT (Appeals) did not bring any relief to the assessee and assessee is in appeal before the Tribunal against the order of ld. CIT (Appeals) dated 28.11.2018 which emanates from an assessment order u/s 143(3) read with Section 263 and 153A of the Act.

5. The Registry has alleged that appeal is time barred by 38 days. Assessee has filed an application for condonation of delay. He has also raised additional ground of appeal vide which it has been pleaded that approval granted u/s 153D is erroneous.

6. Before us, ld. counsel for the assessee submitted that all the facts and circumstances are verbatim same as was available in the case of Shri Dinesh Soin (ITA No. 306/CHD/2019). This appeal has been decided by the Tribunal on 29.04.2025. In that case also, appeal was time barred by 38 days. The Tribunal has condoned the delay and also deleted the addition on merit. In that case also, the Tribunal has considered the alleged

additional ground of appeal raised by the assessee, whether assessment order deserves to be quashed as it was approved u/s 153D mechanically.

7. The ld. CIT DR has relied upon the orders of the Revenue Authorities below. According to her, it is a case of bogus Long Term Capital Gain earned on alleged purchase and sale of a penny stock.

8. We have duly considered the rival contentions and gone through the record carefully. We find that issues agitated in this appeal are verbatim same, therefore, for the facility of reference, we take note of our order passed in ITA 306/CHD/2019 and other appeals, which reads as under :

> *"The present three appeals are directed at the instance of assessees against the separate orders of ld. CIT(A) dated 28.11.2018 passed on the respective appeals of the assessee for assessment year 2010-11, 2010-11 and 2011-12. Since common issues are involved in all these appeals, therefore, we heard them together and deem it appropriate to dispose of them by this common order.*
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> *2. The Registry has pointed out that ITA No.306/CHD/2019 is time barred by 38 days, whereas other two appeals are time barred by 85 days. Both the assessees have filed application for condonation of delay alongwith their affidavits. In the application for condonation of delay, it has been pleaded by the appellants that business run by them came under financial crunch and insolvency proceedings were initiated against them. It has been further pleaded that due to this hardship, lots of record was misplaced and they could not lay their hand on the complete record for filing the appeals. According to the assessee, this situation led the appeals to become time barred. The assessees have prayed that delay in filing appeal be condoned and the same be decided on merit.*

*3. The ld. CIT DR, on the other hand submitted that assessees should be more vigilant in prosecuting their Income Tax litigation before the ITAT. He opposed the prayer for condonation of delay.*

*4. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross- objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji& Others, 1987 AIR 1353:*

> *1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
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> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

*5. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:*

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the*

*redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finislitium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".*

*6. In the light of above, if we peruse the explanation of the assessees for condonation of delay, then it would reveal that assessees have not adopted a strategy to make the appeal time barred for litigation against the Department. It was a bonafide human error. The simple reason is that by making the appeals time barred, they will not gain anything. Their demand would become final. Therefore, it was not an intentional delay, rather due to some financial implications, the appeals could not be filed within time. We condone the delay and proceed to decide the appeals on merit.*

*7. Both the appellants have raised an additional ground of appeal vide which, it has been pleaded that original assessment order passed under Section 153A read with Section 143(3) of the Act was required to be approved by the Commissioner of Income Tax under Section 153D. This approval was granted in a mechanical manner without applying his mind on the issues. The appellants have submitted that this additional ground of appeal goes to the roots of cause of action and therefore, they be permitted to raise this ground.*

*8. During the course of hearing, we have confronted the ld. Counsel for the assessee about maintainability of this ground of appeal. The simple reason is that against an assessment order dated 31.03.2015 passed by the AO in the cases of both the appellants*

*in these assessment years, no appeals were filed because AO did not make any additions, therefore, there was no grievance to the assessee and this issue was not challenged. The fresh assessment orders are being passed in pursuance of a revisional order passed by the CIT under Section 263 on 22.02.2017. The ld. Counsel for the assessee submitted that stand of the assessee is protected by the judgement of Hon'ble Punjab & Haryana High Court in the case of Osho Forge Ltd. Vs CIT reported in 410 ITR 198, 255 Taxman 375. He drew our attention towards relevant paragraphs of the judgement which read as under :*

