* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14th May, 2012
% *Date of Decision: 7th August, 2012*

\+ ITA 1626/2010
\+ ITA 1632/2010
\+ ITA 1998/2010
\+ ITA 2006/2010
\+ ITA 2019/2010
\+ ITA 2020/2010

CIT ..... Appellant
Through: Ms. Rashmi Chopra, Sr. Standing Counsel

Versus

ANIL KUMAR BHATIA ..... Respondent
Through: Mr. Kirti Uppal, Sr. Adv. with Mr.Krishan Kumar and Mr. Arvind Bansal, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

R.V. EASWAR, J.:

ITA Nos.1626, 1632, 1998, 2006, 2019 and 2020 of 2010 are six appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961, which is hereafter referred to as the 'Act'. The assessment years involved are 2000-01 and 2002-03 to 2005-06.

2. On 14th May, 2012, the following substantial questions of law were framed, which are common to all the six appeals and they were heard: -

> *"1. Whether the Income Tax Appellate Tribunal was right in holding that the Assessing Officer had wrongly invoked Section 153A of the Income Tax Act, 1961?*
>
> *2. Whether the Income Tax Appellate Tribunal was right in deleting the addition of ₹1,50,000/- made in the assessment year 2000-01 on account of unexplained unaccounted loan to Mohini Sharma and interest thereon of ₹27,000/- in the assessment year 2003-04 to 2005-07?"*

3. We may clarify that in Q. No.2 the reference to the assessment year "2000-01" should rightly be "2003-04" and to the assessment year "2005-07" should be 2005-06.

4. The brief facts giving rise to the present appeals may be noted. The assessee is an individual. He was carrying on business in *hing* under the name and style of M/s. A.K. Traders. On 13.12.05, there was a search of the assessee's residence and business premises under

Section 132 of the Act. Pursuant to the search, the Assessing Officer issued notices under Section 153A of the Act and called upon the assessee to file the returns of income for the six years as envisaged in the Section. Notices under Sections 142(1) and 143(2) along with a detailed questionnaire were issued on 20.11.2007 in response to which the assessee submitted his explanation on 29.11.2007. After considering the explanation and details submitted by the assessee, the Assessing Officer made additions to the income returned in respect of the assessment years under consideration, which included an amount of ₹1,50,000/- given by the assessee as a loan to one Smt.Mohini Sharma on 10.2.2003. The information that the assessee had given the loan was allegedly available at page 68 of Annexure A-III seized from premises No.31B/2, Rajpura Road, Civil Lines, Delhi. The loan was not reflected in the return of income filed by the assessee for the assessment year 2003-04. The Assessing Officer, therefore, concluded vide Para 5 of the assessment order for the assessment year 2003-04 that the loan was given out of the unaccounted income of the assessee. Accordingly, the same was added as the assessee's income in the assessment order for the assessment year 2003-04.

5. Against the addition of ₹1,50,000/- made by the Assessing Officer in respect of the assessment year 2003-04, the assessee filed an appeal before the CIT(Appeals) and contended that the seized paper, on the basis of which the addition was made, did not contain the signature

of the assessee, that the assessee had not given any loan to Mohini Sharma, that there was no admission or statement of Mohini Sharma to the effect that she took a loan from the assessee on the security of some property, that there was only a proposal by Mohini Sharma that if the assessee gave an amount of ₹1,50,000/-, the same would be returned after selling the property, that these facts have been placed before the Assessing Officer and have not been controverted and, therefore, it was not proper for the Assessing Officer to make an addition without any supporting or corroborative evidence.

