

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM ]

I.T.(SS).A Nos. 109 & 110/Kol/2017

Assessment Years : 2009-10 & 2012-13

Shri Krishna Kumar Singhanian  
[PAN: ALQPS 8424 F]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

I.T.(SS).A No. 105/Kol/2017

Assessment Year : 2012-13

Shri Ajay Kumar Singhanian  
[PAN: AKOPS 8396 R]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

I.T.(SS).A No. 104/Kol/2017

Assessment Year : 2012-13

Smt. Kasak Singhanian  
[PAN: BFLPS 0588 A]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

I.T.(SS).A Nos. 111 & 112/Kol/2017

Assessment Years : 2009-10 & 2012-13

Smt. Nirmala Devi Singhanian  
[PAN: ALUPS 4433 Q]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

I.T.(SS).A Nos. 107 & 108/Kol/2017

Assessment Years : 2009-10 & 2012-13

Shri Vijay Kumar Singhanian  
[PAN: ATCPS 9111 K]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

I.T.(SS).A Nos. 106/Kol/2017

Assessment Year : 2012-13

Smt. Ruchi Singhanian  
[PAN: ADZPC 6523 A]  
(Appellant)

-vs-

DCIT, CC-3(3), Kolkata  
(Respondent)

For the Appellant : Shri S.M. Surana, Advocate

Shri Sunil Surana, FCA

For the Revenue : Shri G. Mallikarjuna, CIT DR

Date of Hearing : 28.11.2017

Date of Pronouncement : 06.12.2017

IT(SS)A Nos.109&110/Kol/2017  
IT(SS)A No.105/Kol/2017  
IT(SS)A No.104/Kol/2017  
IT(SS)A Nos. 111&112/Kol/2017  
IT(SS)A Nos.107&108/Kol/2017  
IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
Asst. Years: 2009-10 & 2012-13

## **ORDER**

### **Per Bench:**

1. All these appeals of the assessee are directed against the independent orders passed by the Learned Commissioner of Income Tax (Appeals) – 21 Kolkata [ in short the ld CITA] in Appeal Nos. 10841 & 10866 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 for Asst Years 2009-10 and 2012-13 respectively in the case of Krishna Kumar Singhania against the independent order of assessments framed under section 153A / 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act') for the Asst Years 2009-10 and 2012-13 dated 28.12.2016 ;

Appeal No. 10867 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 in the case of Ajay Kumar Singhania against the order of assessment framed u/s 153A/143(3) of the Act for the Asst Year 2012-13 dated 29.12.2016 ;

Appeal No. 10779 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 in the case of Smt Kasak Singhania against the order of assessment framed u/s 153A/143(3) of the Act for the Asst Year 2012-13 dated 20.12.2016 ;

Appeal Nos. 10766 & 10785 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 for Asst Years 2009-10 and 2012-13 respectively in the case of Smt Nirmala Devi Singhania against the independent order of assessments framed under section 153A / 143(3) of the Act for the Asst Years 2009-10 and 2012-13 dated 23.12.2016 ;

IT(SS)A Nos.109&110/Kol/2017  
IT(SS)A No.105/Kol/2017  
IT(SS)A No.104/Kol/2017  
IT(SS)A Nos. 111&112/Kol/2017  
IT(SS)A Nos.107&108/Kol/2017  
IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
Asst. Years: 2009-10 & 2012-13

Appeal Nos. 10770 & 10781 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 for Asst Years 2009-10 and 2012-13 respectively in the case of Vijay Kumar Singhania against the independent order of assessments framed under section 153A / 143(3) of the Act for the Asst Years 2009-10 and 2012-13 dated 13.12.2016 and 28.12.2016 respectively;

Appeal No. 10784 /CC-3(3)/CIT(A)-21/Kol/16-17 dated 6.7.2017 in the case of Smt Ruchi Singhania against the order of assessment framed u/s 153A/143(3) of the Act for the Asst Year 2012-13 dated 20.12.2016.

2. It was pleaded by the Id AR that in view of identical facts involved in all the aforesaid appeals, the appeal of Shri Krishna Kumar Singhania for the Asst Year 2009-10 may be taken as the lead case which was also agreed by the Id DR and the decision rendered thereon would apply with equal force for other appeals also as listed above except with variance in figures and assessment year.