> *"11. The assessment order dated 24.12.2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated 24.12.2010. Thereafter the said order was taken up in revision. The order was set aside and the matter was remitted to the A.O. to pass a fresh assessment order. The approval under Section 153D was not set aside. There was no question thereupon of the A.O. seeking fresh approval under Section 153D. The order dated 18.03.2014 passed by the A.O. was in compliance with the remand directions. It was not a case of the A.O. assuming jurisdiction under Section 153A of the Act. That stage was over when order dated 24.12.2010 was passed. The A.O. was complying with the directions of the revisional authority. Section 153D of the Act is only applicable for passing an assessment order or re-assessment order. There is no requirement under Section 153D for prior approval for complying the remand directions. The approval dated 24.12.2010 in fact was to the effect that assessment of assessee can be passed under Section 153A. Remand direction was that the assessment under Section 153A should be framed again. There was no occasion of fresh assumption of jurisdiction to frame assessment. Rather it was in continuation of earlier proceeding which was duly approved. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Additional Commissioner Officer lower in rank than Commissioner for complying with the directions given by the Commissioner.*
>
> *12. The CIT (Appeals) allowed the appeals of the assessee on the basis that compliance of Section 153D of the Act was mandatory. It is not the issue whether the provision is procedural or the requirement of approval is mandatory. The fact is that Section 153D of the Act had been duly complied with by the A.O. The contention raised that even an order of remand cannot be passed without complying with Section 153D of the Act is beyond the scope of the section. The Tribunal rightly held that Section 153D of the Act is for assuming jurisdiction to pass an assessment order under Section 153A of the Act and the A.O. would not loose the jurisdiction to frame assessment while complying with remand order.*
>
> *13. The contention of learned counsel for the appellant that the order dated 18.03.2014 was passed under Section 143(3) read with Section 263 of the Act is not well founded. Though in the heading Section 143(3)/ 263 of the Act are referred to from the order it is clear that it has been passed under Section 153A read with Section 143(3) of the Act and the same has been passed pursuant to the remand under Section 263 of the Act. In the heading the A.O. has mentioned Section 1.43(3) read with Section 263 of the Act only to show that the assessment is being framed as per the directions of the CIT in revisional proceedings.*

*14. The questions of law are answered against the appellant. Appeal is therefore dismissed.*

*8.1 On the other hand, ld. CIT DR submitted that issue of approval attained finality alongwith the assessment order dated 31.03.2015 passed in the cases of both the assessees in these three assessment years.*

*9. We have duly considered the rival contentions and gone through the record carefully. Whether original assessment order was passed after taking approval from the Commissioner of Income Tax in rightful manner or not, has attained finality. The assessee did not challenge that order because they were not aggrieved with the assessment order. This is the second round of assessments framed in pursuance of 263 order. In these assessment orders, approval was not required to be taken because these are passed under the command of revisional order passed under Section 263. The judgement relied upon by the ld. Counsel for the assessee if perused, then it would reveal that in this judgement, an assessment order was passed wherein approval was taken by the AO. That order was set aside by the Commissioner by exercising powers under Section 263. The fresh assessment order was passed but no approval was taken. The facts to this extent are common. The Hon'ble High Court has observed that while exercising the powers under Section 263, issue regarding approval under Section 153D was not set aside. Therefore, no fresh approval was required to be taken by the AO. To our mind, if this judgement is applied on the facts of present case, then it would come out that approval granted by the CIT in the assessment order framed on 31.03.2015 was not disturbed by the CIT while exercising powers under Section 263. It attained finality. Had assessee any grievance against that approval, then it would have been challenged in an appeal and that appeal ought to have been filed against original assessment order dated 31.03.2015. The right to appeal would not emerge to an assessee according to convenience. It is a statutory right and it is to be availed according to the procedure provided for availing that. The stand of the assessee is that since they were not aggrieved against the original assessment order, therefore, they did not challenge that approval but this approval percolated in the second assessment order passed in pursuance of 263 order. Therefore, they be permitted to challenge that. In our opinion, it is a far-fetched argument at the end of the assessees once the issue of approval was not set aside in 263, they cannot challenge that issue in the second assessment order. For example, an assessment was reopened. An assessee has a right to challenge that re-opening as well as additions made on merit. The assessee did not challenge re-opening but challenged the additions on merit which are set aside by the appellate authority for fresh examination. The AO again made the additions, can in the second round of litigation, assessee challenged re-opening. The simply reply to this question is in negative because issue of re-opening attained finality at the stage when assessee did not challenge the re-opening in filing the appeal. The second round of litigation emanates from the remand of the issues to the AO for re-adjudication. Therefore, we do not find any merit in this additional ground of appeal sought to be raised by the assessee. Accordingly, additional ground of appeal is rejected in all the three years.*