6. The CIT(Appeals) however, confirmed the addition, holding as under:-

> *"In so far as loan of Rs.1,50,000/- to Smt. Chander Mohini Sharma, on perusal of details, it is seen that a copy of the undertaking on Rs.100/- rupee stamp paper is found during action u/s 132 in assessee's premises. This undertaking was executed by Smt.Mohini Sharma on 10th day of Feb., 2003 in favour of Sh.Anil Bhatia acknowledging acceptance of loan of Rs.1,50,000/- from him for a period of 18 months on interest @ 18% per annum. It was specifically mentioned that the said amount was received in cash. In lieu of the above referred loan she has executed a general power of attorney in favour of the assessee transferring the legal titles and rights on the house bearing Municipal No.3601, Raja Park, Shakur Basti, Delhi-34. It was further*

undertaken to forgo all her rights on the property mentioned above if she failed to pay back the loan amount within the stipulated period of 18 months. A copy of the general power of attorney also recovered from the assessee during search. After considering the above over whelming evidences, it is incomprehensible to believe the assessee that he has no connection whatsoever with the documents found during search. The duty casts on the appellant to rebut the evidences found during search with cogent material that he has no connection with these contents of the documents found during search. In stead of leading any evidence in his support, the appellant is trying to explain in a very casual and evasive manner on the clinching evidence found from him. In the absence of any explanation much less the reasonable explanation the amount of Rs.1,50,000/- mentioned on the undertaking which was executed by an independent person on stamp paper, the same is to be added as income of the assessee from undisclosed sources. Thereby no interference is called for on the action of the A.O. in assessing the above sum in the total income of the assessee."

On the aforesaid reasoning, the CIT (Appeals) confirmed the addition of ₹1,50,000/-.

7. In respect of the assessment years 2004-05 and 2005-06, the assessee had filed appeals before the CIT(Appeals) questioning the

additions made in the assessment orders for those years. While disposing of those appeals by orders dated 17.3.09 (separate orders), the CIT(Appeals) directed the Assessing Officer to assess the notional interest of ₹27,000/- on the loan of ₹1,50,000/-given to Mohini Sharma, which addition he had confirmed in his appellate order for the assessment year 2003-04. He held as under:-

> *"In the appeal proceedings for the A.Y. 2003-04 in assessee's own case, I have held that a sum of Rs.1,50,000/- given as loan to Smt. Chander Mohini Sharma as income of the assessee from undisclosed sources. In the course of search u/s 132, some incriminating documents were found which suggest that the assessee is to get interest on the above loan @18% per annum from Smt. Chander Mohini Sharma. However, the appellant had not declared any income on this loan while filing return of income. Accordingly the A.O. is directed to assess Rs.27,000/- being the interest on the loan component of Rs.1,50,000/- for whole of the year, while computing the total income of the assessee."*

8. The assessee filed further appeals before the Tribunal. In the appeal for the assessment year 2003-04, he challenged the addition of ₹1,50,000/- being the loan given to Mohini Sharma and in the appeals for the assessment years 2004-05 and 2005-06, he questioned, inter

alia, the addition of ₹27,000/-for each of these years made by the CIT(Appeals) for notional interest on the loan.

9. Thus, the Tribunal was called upon to decide the correctness of the addition of ₹1,50,000/- being loan given to Mohini Sharma in the previous year relevant to the assessment year 2003-04 and the notional interest of ₹27,000/- each on the aforesaid loan for the assessment years 2004-05 and 2005-06.

10. In respect of the other assessment years, the Assessing Officer had made several additions to the income returned and the following additions were challenged by the assessee before the Tribunal: -

Assessment Year	**Additions disputed**	**Rupees**
2000-01	Unexplained deposit	2,50,000.00
2002-03	Agricultural Income Unexplained deposit	6,12,885.00 57,115.00
2003-04	Gift Unexplained deposit in bank Loan to Mohini Sharma Agricultural Income	2,71,000.00 1,50,000.00 1,50,000.00 16,699.00
2004-05	Agricultural Income Notional Interest	10,33,129.00 27,000.00
2005-06	Agricultural Income Notional Interest	36,524.00 27,000.00

2006-07	Gift Agricultural Income Notional Interest	5,18,631.00 36,474.00 27,000.00

It may be added that in respect of the assessment year 2000-01, there was also an addition of Rs.13,89,095/- made in the assessment order for alleged non-genuine exchange fluctuation, but the said addition was deleted by the CIT(Appeals) against which the Revenue filed an appeal before the Tribunal in ITA No.2246/DEL/2009. The Tribunal dealt with the six appeals filed by the assessee and the appeal filed by the Revenue in a consolidated order for the assessment years 2000-01 to 2006-07. By the same order, certain appeals in the case of one Samir Bhatia, another *hing* merchant, were also decided. We are however, concerned only with the case of Anil Bhatia.

