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

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ITA 634/2015

PR. COMMISSIONER OF INCOME
TAX-(CENTRAL -II)

..... Appellant

Through: Ms Lakshmi Gurung, Junior Standing
Counsel.

versus

SMT. KUSUM GUPTA,

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap
Mall, Advocates.

WITH

7.

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ITA 493/2015

PR. COMMISSIONER OF INCOME
TAX-(CENTRAL -II)

..... Appellant

Through: Through: Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

SMT. KUSUM GUPTA,

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap
Mall, Advocates.

WITH

22.

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ITA 578/2013

THE COMMISSIONER OF INCOME TAX



CENTRAL II

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus

KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap Mall, Advocates.

WITH

23.

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ITA 579/2013

THE COMMISSIONER OF INCOME
TAX CENTRAL-II

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus

KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap Mall, Advocates.

WITH

24.

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ITA 580/2013

CIT

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus

KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap Mall, Advocates.



WITH

25.

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ITA 581/2013

CIT

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus

KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap Mall, Advocates.

WITH

26.

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ITA 582/2013

CIT

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus

KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap Mall, Advocates.

WITH

27.

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ITA 583/2013

CIT

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel.

versus



KUSUM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap
Mall, Advocates.

AND

28.

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ITA 584/2013

CIT

..... Appellant

Through: Mr P. Roy Chaudhuri, Senior Standing
Counsel.

versus

KUSUSM GUPTA

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap
Mall, Advocates.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 01.09.2015

1. In all these appeals one common question that arises is regarding the justification for the additions made by the Assessing Officer ('AO') in the course of the assessments made pursuant to notices issued to the Assessee under Section 153(A)(1)(a) of the Income Tax Act, 1961.

2. The search operation was carried on 7th February, 2007 under Section 153A of the Act, and the Assessee was called upon to file returns for the six preceding assessment years. It is common ground that as on the date of



search, there was no pending assessment or re-assessment proceedings qua the Assessee.

3. The next undisputed fact as noted by the AO in the Office Note of the assessment order dated 29th December, 2008 is as under:

“1. There is no incriminating document pertaining to the assessee for this assessment year in the seized record found from the residence of the assessee.”

4. The third important fact, which is again not in dispute, is that although the statement of the Assessee was recorded during the search, nothing in that statement was found to be incriminating as far as the Assessee was concerned. The AO also considered the reply of the Assessee to a query letter dated 14th November, 2008 of the AO and stated "no adverse view is taken on this score."

5. With the above being admitted factual position, the decision of this Court dated 28th August, 2015 in ITA Nos. 707, 709 and 713 of 2014 (*CIT v. Kabul Chawla*) would apply on all fours. The summary of the legal position as set out in the said decision is as under:

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

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant



to the AY in which the search takes place.

- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- vi. Insofar as pending assessments are concerned, the



jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

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

6. In that view of the matter in all these cases the question that arises is answered in favour of the Assessee and against the Revenue by holding that the additions made in the assessments made pursuant to the search are unsustainable in law. Consequently, the question of any penalty proceedings being initiated, pursued or continued against the Assessee does not arise.

7. The appeals are dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 01, 2015
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