*10. The solitary substantial grievance of the appellants in each appeal is that ld. CIT(A) has erred in confirming the denial of exemption on alleged Long Term Capital Gain claimed under Section 10(38) of the Income Tax Act. This exemption was claimed on sale of shares.*

*11. First we take note of the facts from ITA 306/CHD/2019. The brief facts of the case are that a search & seizure operation under Section 132 of the Income Tax Act was conducted at the premises of the assessee on 28.08.2012. A notice under Section 153A was issued on 07.03.2013. The assessee has filed his return of income on 31.07.2013 declaring total income at Rs.31,70,120/-. A notice under Section 143(2) was issued and served upon the assessee. Thereafter ld. AO has passed an assessment order under Section 153A read with Section 143(3) of the Income Tax Act on 31.03.2015. Since no incriminating material was found during the course of search, therefore, no addition was made by the AO except Rs.25,000/-. This estimated addition was made on account of certain unexplained expenses.*

*12. The ld. CIT perused the assessment record and formed an opinion that assessment order is erroneous as much as it has caused prejudice to the interests of Revenue. He put reliance upon the judgement of Hon'ble Karnataka High Court in the case of Canara Housing Development Corporation Vs DCIT, Central Circle, Bangalore. On the strength of this judgement, he was of the view that apart from seized material, any other issue could also be examined in an assessment required to be framed under Section 153A of the Income Tax Act. The judgement of Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla 380 ITR 571 was brought to his notice but he observed that against this judgement, an appeal is being filed before the Supreme Court. He further observed that assessee has claimed exemption under Section 10(38) on sale of shares. It is ought to be examined by the AO.*

*12.1 The order of the ld. CIT dated 22.02.2017 attained finality. The AO has passed the fresh assessment order under Section 143(3) read with Section 263 of the Act on 20.12.2017. A perusal of his order would reveal that ld. AO has observed that assessee has sold shares of M/s Oasis Cine Communication Ltd. for a consideration of Rs.3,72,79,089/- and claimed exemption under Section 10(38) of the Income Tax Act. The AO, thereafter, made reference to a report of Director of Investigation, Calcutta. Such reference is of general term and we deem it appropriate to take note of this observation of the AO which is verbatim on all three assessment orders. It readd as under :*

> *"The Directorate of Investigation, Kolkata carried out a country-wide investigation to unearth the organized racket of generating bogus entries of Long Term Capital Gain (LTCG) which is exempt from tax. The modus operandi adopted by the operators was to make the beneficiary buy some shares of a predetermined Penny stock company controlled by them. These shares are transferred to the beneficiary at a very nominal price mostly off-line through preferential allotment or off-line sale to save STT. The beneficiary (an individual) holds the share for one year, the statutory period after which LTCG is exempt under section 10(38) of the Income tax Act 1961. In the meantime the operators rig the price of the stock and gradually rise its price many times, often 500 to 1000 times. This is done through low volume transaction indulged in by the dummies of the operator at a pre-determined price. When the price reaches the desired level the beneficiary who bought the shares at a nominal price, is made to sell it to a dummy Paper company of the operator. For this, unaccounted cash is provided by the beneficiary which is routed through a few layers of paper companies by the operator and finally is parked with the dummy paper company that will buy the shares."*