11. Before the Tribunal, the assessee also questioned the validity of the additions made in the assessments framed under Section 153A of the Act. The challenge was based on the following line of argument. It was contended that during the search of the assessee's premises, no document or incriminating material, except the one unsigned undertaking for the loan was found. There was no corroborative material seized in the course of search. The income tax returns for the assessment years 2000-01 to 2005-06 (six years) were filed prior to the search and in the normal course, *suo moto* disclosing the particulars of the subject additions and these returns stood accepted under Section

143(1) of the Act. Since on the date of the initiation of the search, no assessment was pending as they had all abated, the Assessing Officer has wrongly invoked Section 153A of the Act. The assessment contemplated by Section 153A is not a *de novo* assessment and the additions made therein have to be necessarily restricted to the undisclosed income unearthed during the search. The Section has to be strictly interpreted. It is not an assessment such as a normal or regular scrutiny assessment.

12. In support of these submissions, the assessee relied on several orders of the Coordinate Benches of the Tribunal in Ahmedabad, Jodhpur and Kolkata.

13. The Tribunal found itself in complete agreement with the submissions made on behalf of the assessee. It referred to the orders of the Coordinate Benches of the Tribunal and ultimately held as follows:

> *"9.6 From aforesaid analysis of judicial precedents, we are of the considered view that since for all the assessment years in consideration, processing returns u/s 143(1)(a) stood completed, for returns filed in due course before search, and no material being found in search thereafter, no addition can be made for agricultural income, gifts, unexplained deposit as stated in chart (supra)."*

14. As regards the merits of the addition of the loan and the notional interest thereon, the Tribunal held that the document recovered during the search did not bear the signature of the assessee or Mohini Sharma, the alleged borrower. She was also not examined by the departmental authorities. According to the Tribunal, the unsigned document which was stated to have never been acted upon by the parties cannot be presumed to contain unexplained or unaccounted income of the assessee. The Tribunal further held that so far as interest is concerned, no notional income which was not earned by the assessee can be added and taxed. In this view of the matter, the Tribunal deleted the addition of ₹1,50,000/- in the assessment year 2003-04 and consequently the notional interest of ₹27,000/-added in the assessment years 2004-05 and 2005-06 was also deleted.

15. The first question which we have to consider is whether the Tribunal was right in holding that no addition can be made for agricultural income, gifts received and unexplained deposits as stated in the chart set out in Para 10 (supra) on the ground that in respect of these additions, no material was found during the search carried out under Section 132 and also on the ground that for all the years under consideration, the returns filed by the assessee before the search had been processed under Section 143(1)(a) of the Act. Though the Tribunal has not referred expressly to the provisions of Section 153A of the Act, its decision in Paragraph 9.6 of the order is based on the

premise that the Assessing Officer had wrongly invoked Section 153A since (a) no material was found during the search in respect of the agricultural income, gifts received and unexplained deposits and (b) the returns filed by the assessee prior to the search had been accepted under Section 143(1)(a) of the Act. The same reasoning however, has not been applied by the Tribunal in respect of the addition of ₹1,50,000/- made in the assessment year 2003-04 on account of unexplained loan advanced to Mohini Sharma and the addition of ₹27,000/- made in the assessment years 2004-05 and 2005-06 presumably because the document embodying the loan was recovered in the course of the search of the assessee's premises.

16. We now proceed to discuss the correctness of the conclusion of the Tribunal that the Assessing Officer had wrongly invoked Section 153A of the Act. This Section was introduced into the Act by the Finance Act, 2003 w.e.f. 1.6.2003 along with Sections 153B and 153C. Section 153A provides for 'assessment in case of search or requisition'. It runs as follows:

> ***"153A.*** *[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-*

(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided *that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.*

Provided further *that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] 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.*

[(2) 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 revised with effect from the date of receipt of the order of such annulment by the Commissioner.