3. The preliminary issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the additions in the search assessment framed u/s 153A/143(3) of the Act in the absence of any incriminating material found during the course of search to that effect.

4. The brief facts of this issue is that there was a search and seizure operation conducted u/s 132 of the Act on the Cygnus Group of Cases comprising of various companies and individuals on 23.12.2014 at various residential premises / offices. The

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

assessee is one of the key individuals in the said group. Search warrant was executed in the name of the assessee. The Id AO observed that during the course of search and seizure operation, books of accounts and incriminating documents having identification marks CG/1 to CG/11 & CG/HD/1, KKS/1 were seized. Consequent to the search, notice u/s 153A of the Act was issued on 7.10.2015, in response to which, the assessee filed his return on 14.12.2015. The assessee had filed his original return of income on 10.2.2010. The assessee stated that the time limit for issuance of notice u/s 143(2) of the Act for the Asst Year 2009-10 in respect of the original return filed on 10.2.2010 had expired on 28.2.2011 and hence as on the date of search, that year (i.e Asst Year 2009-10) would fall under the category of unabated assessment and hence the income assessed originally thereon either u/s 143(3) or u/s 143(1) or the returned income, as the case may be, could not be disturbed unless there is any incriminating material found in the course of search relating to such assessment year.

5. The Id AO observed that the incriminating materials were indeed found in the course of search on 23.12.2014 vide seized document reference CG / 1 to 11 and CG/ HD /1 which reflected that the assessee had his group were indulged in purchasing bogus long term capital gains by converting their undisclosed income. In other words, the Id AO was of the opinion that the assessee had converted his unaccounted cash and brought the same in the form of long term capital gains which was shown as exempt income in connivance with the share brokers and the Calcutta Stock Exchange Ltd. In response to this, the assessee apart from addressing the issue on merits stated that the seized document relied upon by the Id AO viz CG /1 to 11 and CG/HD/1 was not seized from the premises of the assessee during the course of search on 23.12.2014. The same were

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

found and seized in the business premises of Cygnus Equipment & Rentals Pvt Ltd and other companies in the course of search on 23.12.2014 pursuant to an independent search warrant issued on them as could be evident from the panchaname drawn in the name of the said companies. The assessee submitted that the only document which was seized from his premises was KKS /1 comprising of 8 pages in the form of loose sheets and there was nothing incriminating in the same as admittedly the same only contains details of amount spent in the sums of Rs 93,500/- and R 225/- towards purchase of TV and which is duly covered by the drawings of the assessee. It was pleaded that the documents found in the premises of Cygnus group of companies are to be examined only in the hands of the said company search assessments and not in the hands of the individuals. It was argued that admittedly no incriminating materials were found for Asst year 2009-10 and 2012-13 in the course of search with regard to any long term capital gains and any other items from the premises of the assessee at the time of search. Accordingly it was pleaded before the Id AO for not disturbing the original income already determined which is same as the returned income. The Id AO however did not heed to the contentions of the assessee and proceeded to frame the assessments u/s 153A of the Act by disallowing long term capital gains of Rs 12,39,892/- and addition towards short term capital gain due to disallowance of development charges in the sum of Rs 18,58,883/- on the plea that the assessments to be framed u/s 153A of the Act clears all the decks and would enable the Id AO to assess or reassess the total income as per the provisions of the Act irrespective of incriminating materials found in the search.

6. The Id CITA upheld this action on the legal ground by observing as under:-

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

*“I have considered arguments put forward by the AR in the written submission filed and different case laws brought on record on this issue. I have also considered findings of the AO in the assessment order on this issue. In the very first paragraph of the assessment order of the AO has brought it on record as under:*

*“During the course of search and seizure operation books of accounts and incriminating documents having identification marks CG/1 to CG/11 & CG/HD/1, KKS/1 have been seized. A number of lockers were found in the names of the family members of the assessee and those lockers were also covered u/s 132 of the Income Tax Act, 1961 and valuation of the jewellery and other valuable items were done by registered valuer. In consequence of search survey operations were also conducted in the office premises of (i) M/s Sunway Infrastructure Services Pvt. Ltd. at A-44/45, DLF IT Park, Tower C, Sector-62, Noida where documents having identification marks LP-1, A-1 to A-17, A-18 (Main server), HD-1 & HD-2 were impounded and (ii) M/s Cygnus Splendid Limited at 1009, 10<sup>th</sup> Floor, Arunachal Building, Barakhambha Road, New Delhi-110001 where documents having identification marks A-1, A-2(HD) were impounded.”*