*12.2 Thereafter, ld. AO confronted the assessee to submit details on six counts which has been submitted by the assessee and brief summary of such details has been reproduced by him on page No. 3. The AO thereafter observed that he has issued notice under Section 133 sub-section (6) on 23.11.2017 from Calcutta Stock Exchange as also M/s Oasis Cine Communication Ltd. which were not replied. Therefore, he treated the alleged sale of shares as a bogus and made the addition.*

*13. Appeal to the ld. CIT(A) did not bring any relief to the assessee.*

*ITA 704/CHD/2019*

*14. This case has also identical facts. The only difference is the quantum of addition which has been made at Rs.78,02,942/-. The search was conducted on the same date. In other words, both the assessees are family members, hence, there is no variation in the facts.*

*15. Similar is the situation in ITA 705/CHD/2019.*

*16. The observations recorded by the AO are verbatim same except variation of the quantum. The orders of the ld. CIT under Section 263 are also similar as much as the orders of the CIT(A) are also verbatim same.*

*17. The ld. Counsel for the assessee while impugning the orders of Revenue Authorities submitted that original assessments were framed under Section 153A. According to the position of law propounded by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. 149 taxman.com 399, the additions in an assessment under Section 153A was to be made on the basis of seized material found during the course of search. No such material was either found during the course of search nor any material was transmitted to the AO by Investigation Wing of Calcutta. The whole addition is being made on a theoretical narration made by the AO. Without collecting any evidence, AO simply assumed that the transaction of the assessee was bogus and it was of a penny stock. He has not conducted any enquiry.*

*17.1 On the other hand ld. CIT DR relied upon the orders of the Revenue Authorities. He further relied upon the following judgements:*

1. *Judgement of Hon'ble High Court of Bombay in the case of Sanjay Bimalchand Jain Vs Pr.CIT - ITA 18/2017*

2. *Judgement of the Hon'ble Calcutta High Court in the case of Pr.CIT Vs Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta)[2022] 446 ITR 56 (Calcutta) [ 14.06.2022]*

3. *Judgement of the Hon'ble ITAT, Ahmedabad in the case of Hemil Subhashbhai Shah " Samarpan" Vs DCIT (ITA No. 1211/Ahd/2018) (ITA No. 961/Ahd/2019)*

4. *Judgement of the Hon'ble ITAT, Delhi in the case of Pooja Ajmani Vs. ITO (ITA 5714/Delhi/2018)*

*5. Judgement of the Hon'ble ITAT, Delhi in the case of Sangeeta devi Jhunjhunwala Vs. ITO (ITA 747/Delhi/2022)*

*17.2 He submitted that transactions of the assessee are bogus and therefore, AO has rightly made the addition.*

*18. We have duly considered the rival contentions and gone through the record carefully. Though the order passed by the ld. Commissioner dated 27.02.2017 under Section 263 attained finality but a perusal of this order would indicate that whole premises of this order is based upon the construction of the position of law that in a search assessment, any issue can be examined rather unearthed or not during the course of search. When judgement of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla 388 ITR 571 was brought to his notice , then he ignored that judgement only on the basis that appeal is being filed before the Supreme Court against this. He relied upon the judgement of Hon'ble Karnataka High Court in the case of Canara Housing Development Corporation Vs DCIT. After judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell, situation reversed. Judgement of Hon'ble Delhi High Court in the case of Kabul Chawla has been upheld and judgement of Hon'ble Karnataka High Court in the case of Canara Housing Development Corporation Vs DCIT was disproved by the Hon'ble Supreme Court. The Hon'ble Supreme Court has propounded that in a search assessment, additions are to be made on the basis of incriminating material found during the course of search. The observations made by the Hon'ble Supreme Court in the concluding paragraph is worth to note, which read as under :*

> *"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 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 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 sections 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 re- writing 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".*