***Provided** that such revival shall cease to have effect, if such order of annulment is set aside.]*

Explanation.- For the removal of doubts, it is hereby declared that-

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

17. The three sections introduced w.e.f. 1.6.2003 replaced the "Post Search Block Assessment Scheme" in respect of any search under Section 132 or requisition under Section 132A made after 31.5.2003. In Circular No.7 of 2003 dated 5.9.2003 reported in *(2003) 263 ITR (St)62,* the new Scheme was explained by the CBDT in the following manner:

"65. The special procedure for assessment of search cases under Chapter XIV-B be abolished :

65.1 The existing provisions of the Chapter XIV-B provide for a single assessment of undisclosed income of a block period, which means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted and also includes the period up to the date of the commencement of such search, and lay down the manner in which such income is to be computed.

65.2 The Finance Act, 2003, has provided that the provisions of this Chapter shall not apply where a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A after May 31, 2003, by inserting a new section 158BI in the Income-tax Act.

65.3 Further three new sections 153A, 153B and 153C have been inserted in the Income-tax Act to provide for assessment in case of search or making requisition.

65.4 The new section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after May 31, 2003. In such cases, the Assessing Officer shall issue notice to such

person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.

65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. 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 requisition under section 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

65.6 The new section 153B provides for the time limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

65.7 This section also provides that assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A shall be completed within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed."

65.8 It also provides that in computing the period of limitation for completion of such assessment or reassessment, the period during which the assessment proceeding is stayed by an order or injunction of any court ; or the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or the time taken in reopening the whole or any part of the proceeding or giving an

opportunity to the assessee of being re-heard under the proviso to section 129, or in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, shall be excluded. If, after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation shall be deemed to be extended accordingly.

65.9 The new section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A, then the books of account, or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

65.10 An appeal against the order of assessment or reassessment under section 153A shall lie with the Commissioner of Income-tax (Appeals).

65.11 Consequential amendments have also been made in sections 132, 132B, 140A, 234A, 234B, 246A and 276CC to give reference to section 153A in these sections.

65.12 These amendments will take effect from June 1, 2003."

18. A perusal of Section 153A shows that it starts with a *non obstante* clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.2003. These Sections, the applicability of which has been excluded, relate to returns, assessment and reassessment provisions. Prior to, the introduction of these three Sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as 'block assessment' because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as 'block period'. Though a single assessment order was to be passed, the undisclosed income was

to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA(2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.

19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant

to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the *non obstante* clause

with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the *non obstante* clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

21. Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but also the 'total income' of the

assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no

question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made.

22. In the light of our discussion, we find it difficult to uphold the view of the Tribunal expressed in Para 9.6 of its order that since the returns of income filed by the assessee for all the six years under consideration before the search took place were processed under Section 143(1)(a) of the Act, the provisions of Section 153A cannot be invoked. The Assessing Officer has the power under Section 153A to make assessment for all the six years and compute the total income of the assessee, including the undisclosed income, notwithstanding that the assessee filed returns before the date of search which stood

processed under Section 143(1)(a). The other reason given by the Tribunal in the same paragraph of its order that no material was found during the search is factually unsustainable since the entire case and arguments before the departmental authorities as well as the Tribunal had proceeded on the basis that the document embodying the transaction with Mohini Sharma was recovered from the assessee. While summarizing the contentions of the assessee in Paragraph 5 of its order, the Tribunal itself has referred to the contention that no document much less incriminating material was found during the search of the assessee's premises, except one unsigned undertaking for loan. Again in Paragraph 10 of its order, while dealing with the assessee's contention against the addition of ₹1,50,000/- being unexplained loan given to Mohini Sharma, the Tribunal has stated that it has analyzed "the subject document carefully, recovered from search" suggesting that the document was recovered during the search from the assessee. The Tribunal has even proceeded to delete the addition of ₹1,50,000/- as well as the notional interest on merits, holding that the document was unsigned, that Mohini Sharma was not examined by the income tax authorities and there was no corroboration of the unsigned document. If it is not in dispute that the document was found in the course of the search of the assessee, then Section 153A is triggered. Once the Section is triggered, it appears mandatory for the Assessing Officer to issue notices under Section 153A calling upon the

assessee to file returns for the six assessment years prior to the year in which the search took place. There are contradictions in the order of the Tribunal. We are unable to appreciate how the Tribunal can say in Para 9.6 that no material was found during the search and at the same time in Paragraph 10 deal with the merits of the additions based on the document recovered during the search which allegedly contain the loan transaction with Mohini Sharma. Therefore, both the reasons given by the Tribunal for holding that the assessments made under Section 153A were bad in law do not commend themselves to us. The result is that the first substantial question of law is answered in the negative, in favour of the Revenue and against the assessee.

23. We are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We, therefore, express no opinion as to whether Section 153A can be invoked even in such a situation. That question is therefore left open.

24. As regards the second substantial question of law, it impinges on the decision of the Tribunal deleting the addition of ₹1,50,000/- made in the assessment year 2000-01 on account of unexplained loan to Mohini Sharma and the deletion of the addition of ₹27,000/- each as interest for the assessment years 2003-04 to 2005-06. On this aspect we have examined the order of the departmental authorities as well as the Tribunal. The addition has been made by the Assessing Officer in

the assessment year 2003-04 and para 5 of the assessment order deals with the issue in the following manner: -

> *"The page 68 of Annexure A-3 seized from premises no.31B/2, Rajpura Road, Civil Lines, Delhi. It is seen that Sh.Anil Kumar Bhatia has given a loan of ₹1,50,000/- to Smt. Mohini Sharma on 10/2/2003, the perusal of the return of Sh.Anil Kumar Bhatia do not show this transaction, which clearly shows the unaccounted income being let by Sh.Anil Bhatia. Accordingly while in the case of Anil Bhatia the same is being taxed as to have being rent out of unaccounted income in the case of Smt.Mohini Sharma, the recipetent the action is called for u/s 269SS."*

25. On appeal it was submitted before the CIT(Appeals) that the document which was actually a stamp paper was not signed by the assessee, that no amount was given to Mohini Sharma for purchase of any property, that the property referred to in the document was not found to be in the name of the assessee, that Mohini Sharma was not summoned by the Assessing Officer nor was her statement recorded, that the actual proposal embodied in the document was that if the assessee gave her the amount of ₹1,50,000/- she would return the same after selling the property, that the proposal was not accepted by the assessee and that in these circumstances, the addition was made merely on conjecture and surmises.

26. The CIT(Appeals) sustained the addition by recording the following findings: -

(a) The document seized from the assessee's premises is an undertaking on ₹100/- stamp paper executed by Smt.Mohini Sharma on 10.2.2003.

(b) She acknowledged the acceptance of a loan from the assessee, the loan amount being ₹1,50,000/- for a period of 18 months on interest at the rate of 18% per annum.

(c) The amount was received in cash.

(d) In lieu of the loan, Mohini Sharma executed a General Power of Attorney in favour of the assessee transferring the title and rights in respect of the house bearing municipal No. 3601, Raja Park, Shakur Basti, Delhi-34.

(e) She further undertook to forego all her rights in the property if she failed to pay back the loan within the stipulated period.

(f) A copy of the General Power of Attorney was also recovered from the assessee during the search.

On the basis of the above findings of fact, the CIT(Appeals) held that it was not possible to believe that the assessee had no connection with the documents found during the search. He further held that the assessee did not discharge the duty cast on him to rebut the evidence on the basis of any cogent material, but has tried to explain the evidence "in a very casual and evasive manner". He accordingly confirmed the addition. It may be added that the CIT(Appeals) had before him a photocopy of the document seized as recorded by him towards the end of the second paragraph of its order (paragraph not numbered).

27. In the light of the aforesaid findings, it was incumbent upon the assessee in his further appeal before the Tribunal to rebut the findings of fact and adduce evidence or explanation as to why the findings are perverse or arbitrary or cannot be given effect to. The contention however, raised by him before the Tribunal, as noted in Paragraph 10 of the order of the Tribunal is that Mohini Sharma was not examined by the departmental authorities and that the unsigned document lacked corroboration and therefore, cannot be made the sole basis for making the addition. It would also appear to have been contended before the Tribunal that the document was not acted upon right from the beginning. The Tribunal accepted the contention and deleted the addition.

28. The Tribunal is the ultimate fact finding authority and an appeal to the High Court is provided only on a substantial question of law. The findings of fact entered by the Tribunal are normally binding on the High Court. However, if those findings are perverse or are so unreasonable that no person, properly instructed on facts and in law could have reached findings which the Tribunal did, it is open to the High Court to disregard the findings of fact as not binding on it. This is a well settled position and has been dealt with in several cases, a few of which have been noticed by us in our decision in the case of the *CIT v. Nova Promoters and Finlease Ltd.*, (ITA 342/2011 dated 15.02.2012) (reported in (2012) 342 ITR 169). We are of the view that the findings

arrived at by the Tribunal are not borne out by the evidence on record. We, therefore, do not feel bound by the findings of the Tribunal. It is true that the order of the Tribunal cannot be said to give rise to a substantial question of law merely because the High Court is of the view that it would have come to a different conclusion on the same evidence; however, where the appreciation of the evidence is unsatisfactory and crucial aspects of the evidence have been missed, it is a case of a finding or conclusion which no person properly instructed on the facts and the legal position would have reached. That is what has happened in the present case.

29. It is not, therefore, possible to countenance the decision of the Tribunal. Documents were found in the assessee's possession and were recovered from him. The primary duty was therefore, upon the assessee to explain them. The mere fact that the undertaking was not signed by Mohini Sharma did not absolve the assessee from the duty of satisfactorily explaining the possession of the documents. The amount is stated to have been advanced in cash. The undertaking seems to have stated, as found by the CIT(Appeals), that she would forego all her rights in the property if she failed to return the loan within the stipulated period. The recovery of a copy of the General Power of Attorney executed by her in favour of the assessee *prima facie* corroborated the undertaking and the contents of the stamp paper. In these circumstances, it was for the assessee to show that no such

transaction took place and the money was not advanced by him and the documents were not acted upon. The way in which this could have been done is for the assessee to bring Mohini Sharma before the Assessing Officer and deny that she ever received the money from the assessee. Even an affidavit from her was not filed, denying the receipt of the money from the assessee. It was not for the Assessing Officer to record any statement from Mohini Sharma confirming the transaction. The very plea of the assessee that the document was not acted upon is open to question in light of the fact that the copies of the General Power of Attorney were also recovered during the search along with the document. This shows that there was at least *prime facie* evidence to show that the document was acted upon and parties had taken some steps in furtherance thereto. In these circumstances, the Tribunal ought to have examined the case set up by the assessee without putting on blinkers and should have scratched the surface instead of simply accepting the assessee's stand. We are unable to find fault with the observation of the CIT(Appeals) that the assessee's explanation was very casual and evasive despite the evidence found during the search. The view taken by the Tribunal, with respect, appears to us to be one which cannot be sustained having regard to the evidence on record and the total lack of any explanation adduced by the assessee. The finding of the Tribunal cannot therefore be upheld as a reasonable inference. Consequently, the addition of ₹1,50,000/- is restored as also the

addition of ₹27,000/- each in the assessment years 2004-05 and 2005-06 as notional interest.

30. We therefore, answer the second substantial question of law in the negative, in favour of the Revenue and against the assessee. The appeals of the Revenue are accordingly allowed with no order as to costs.

R.V.EASWAR, J

SANJIV KHANNA, J

AUGUST 7, 2012
gm/hs