*I have considered findings of the AO in the assessment order and the written submissions filed by the AR on this issue. From the assessment order it is clear that many papers, incriminating documents, CDs and incriminating computerized data were found and seized during the search operations and in survey/search operations conducted in Delhi and Noida many incriminating documents were found and seized/impounded. The AO has considered all such incriminating documents and only after that he has framed assessment order. Therefore, the argument of the assessee that no incriminating document was found or considered while framing the assessment orders is not correct. Accordingly, assessee’s appeal on grounds no. 1 and 2 are dismissed.”*

7. Aggrieved, the assessee is in appeal before us on the following grounds:

*1. For that the Ld. CIT(A) erred in confirming the order of the AO making the additions while completing the assessment u/s 153A when no incrementing documents belonging to the assessee were found in the course search, nor any such document have been relied on while completing the assessment or making the additions and as such the assessment completed u/s 153A/143(3) is bad in law and further more the seized documents CG/1 to CG/11 and CG/HD/1, HD/1*

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

*and HD/2 were not seized from the assessee and there was no incriminating material in KKS -1.*

*2. For that the Ld. CIT(A) erred in confirming the order of the AO in making addition from the issues which were disclosed in the original return filed and were subject matter of the regular assessment which assessment was not abated.*

*3. For that the Ld. CIT(A) erred in confirming the order of the AO in adding back the genuine long term capital gain of Rs. 12,39,892/- as bogus LTCG ignoring the evidence submitted discarding the onus that lay upon the assessee and the AO failed to bring on record any evidence to the contrary.*

*4. For that the Ld. CIT(A) erred in confirming the order of the AO in disallowing the genuine expenses for development of the land which was sold after development, evidence whereof was filed and there was no justification to treat the expenses as bogus.*

8. The Id DR argued that the expression 'incriminating material' is not found in the provisions of the Act and it is only the Hon'ble Courts which had imported those words while rendering the decisions. He stated that the Hon'ble Courts are divided on this issue and placed reliance on the decision of the *Hon'ble Karnataka High Court in the case of Canara Housing Development Co vs DCIT reported in (2014) 49 taxmann.com 98 (Kar HC)* wherein it was held that search assessments could be framed even without the existence of incriminating materials found in the course of search. He argued that the basic foundation for conducting the search is governed by the provisions of section 132 of the Act which has to be read harmoniously with section 153A of the Act. There are three conditions based on which a search action could be initiated u/s 132 of the Act on an assessee. They are :-

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

Section 132(1) - If the concerned authority has in consequence of information in his possession, has reason to believe that -

- (a) where a person fails to produce the books of accounts and other documents in response to notice u/s 142(1) or summons issued u/s 131(1) of the Act ; or
- (b) where a person fails to comply with the requirements of summons issued u/s 131(1) of the Act ; or
- (c) where a person is in possession of any money, bullion, jewellery or other valuable article or thing and such assets represents either wholly or partly income or property which has not been , or would not be, disclosed for the purposes of the Act (hereinafter referred to as the undisclosed income or property) ;

then the officer , so authorized could conduct a search and proceed as per the requirements laid down in the said section. He argued that the aforesaid three primary conditions for invoking search proceedings cannot be given a go by while framing section 153A assessments and the instant case falls under section 132(1)(c ) of the Act.

The provisions of section 153A of the Act use the expression ‘assess or reassess total income’ and hence the search assessment could be framed u/s 153A of the Act irrespective of any incriminating materials.

He further argued that the documents seized in the business premises of the group companies of the assessee also could be very well used in the section 153A proceedings of the assessee, which has been rightly done by the Id AO in the instant case.



IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

9. In response to this, the Id AR stated that as on the date of search, the assessment for the Asst Year 2009-10 had been completed in view of time limit for issuance of notice u/s 143(2) of the Act had already expired thereon. He reiterated the submissions made before the lower authorities with regard to framing of additions in section 153A assessments without any incriminating material found thereon. He further stated that the only seized document found in the assessee's premises was KKS / 1 comprising of 8 pages and the explanation given thereon explaining its contents had been duly accepted by the Id AO and no addition was made in section 153A assessments. He argued that the materials found and seized from the premises of any other company should be considered in their respective search assessments in view of presumption provided in section 292C of the Act. He argued further that if at all such materials are to be used against the assessee, then the Id AO of the other person (i.e the party from whose premises materials were seized) should record a satisfaction in terms of section 153C of the Act and transfer these materials to the AO of the assessee and the AO of the assessee should have initiated proceedings u/s 153C of the Act on the assessee on the very same material. In the instant case, the materials used in third party premises had been used against the assessee in section 153A assessments which is not tenable as per law. The assessee placed reliance on various case laws in support of his arguments.

10. We have heard the rival submissions. We find that it is not in dispute that there were no documents that were seized from the premises of the assessee except loose sheets vide seized document reference KKS /1 comprising of 8 pages, for which satisfactory explanation has been given by the assessee and no addition was made by the Id AO on this seized document. The seized document used by the Id AO for making

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

the addition in section 153A assessment is CG/1 to 11 and CG/HD/1 which were seized only from the office premises of Cygnus group of companies in which assessee is a director. In this regard, it would be pertinent to note that as per section 292C of the Act, there is a presumption that the documents, assets, books of accounts etc found at the time of search in the premises of a person is always presumed to be belonging to him / them unless proved otherwise. This goes to prove that the presumption derived is a rebuttable presumption. Then in such a scenario, the person on whom presumption is drawn, has got every right to state that the said documents does not belong to him / them. The Id AO if he is satisfied with such explanation, has got recourse to proceed on such other person (i.e the person to whom the said documents actually belong to) in terms of section 153C of the Act by recording satisfaction to that effect by way of transfer of those materials to the AO assessing the such other person. This is the mandate provided in section 153C of the Act. In the instant case, if at all, the seized documents referred to in CG/1 to 11 and CG/HD/1 is stated to be belonging to assessee herein, then the only legal recourse available to the department is to proceed on the assessee herein in terms of section 153C of the Act. In this regard, we would like to place reliance on the recent decision of the *Hon'ble Delhi High Court in the case of CIT vs Pinaki Misra and Sangeeta Misra reported in (2017) 392 ITR 347 (Del) dated 3.3.2017*, wherein it was held that, no addition could be made on the basis of evidence gathered from extraneous source and on the basis of statement or document received subsequent to search. Hence we hold that the said materials cannot be used in section 153A of the Act against the assessee. This opinion is given without going into the merits and veracity of the said seized documents implicating the assessee herein.

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

10.1. Hence now the only issue which is left to be addressed is the preliminary issue of whether the addition could be framed u/s 153A of the Act in respect of a concluded proceeding without the existence of any incriminating materials found in the course of search. The scheme of the act provides for abatement of pending proceedings as on the date of search. It is not in dispute that the assessment for the Asst Year 2009-10 was not selected for scrutiny and the time limit for issuance of notice u/s 143(2) of the Act had expired and hence it falls under concluded proceeding, as on the date of search. We hold that the legislature does not differentiate whether the assessments originally were framed u/s 143(1) or 143(3) or 147 of the Act. Hence unless there is any incriminating material found during the course of search relating to such concluded year, the statute does not confer any power on the Id AO to disturb the findings given thereon and income determined thereon, as finality had already been reached thereon, and such proceeding was not pending on the date of search to get itself abated. The provisions of section 153A of the Act are reproduced hereunder for the sake of convenience :-

***"[Assessment in case of search or requisition***

*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*

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

*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:"*

10.2. We find that the Co-ordinate Bench of this tribunal in the case of *ACIT vs Kanchan Oil Industries Ltd in ITA No. 725/Kol/2011 dated 9.12.2015 reported in 2016-TIOL-167-ITAT-KOL* had explained the aforesaid provisions as below:-

*"6.4 In our opinion, the scheme of assessment proceedings should be understood in the following manner pursuant to the search conducted u/s. 132 of the Act :-*

- (a) *Notice u/s. 153A of the Act would be issued on the person on whom the warrant of authorization u/s. 132 of the Act was issued for the six assessment years preceding the year of search and assessments thereon would be completed u/s. 153A of the Act for those six assessment years.*
- (b) *In respect of the year of search, notice u/s. 143(2) of the Act would be issued and assessment thereon would be completed u/s. 143(3) of the Act.*
- (c) *In respect of concluded assessments prior to the year of search, no addition could be made in the relevant assessment year unless any incriminating material is found during the course of search with respect to the relevant assessment year.*
- (d) *Pursuant to the search u/s. 132 of the Act, the pending proceedings would get abated. In respect of abated assessments, the total income needs to be determined afresh in accordance with the provisions of section 153A and other provisions of the Act.*

*6.4.1 The concluded assessments for the purpose of section 153A of the Act shall be*

-

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

- (i) *assessment years where assessments are already completed u/s. 143(1) and time limit for issuance of notice u/s. 143(2) of the Act has expired or;*
- (ii) *assessment years where assessments are already completed u/s. 143(3) of the Act ;*

*unless they are reopened u/s. 147 of the Act for some other purpose in both the scenarios stated above.*

*6.4.2 The scheme of assessment proceedings contemplated u/s. 153A of the Act are totally different and distinct from the proceedings contemplated u/s. 147 of the Act and these procedures of assessment operate in different fields and have different purposes to be fulfilled altogether.*

*6.4.3 The expression 'assess or reassess' stated in section 153A(1)(b) has to be understood as below:-*

*'assess' means assessments to be framed in respect of abated assessment years irrespective of the fact whether there are any incriminating materials found during the course of search with respect to relevant assessment years ;*

*'reassess' means assessments to be framed in respect of concluded assessment years where incriminating materials were found during the course of search in respect of the relevant assessment year."*

10.3. We also find that recently the *Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla reported in (2016) 380 ITR 573 (Del)* held 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 153A(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.*

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

*The total income for such AYs will have to be computed by the LD AOs as a fresh exercise.*

- (iii) *The LD AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The LD 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 153A 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 LD 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 complete 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 LD AO.*
- (vii) *Completed assessments can be interfered with by the LD AO while making the assessment under section 153A 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."*

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

*38. The present appeals concern AYs 2002-03, 2005-06 and 2006-07, on the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.*

10.4. We find that the decision relied upon by the ld DR in the case of *CIT vs Anil Kumar Bhatia reported in (2013) 352 ITR 493 (Del)* do s not in any manner advance the case of the revenue as admittedly the Hon'ble Delhi High Court in para 24 of its order had held as under:-

*“24. 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.”*

10.5. The ld DR also relied on the recent decision of the Hon'ble Kerala High Court in the case of *E.N.Gopakumar vs CIT reported in (2016) 75 taxmann.com 215 (Kerala)* in support of his contentions. We find that the decision of Hon'ble Delhi High Court in the case of *CIT vs Kabul Chawla reported in (2016) 380 ITR 573 (Del)* had duly considered the decisions of *CIT vs Anil Kumar Bhatia reported in (2013) 352 ITR 493 (Del)* ; *CIT vs Chetan Das Lachman Das reported in (2012) 211 Taxman 61 (Del HC)* ; *Madugula Venu vs DIT reported in (2013) 215 Taxman 298 (Del HC)* ; *Canara Housing Development Co. vs DCIT reported in (2014) 49 taxmann.com 98 (Kar HC)* ; *Filatex India Ltd vs CIT reported in (2014) 229 Taxman 555 (Del HC)* ; *Jai Steel (India) vs ACIT reported in (2013) 219 Taxman 223 (Del HC)* ; *CIT vs Murli Agro Products Ltd reported in (2014) 49 taxmann.com 172 (Bom HC)* ; *CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd reported in (2015) 374 ITR 645 (Bom*

IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

HC) and All Cargo Global Logistics Ltd vs DCIT reported in (2012) 137 ITD 287 (Mum ITAT) (SB).

We also find that against the decision of the Hon'ble Delhi High Court in 380 ITR 573 (Del) , the revenue preferred Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Apex Court which is reported in 380 ITR (St.) 4 (SC). Hence it could be safely concluded that the decision of Hon'ble Delhi HC in the case of Kabul Chawla supra would have to be considered on the impugned issue and in any case, the *Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd reported in 88 ITR 192 (SC)* had held that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted.