*19. In the light of above, let us examine the assessment order. The order under Section 263 was passed ion 20.02.2017. Assessment is being passed on 20.12.2017. This assessment order is under Section 153A read with Section 143(3)/263 of the Income Tax Act because ld. Commissioner has taken action under Section 263 against an assessment order passed under Section 153A/143(3) dated 31.03.2015. A perusal of the complete assessment order would reveal that nothing is being possessed by the AO. He simply made reference of some report by the Director of Investigation, Calcutta but we have reproduced the reference of this Report in the assessment order, in the upper part of this order. A perusal of this reference would indicate that it only exhibit the modus-operandi of alleged earning of Long Term Capital Gain. It is a*

*generic narration and does not have any connection with the assessee. The AO was not having any information from the Director of Investigation, Calcutta regarding information of M/s Oasis Cine Communication Ltd. He wrote two letters under Section 133(6) dated 23.11.2017 to Calcutta Stock Exchange and 30.11.2017 to M/s Oasis Cine Communication Ltd. Reference is being made with regard to above facts at page No. 2 of the assessment order. The assessment order was passed on 20.12.2017. Hardly he has devoted any energy for conducting investigation from these concerns. The assessee has submitted a note about his transactions whereby it was contended that he has purchased shares of M/s Sharp Transport Pvt. Ltd. which was merged in M/s Oasis Cine Communication Ltd. and he got the shares of M/s Oasis Cine Communication Ltd. on merger of erstwhile company whose shares were purchased by the assessee. He has submitted the complete details but no steps were taken by the AO.*

*20. Before the ld. CIT(A), assessee has placed reliance upon the judgement of Hon'ble jurisdictional High Court in the case of Pr. Commissioner of Income Tax, Central, Ludhiana Vs Shri Hitesh Gandhi ITA No. 18 of 2017 decided on 16.02.2017. He also relied upon judgement in CIT Vs Prem Pal Gandhi ITA No. 95 of 2017. The assessee has made a comparative analysis of facts of both these cases. Such submissions have been reproduced by the ld. CIT(A) in paragraph No. 5.1, which read as under :*

*5.1 The facts and circumstances of the case of the appellant are similar to the facts and circumstances of this case of the Honorable Punjab & Haryana High Court. We are giving below the facts on the basis of which the Hon'ble Punjab and Haryana High Court has upheld the deletion of addition by the CIT(A) and the Hon'ble ITAT in the case of Hitesh Gandhi(Supra)*

| *Hitesh Gandhi's case* | *Appellant's case* |
|---|---|
| *1. Shares were actually purchased and these were physically transferred in favour of the assessee in the books of the listed company.*<br>*2. Shares were got dematerialised and credited to the account of the assesse in the accounts maintained by the Depository Participant i.e. HDFC*<br>*3. Even in the search carried out by the Department in this* | *1.In our case also shares were actually purchased and were transferred in favour of the appellant in the books of the listed company*<br>*2. In our case also shares were dematerialised in the account maintained by Depository-Participant Master Cap[ital Services Ltd.*<br>*3 In our case also an action under section 132 of the IT Act wa[r] taken and here also* |

| | |
|---|---|
| *case no recovery is shown to be made of any incriminating evidence to show that the transaction of purchase and sale of shares was arranged, as suspected by the Assessing Officer*<br>*4. Post search enquiries also did not bring out any adverse material relating to the transaction of purchase and sale of shares.*<br>*5. Just because the assesse has been found to have earned huge amount of long term capital gain on the sale of shares, the A.O. held the transaction to be sham merely on the ground of same being unlikely in the given circumstances.*<br>*6. Sales of shares debited in the D Mat account of the assessee and STT duly paid on the same*<br>*7. Sales and Purchase of shares were through SEBI Regd. Brokers only.*<br>*8. Payments of sales of shares were received through banking channels only.* | *no such incriminating material was found during the search.*<br>*4. Post search enquiries in our case also did not bring out any adverse material relating to sale or purchase of share.*<br>*5. In our case also the A.O. held similarly under exactly similar circumstances*<br>*6. In Appellant's case also sales of shares are debited in the D Mat account and STT paid*<br>*7. Sales and purchase of shares are through SEBI Regd. Brokers only*<br>*8. In our case also payments of sales of shares were received through banking channels only.* |

*As could be seen from the above comparison the addition in question was made in the case of the appellant under exactly similar facts and circumstances as those in the case of Hon'ble jurisdictional High court in the case of Hitesh Gandhi (Supra). Therefore our case is squarely covered by the said decision. That decision being binding on the appellate authorities in the jurisdiction of the Hon'ble High court it is prayed that the addition of Rs . 3,72,79,089/- be deleted as held by the Hon'ble High Court.*

*Further reliance is also placed on the decision in the case of CIT vs. Alpine Investments (Calcutta High Court) Posted on September 15, 2018 which states S.68 Bogus Capital Gains From Penny Stocks: The share transaction is genuine because it is supported by contract notes, bills, were carried out through recognized stockbroker of the Stock Exchange and all payments made to, and received from, the stockbroker, were through account payee instruments. A transaction fully supported by documentary evidences cannot be brushed aside on suspicion and surmises.*

*In view of the above, it is prayed that addition of Rs. 3,72,79,089/- made by the Ld AO may be deleted.*

*6. The Ld AO has made addition in this case on the basis of suspicion in his mind that the capital gain in this case may not be in genuine as in the case of assesses in regard to which investigation was made by the DIT (Inv), Kolkata. In this regard it has been held in a number of cases that suspicion however stronger cannot partake the character of an evidence. The assessee cannot be taxed and penalized just on the basis of suspicion in the mind of the AO. Reliance in his regard is placed on the following decisions:-*

*i) Lalchand Bhagat Ambica Ram v CIT (37ITR 288) (SC)*

*ii) CIT v. Paras Cotton Co. (288 ITR 211) (Raj.)*

*iii)Faqir Chand Chaman Lai v. ACIT [(2004) 1 SOT 914 (Asr.)] [Appeal dismissed by P&H High Court in 262 ITR 295 and SLP dismissed by SC in 268 ITR 215(St)];*

*iv) Assam Tea Co. v. ITO [(2005) 92ITD 85 (Asr.) (SB)];*

*v) Jhantala Investments Limited v ACIT [(2000) 73 ITD 123 (Mum.)]*

*7. Further in this case assessment was made under section 153A, being a search case. No incriminating material, to show that the long term capital gain shown by the assessee is ingenuine, was found during the course of search. The Ld CIT may have set aside the assessment order under section 263 on whatever ground, but still the fresh assessment has to be completed taking into consideration the decisions of the courts and appellate authorities prevailing at that time. Even while adjudicating the appeal, the issue as to whether addition can be made on the point on which no incriminating material was found during search will have to decided on the basis of prevailing judicial decisions . In this regard the humble appellant may point out that there are following decisions of jurisdictional Tribunal on this issue:-*

*i) DCIT Central Circle II. Chandigarh Vs Times Finvest and Commerce Ltd ITAT Chandigarh)in ITA No.541/Chd/2014*

*"In view of the proposition laid down in the case of Murli Agro Products Ltd. by th Hon'ble Bombay High Court, we hold that in the absence of any incriminating"'*

*material found during the course of search and the assessment proceedings having not been abated at the time of search, the Assessing Officer has no jurisdiction to make the addition under section 153A of the Act."*

*ii) Mala Builders Pvt. Ltd Vs CIT (ITAT Chandigarh) on 23 August, 2016*

*"In view of the above we hold that in the absence of any incriminating material found during the course of search and the assessment proceedings having not abated at the time of search, the assessing officer has no jurisdiction to make the addition under section 153A of the Act. This ground of appeal of the assessee is therefore allowed. The additions made in the order under section 153A /143(3) are accordingly deleted."*

*iii) DCIT Vs. SCM Fin Trade Pvt. Ltd. ( ITAT Chandigarh- ITA No. 981 and 982/Chd/2017 )-date of order 05.01.2018*

*"We have heard the contentions of both the parties. We do not find any merit in the present appeal filed by the Revenue. The facts vis-a-vis both the appeals are that search action was carried out on the assessee on 4.10.2012 and at the time of search action no assessment or re- assessment proceedings were pending is undisputed. It is also not disputed that no incriminating documents or record or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the assessee. Therefore, the Ld. CIT(Appeals), we hold, has rightly deleted the addition made following various judicial pronouncements in this regard. Further we do not find any merit in the contention of the Ld. DR that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla has been distinguished in the case of Smt. Dayawanti Vs. CIT in ITA No.357/2015 dated 27.10.2016, since we find that even this aspect has been dealt with by the ITAT, Chandigarh Bench, in the case of Bharatnet Technology Ltd. (supra) in which it was observed that the case of Smt. Dayawanti was subsequently discussed by the Hon'ble Delhi High Court in the case of Pr. CIT Vs. MeetaGutgutia Prop. M/s Ferns 'N' Petals in ITA No.306/2017 decision vide order dated 25.5.2017, wherein it was held that in the case of Smt. Dayawanti (supra) incriminating material was found during search action, however, in the case of Pr. CIT Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals no incriminating material was found during search action and hence addition made was not justified. In view of the above, we do not find any infirmity in the order of the Ld.CIT(Appeals) while deleting the impugned additions in both the appeals filed by the Revenue."*

*iv) Sh. Ramesh Mittal. Panchkula Vs ACIT, Chandigarh (ITAT Chandigarh) on 30 November, 2017 , in ITA No. 232/Chd/2014*

*"We have heard the submissions. We find that it is not in dispute that the additions made were on account of entries depicted in the balance sheet and the pass book and are not based on any incriminating material seized during the search. In the face of these facts we find that the issue is covered by the entire gamut of section 153(A),153(B) and 153(C), case of CIT Vs. Kabul Chawla, 61 Taxmann.com 412(Delhi) , CIT Vs RRJ Securities 380 ITR62 and Pr. CIT Vs Lata Jain in ITA No.274/2016 dated 29.04.2016 the decision lay down the propositions that in the absence of any incriminating material found during the course of search and where the assessment proceeding having not been abated at the time of search, the AO has*

*no jurisdiction to make the addition under section 153A. This ratio is applicable in the case of the assessee for the AY 2003-04. Reliance has also been placed on the order of ITAT Chandigarh Bench in ITA No. 433 to 437/Chd/2014 for AY 2008-09 in the case of M/s Mala Builders Pvt. Ltd. Vs. ACIT, wherein the issue of addition or disallowance in assessment can be made or not, in the absence of the incriminating material found during the course of search, has been extensively discussed. Hence, the addition made by the Assessing Officer on account of unsecured loans and deposits in saving bank account in this assessment year wherein no assessment proceedings were pending hitherto stands deleted."*

*v) DCIT . CC-II. Chandigarh Vs. Sh. R.K. Garg ( ITAT Chandigarh) date of order 01.05.2018*

*"We have heard the contentions of both the parties. We do not find any merit in the present appeal filed by the Revenue. The facts vis-a-vis both the appeal that search action was carried out on the assessee on 4.10.2012 and at the time of search action no assessment or reassessment proceedings were pending is undisputed. It is also not disputed that no incriminating documents or record or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the assessee. Therefore, the Ld.CIT(Appeals), we hold, has rightly deleted the addition made, following various judicial pronouncements in this regard. Further we do not find any merit in the contention of the Ld. DR that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has been distinguished in the case of Smt. Dayawanti Vs. CIT in ITA No.357/2015 & Others dated 27.10.2016, since we find that even this aspect has been dealt with by the ITAT Chandigarh Bench in the case of Bharatnet Technology Ltd. (supra) in which it was observed that the case of Smt. Dayawanti (supra) was subsequently discussed by the Hon'ble Delhi High Court in the case of Pr.CIT Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals in ITA No.306/2017 85 Other decision vide order dated 25.5.2017, wherein it was held that in the case of Smt. Dayawanti (supra) incriminating material was found during search action, however, in the case of Pr. CIT Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals no incriminating material was found during search action and hence addition made was not justified. In view of the above, we do not find any infirmity in the order of the Ld.CIT (Appeals) while deleting the impugned additions in both the appeals filed by the Revenue. Applying the aforesaid decision to the present case, we uphold the order of the Ld. CIT(A) deleting the addition made in the present case, in the absence of any incriminating material found during the course of search and dismiss all the grounds raised by the Revenue."*

*vi) DCIT. CC-II. Chandigarh Vs. DHG Marketing Pvt. Ltd.. (ITAT Chandigarh) date of order 09.05.2018*

*"We have heard the contentions of both the parties. We do not find merit in the present appeal filed by the Revenue. The fact that a search was conducted on the assessee on 04.10.2012 and the assessment in the present case, pertaining to assessment year 2010-11 was not pending on the said date and thus had not abated, is not disputed. It is also an admitted fact, as noted above by the Assessing Officer of the assessee, that no incriminating material was found during the course of search. In the backdrop of such facts the decision of the Honble Delhi High Court in the case of , Kabul Chawla(supra) has been rightly followed by the Ld.CIT (Appeals) , holding that no addition could be made in such circumstances. Therefore, the Ld. CIT( Appeal) , we*

*hold, has rightly deleted the addition made in the present case following various judicial pronouncements in this regard, vis a vis the ground raised by the revenue that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla has been distinguished in the case of Dayawanti Vs CIT in ITA No. 357/2015 and others dated 27.10.2016, we find that this aspect has being dealt with by the ITAT in the case of SCM Fintrade Private Limited (supra) wherein it has been held that the case of Dayawanti (Supra) was subsequently discussed by the Hon'ble Delhi High Court in the case of Pr. CIT Vs Meeta Gutgutia, Prop. M/s Ferns & Petals in ITA No. 306/2017 and others, vide order dated 25.05.2017, wherein it was held that in the case of Dayawanti (supra), incriminating material was found during search action while in the case of Pr. CIT vs Meeta Gutgutia (supra) no incriminating material was found during search action and addition was not justified in view of the above. In view of the above we do not find any infirmity in the order of the Ld. CIT( Appeal) deleting the impugned addition."*

*Further these decisions of ITAT Chandigarh are based on decisions of various High Courts.*

*7.1 It has been held in a number of cases that the decisions of the Hon'ble jurisdictional Tribunal are of binding nature for Hon'ble first appellate authority, and otherwise it will result into judicial indiscipline resulting into judicial anarchy. Attention in this regard is drawn on the decision of in the case of Cargo Handling Private Workers Pool Vs DOT ( ITAT Vishakhapatnam) order dated 19.07.2011 in which it is held that the Tribunal's order is binding and failure to follow it is a contempt of court .*

*7.2 So in the appellant's humble view the assessment under section 153A which may have been set asides under section 263 on any ground, while completing the fresh assessment the Ld AO will take into consideration the decisions prevailing at that time and the Hon'ble First Appellate Authority shall take into consideration the decisions of the Hon'ble Jurisdictional Tribunal. And as no incriminating material is found showing in genuineness of capital gain, no addition deserves to be sustained on this point.*

*8. In view of the humble submission, the appellant prays that the addition made may kindly be deleted. Kindly do let the appellant know if your honour requires any further information/ explanation in matter."*

*21. We have perused the submissions as well as the orders relied upon by the ld. CIT DR. We are of the view that AO failed to make reference to any material seized during the course of search for disbelieving the case of the assessee. He has not made any reference to any document which has been transmitted to him by the Director General of Investigation, Calcutta. He has only made a reference to generic analysis of penny stock companies by the DIT (Investigation) Calcutta. The additions could be made only on the basis of specific information or by disproving the claim made by the assessee. No such steps were taken by the AO. More so, these are the assessment orders passed under Section 153A. Their scope is limited to seized material found during the course of search. This aspect has been totally ignored by both ld. Revenue Authorities below. Therefore, in the light of these propositions laid*

*down by Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd., these additions are not sustainable in the hands of all the assessees.*

*22. Accordingly, all the appeals are partly allowed.*

*Order pronounced on 29.04.2025.*

9. We find there is no disparity on facts, therefore, we condone the delay and delete the additions in the same term as has been done in the above order of other family members.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 23rd July,2025.

Sd/- Sd/-

**(MANOJ KUMAR AGGARWAL)**
**ACCOUNTANT MEMBER**

**(RAJPAL YADAV)**
**VICE PRESIDENT**

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar