

No addition for deposit in Swiss Bank when sec. 143(1) assessment was completed prior to search

Summary – The Kolkata ITAT in a recent case of Bishwanath Garodia., (the Assessee) held that There is no distinction in assessments completed under section 143(1) and section 143(3) for determining scope of proceedings under section 153A

Facts

- The assessee, an individual, was belonging to 'M' group. He filed returns of income for relevant years which were processed under section 143(1).
- Subsequently, the Assessing Officer received information that assessee had a bank account in HSBC, Geneva, Switzerland showing certain amount deposited.
- On the basis of said information, a search and seizure action under section 132 was conducted in the case of the assessee as well as in other cases belonging to 'M' Group.
- In response to notice issued under section 153A, the assessee filed his return wherein no amount deposited in foreign bank was offered to tax.
- The Assessing Officer completed assessment under section 153A/143(3) making addition to assessee's income on account of transactions reflected in foreign bank account.
- The assessee raised a plea that in the absence of any incriminating material or document found in the course of search, the Assessing Officer had no jurisdiction to initiate and frame the assessments under section 153A.
- The Commissioner (Appeals) rejected assessee's plea and confirmed addition made by the Assessing Officer.
- On second appeal:

Held

- The returns of income originally filed by the assessee for both the years under consideration were duly processed by the Assessing Officer under section 143(1) well before the date of search. The said search was conducted in the case of the assessee on the basis of information received by the Assessing Officer from CBDT relating to the undisclosed account maintained by the assessee with HSBC Bank, Geneva, Switzerland. During the course of search, no incriminating material, however, was found relating to the transactions reflected in the said Bank account of the assessee with HSBC Bank or any income relating thereto and this position was categorically admitted by the Assessing Officer during the course of appellate proceedings before the Commissioner (Appeals).
- The question that arises now is whether in the absence of such incriminating material, any addition to the total income of the assessee can be made on account of the transactions reflected in the Bank account of the assessee with HSBC Bank or any income relating thereto in assessments completed under section 153A for both the years under consideration.

- As per the provisions contained in section 153A, if the search or requisition is initiated after 31-03-2003, the Assessing Officer is under an obligation to initiate proceedings under section 153A for six years immediately preceding the year of search. The Assessing Officer is then required to assess or reassess the total income of the said six years and if any assessment or reassessment out of the said six years is pending on the date of initiation of the search, the same would abate, *i.e.* pending proceeding *qua* the said assessment year would not proceed thereafter and the assessment has to be made under section 153A(1)(b) of the Act read with the 1st Proviso thereunder.
- As regards the other years for which assessments have already been completed and the assessment orders determining the assessee's total income are subsisting at the time when the search or requisition is made, the scope of assessment under section 153A is limited to reassess the income of the assessee on the basis of incriminating material found during the course of search.
- At the time of hearing the revenue has contended that the processing of returns of income filed by the assessee as made by the Assessing Officer under section 143(1) could not be regarded as assessment and it is, therefore, not a case where the assessments for both the years under consideration could be said to have been completed. It was also contended that the conclusion of such alone is sufficient to give jurisdiction to the Assessing Officer to proceed against the assessee under section 153A of the Act. In support of this contention, he has relied on the decision of the Delhi High Court in the case of *CIT v. Anil Kumar Bhatia* [IT Appeal No. 1626 of 2010, dated 14-5-2012].
- It is quite clear from the question raised by the Delhi High Court that there was no distinction in the assessments completed under section 143(1) and section 143(3) for determining the scope of the proceedings under section 153A. However, the said question arose specifically for the consideration of Mumbai Bench of this Tribunal in the case of *Asstt. CIT v. Pratibha Industries Ltd.* [[2013\] 141 ITD 151/\[2012\] 28 taxmann.com 246](#) and the Tribunal held that the only logical conclusion which could be traced out by harmonizing the legislative intent and the judicial decision was that where the assessments had already become final prior to the date of search, the total income has to be determined under section 153A by clubbing together the income already determined in the original assessments and the income that is found to have escaped assessment on the basis of incriminating material found during the course of search.
- To arrive at this conclusion, reliance was placed by the Tribunal on the decision of Special Bench, Mumbai in the case of *All Cargo Global Logistics Ltd. v. Dy. CIT* [[2012\] 137 ITD 287/23 taxmann.com 103](#), wherein it was held that even though all the six years shall become subject matter of assessment under section 153A as a result of search, the Assessing Officer shall get the free hand through abatement only on the proceedings that are pending. But in a case or in a circumstances where the proceedings have reached finality, assessment under section 143(3) read with section 153A(3) has to be made as was originally made and in a case certain incriminating documents were found indicating undisclosed income, then addition shall only be restricted to those documents/incriminating material.

- Keeping in view the discussion made above, the additions as finally made to the total income of the assessee on account of transactions reflected in the Bank account of the assessee with HSBC, Geneva, Switzerland and income relating thereto for both the years under consideration are beyond the scope of section 153A as the assessments for the relevant years had become final prior to the date of search and there was no incriminating material found during the course of search to support and substantiate the said addition. The said additions made for both the years under consideration are, therefore, deleted.