10.6. We also find that the *Hon'ble Jurisdictional High Court recently in the case of Principal CIT vs M/s Sa asar Stock Broking Ltd in G.A.No. 1929 of 2016 ITAT No. 264 of 2016 dated 24.8 2016* had endorsed the aforesaid view of Hon'ble Delhi High Court in Kabul Chawla's case and also placed reliance on its own decision in the case of *CIT vs Veerprabhu Marketing Ltd reported in (2016) 73 taxmann.com 149 (Cal HC)*.

10.7. We find that the provisions of section 132 of the Act relied upon by the Id DR would be relevant only for the purpose of conducting the search action and initiating proceedings u/s 153A of the Act. Once the proceedings u/s 153A of the Act are initiated, which are special proceedings, the legislature in its wisdom bifurcates differential treatments for abated assessments and unabated assessments. At the cost of repetition, we state that in respect of abated assessments (i.e pending proceedings on the



IT(SS)A Nos.109&amp;110/Kol/2017

IT(SS)A No.105/Kol/2017

IT(SS)A No.104/Kol/2017

IT(SS)A Nos. 111&amp;112/Kol/2017

IT(SS)A Nos.107&amp;108/Kol/2017

IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 &amp; 2012-13

date of search) , fresh assessments are to be framed by the Id AO u/s 153A of the Act which would have a bearing on the determination of total income by considering all the aspects, wherein the existence of incriminating materials does not have any relevance. However, in respect of unabated assessments, the legislature had conferred powers on the Id AO to just follow the assessments already concluded unless there is an incriminating material found in the search to disturb the said concluded assessment. In our considered opinion, this would be the correct understanding of the provisions of section 153A of the Act , as otherwise, the necessity of bifurcation of abated and unabated assessments in section 153A of the Act would become redundant and would lose its relevance. Hence the arguments advanced by the Id DR in this regard deserves to be dismissed.

10.8. In view of the aforesaid findings and respectfully following the judicial precedents relied upon hereinabove, we hold that the assessment already deemed to have been completed for the Asst Year 2009-10, which was unabated / concluded assessment, on the date of search, deserves to be undisturbed in the absence of any incriminating material found in the course of search and accordingly no fresh addition could be made thereon without the existence of any incriminating materials found in the course of search from the premises of the assessee. Since the issue is addressed on preliminary ground of absence of incriminating materials, we refrain to give our findings on the merits of the additions for the Asst Year 2009-10 in the case of Krishna Kumar Singhania. Accordingly the preliminary ground raised by the assessee in this regard is allowed.

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

11. The aforesaid decision rendered in the case of Krishna Kumar Singhania for Asst Year 2009-10 would apply for Asst Year 2012-13 also for that assessee and also for other assessees involved supra for various assessment years in view of identical facts and circumstances except with variance in figures. It is not in dispute that for both the Asst Years 2009-10 and 2012-13 , the assessments were deemed to be completed as on the date of search for all the abovementioned assessees as admittedly the time limit for issuance of notice u/s 143(2) of the Act had expired in all the abovementioned cases. Thus they had become concluded assessments on the date of search. The basic facts of filing the original return of income by other assessees and the time limit available for issuance of notice u/s 143(2) of the Act are as under:-

Asst Year 2009-10

<u>Name of the person</u>	<u>Date of filing the Original Return of Income</u>	<u>143(2) time limit Expired on</u>
Krishna Kumar Singhania	10.2.2010	29.2.2011
Vijay Kumar Singhania	11.1.2010	31.1.2011
Nirmala Devi Singhania	8.1.2010	31.1.2011

Asst Year 2012-13

<u>Name of the person</u>	<u>Date of filing the Original Return of Income</u>	<u>143(2) time limit Expired on</u>
---------------------------	---	---

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhanian, Ajay Kumar Singhanian, Kasak Singhanian,  
 Nirmala Devi Singhanian, Vijay Kumar Singhanian, Ruchi Singhanian  
 Asst. Years: 2009-10 & 2012-13

Krishna Kumar Singhanian	30.6.2012	30.9.2013
Vijay Kumar Singhanian	30.6.2012	30.9.2013
Nirmala Devi Singhanian	30.6.2012	30.9.2013
Kasak Singhanian	30.6.2012	30.9.2013
Ruchi Singhanian	5.7.2012	30.9.2013
Ajay Kumar Singhanian	30.6.2012	30.9.2013

12. The common addition made for all the assesseees for various assessment years as mentioned above is towards disallowance of long term capital gains claimed by the assessee. This long term capital gain was claimed as exempt by the assessee in his original return of income itself. Hence the decision rendered above for Asst Year 2009-10 in the case of Krishna Kumar Singhanian would apply for other assesseees also except with variance in figures. Apart from this long term capital gains addition, there were certain other additions made in the assessments of various persons as under:-

I. Krishna Kumar Singhanian – Asst Year 2009-10 – Bogus Development Expenses

This was part of the claim in the original return of income.

Krishna Kumar Singhanian – Asst Year 2012-13 – Perquisites u/s 17(2)(iv) of the Act

The remuneration was part of the original return of income. This was a fresh addition made towards insufficient drawings in the section 153A assessment which is not backed by any search material found in the course of search.

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

## II. Vijay Kumar Singhania – Asst Year 2012-13 – Perquisites u/s 17(2)(iv) of the Act

The Director's remuneration was part of the original return of income. This was a fresh addition made towards insufficient drawings in the section 153A assessment which is not backed by any search material found in the course of search.

## III. Kasak Singhania – Asst Year 2012-13

### (a) Difference between contractual receipts reported in return and that shown in Form 26AS – Rs 16,200/-

This is part of the records of the department and no search material was found at the time of search. This was a fresh addition made in section 153A assessment.

### (b) Disallowance u/s 14A of the Act – Rs 1,055/-

This was a fresh addition made in the section 153A assessment which is not backed by any search material found in the course of search. This was deleted by the Id CITA. No appeal preferred by the revenue before us against the same.

## IV. Ajay Kumar Singhania – Asst Year 2012-13

### (a) Perquisites u/s 17(2)(iv) of the Act

The Director's remuneration was part of the original return of income. This was a fresh addition made towards insufficient drawings in the section 153A assessment which is not backed by any search material found in the course of search.

### (b) Addition towards Unsecured Loans – Rs 21,79,580/-

IT(SS)A Nos.109&110/Kol/2017  
 IT(SS)A No.105/Kol/2017  
 IT(SS)A No.104/Kol/2017  
 IT(SS)A Nos. 111&112/Kol/2017  
 IT(SS)A Nos.107&108/Kol/2017  
 IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
 Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania  
 Asst. Years: 2009-10 & 2012-13

This sum represents new loan received during the year for which no confirmation was filed before the Id AO by the assessee and hence added by the Id AO which is not backed by any search material found in the course of search. This addition was deleted by the Id CITA. No appeal preferred by the revenue before us against the same.

13. In view of the aforesaid findings in the facts and circumstances of the case, we hold that the assessments for the Asst Years 2009-10 and 2012-13 fall under the category of completed assessments and hence the additions made by the Id AO which are contested before us by the assessee cannot be made in the assessments framed u/s 153A of the Act as they are not backed by any incriminating materials found in the course of search . Accordingly the grounds raised by the assessee for all the appeals are allowed.

14. In the result, all the appeals of the various assesseees aforesaid are allowed.

**Order pronounced in the Court on 06.12.2017**

Sd/-  
 [N.V. Vasudevan]  
 Judicial Member

Sd/-  
 [ M.Balaganesh ]  
 Accountant Member

Dated : 06.12.2017

SB, Sr. PS

IT(SS)A Nos.109&110/Kol/2017  
IT(SS)A No.105/Kol/2017  
IT(SS)A No.104/Kol/2017  
IT(SS)A Nos. 111&112/Kol/2017  
IT(SS)A Nos.107&108/Kol/2017  
IT(SS)A No. 106/Kol/2017

Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania,  
Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania

Asst. Years: 2009-10 & 2012-13

Copy of the order forwarded to:

1. Krishna Kumar Singhania, Ajay Kumar Singhania, Kasak Singhania, Nirmala Devi Singhania, Vijay Kumar Singhania, Ruchi Singhania, all are residing at 51, Nalini Seth Road, Kolkata-700007
2. DCIT, CC-3(3), Kolkata, 110, Shanti Pally, E.M. Bypass, Near Ruby Hospital, Kolkata-700107
- 3..C.I.T.(A)- , Kolkata 4. C.I.T.- Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches