IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPURBENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, HON'BLE ACCOUNTANT MEMBER &
SHRIN.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER

I.T.A. Nos. 69 to 71/RPR/2019
(Asst. Years : 2008-09 to 2010-11)

M/s. Topworth Steel & Power Pvt. Ltd., 308, 3rd Floor, Ceejay House, Dr. A.B.Road, Worli, Mumbai (MH).	vs.	Pr.CIT (Central), Bhopal (MP).
PAN No. AACCT 0878 L (Appellant)		(Respondent)

Assessee by	:	Shri Nikhilesh Begani, CA.
Department by	:	Shri R.K. Singh, CIT-DR
Date of hearing	:	29/07/2021.
Date of pronouncement	:	28/09/2021.

O R D E R

PER N.K. CHOUDHRY, JUDICIAL MEMBER

These appeals have been preferred by the Assessee against the order dated 19/03/2019 impugned herein passed by the Ld. Principal Commissioner of Income Tax (Central) [for short, 'ld. Pr.CIT], Bhopal u/sec. 263 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Ys. 2008-09 to 2010-11.

2. All the three appeals have similar facts and issues, therefore have been taken into consideration simultaneously for adjudication by this composite order and we will quote facts of ITA No. 69/RPR/2019 and result of the same shall apply *mutatis mutandis* to the other appeals.

3. In the instant case, the Assessee has filed its return of income on dated 30/09/2012. Thereafter, a search and seizure operation was conducted u/sec. 132 of the Act in the case of Crest Topworth Group on dated 10/10/2012, which resulted into passing of assessment order dated 10/11/2016 u/sec. 153A r.w.s. 143 of the Act and total income was assessed at Rs. 4,93,82,49,811/-. Later on, the said assessment order was scrutinized by the Pr.CIT u/sec. 263 of the Act and the same was held as erroneous and prejudicial to the interest of the revenue and consequently the AO was directed to re-frame the assessment after examining the following issues:

a. allowance of depreciation at 10% on water treatment systems,

b. difference of unsecured loan to the tune of Rs. 3.00 crores between the figure reported in Form 3CD and the balance sheet,

c. substantial investments in shares and securities, income from which does not form part of total income.

4. The Assessee being aggrieved, challenged the instant appeal on various grounds, however, we deem it appropriate to decide ground

No.1 first which is legal in nature and the same is reproduced below:-

> *"1. That the Revision Order passed by the Learned Pr. Commissioner of Income Tax ('the Ld.PCIT") under section 263 of the Income Tax Act, 1961 ("the Act") is highly unjustified, bad in law, without jurisdiction & void ab initio for the reason that in pursuance of search operation under the provisions of section 132 of the Act, no incriminating material or documents were unearthed and seized and as per the second proviso to section 153A of the Act, the assessment in this case was not pending as on the date of initiation of search and had already attained finality, hence, the Ld.PCIT has grossly erred in concluding that the Learned Assessing Officer ('the Ld.AO") has failed to carry out the necessary enquiries and investigation in relation to the return which pertained to material already on record.*
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> *Further, that the action of the Ld. PCIT in invoking jurisdiction uls.263 by alleging that the Ld.AO failed to carry out necessary enquiries and investigation with regard to the issues specified therein is devoid of merit in as much as the impugned assessment pertains to unabated assessment of the appellant, which dehors incriminating seized material could not be revised by resorting to provisions of section 263 of the Act.*
>
> *Hence, it is prayed that the Order passed by the Ld. PCIT under the provisions of section 263 of the Act may please be cancelled."*

5. The main grievance of the Assessee in this appeal is that no incriminating material or documents were unearthed and seized

during the course of survey operation u/sec. 132 of the Act and even otherwise, the assessment in this case was not pending as on the date of initiation of search and had already attained finality and therefore the assessment order cannot be revised u/sec. 263 of the Act.

6. On the contrary, the ld. DR submitted that the ld. Pr.CIT is empowered by the provisions of section 263 of the Act, therefore he has rightly revised the assessment order in this case and the order of ld. Pr.CIT is neither contrary to the law and facts nor improper and therefore no interference is warranted.

7. Having heard the parties and perused the material available on record. It is undisputed fact as reflected from assessment order dated 10/11/2016 passed u/sec. 153A r.w.s. 143(3) of the Act that for the A.Ys. 2008-09 to 2010-11, the income declared by the Assessee was assessed by the AO by accepting the same as "NIL". It is also undisputed fact that neither incriminating material/ documents were seized by the revenue authorities during the course of search relevant to the assessment years concerned nor being used by the AO while making the assessment order dated 10/11/2016. Even otherwise, there is no reference of any incriminating material in support of the issues raised by the Ld. Pr.CIT in the impugned order and it is the case of the ld. Pr.CIT that the incriminating material seized in the course of search has not been considered by the AO while framing the assessment order u/sec. 153A r.w.s. 143(3) of the Act.

7.1 It is settled law that the completed assessments cannot be disturbed. The Hon'ble Delhi High Court in the case of *Pr.CIT Vs. Mahesh Kumar Gupta* [2016 (12) TMI 684 (Del. HC)] has dealt with an identical issue and held as under:-

> *"3. The ITAT concluded based upon the materials available that the search and seizure operations did not yield any fresh material warranting addition under section 153A of the Act, and therefore, could not clothe the CIT with the authority to add an amount on the basis of a fresh appraisal of the existing materials that formed part of the original assessment. It is urged by the Revenue that the CIT acted within his jurisdiction in concluding that the AO erroneously did not bring to tax the amount that had to be included under section 2(22)(e) facially itself, therefore, the CIT's order was justified, consequently, the ITAT should not have interfered with that determination.*
>
> *4. There is no dispute that the search and seizure proceedings in this case did not result in anything, therefore, material either in the form of books of account or other documents related to the issue of deemed dividend under Section 2(22) of the Act. The amounts paid were in fact originally declared in the assessment returns of the assessee. The CIT, therefore, had opportunity to exercise his powers as it were on the basis of returns as filed originally and validly under Section 263 of the Act.*
>
> *5. In the circumstances in the absence of any material disclosing that the issue of deemed dividend had been wilfully derived or had been deemed or otherwise withheld from the assessment an addition under Section 153A was warranted – based on the proposition taught by this Court in judgment dated 28.08.2015 in ITA 707/2014 titled: CIT vs Kabul Chawla. Therefore, we concur with the ITAT's opinion in this regard. The search and seizure proceedings in such cases are undoubtedly meant to*

bring to tax amount that are to be determined on the basis of materials seized in the course of such searches; permitting anything over and above that would virtually amount to letting the Revenue have a third or fourth opinion as it were. Searches – to quote the view of Attorney-General (NSW) vs Quin (1990) HCA 21 in another context are "not the key which unlocks the treasury" of the Revenue's jurisdiction in regard to matters that had attracted attention in the regular course of assessment."

The Hon'ble High Court in the said case affirmed the view of the ITAT wherein it was held that survey and seizure operation did not yield any fresh material warranting addition under section 153A of the Act, and therefore, could not clothe the CIT with the authority to add an amount on the basis of a fresh appraisal of the existing materials that formed part of the original assessment.

7.2 The Hon'ble Delhi High Court in the case titled as C*CIT Vs. Kabul Chawla* (ITA 707/2014, dated 28.08.2015), clearly held that if on the date of search, the assessment proceedings already stood completed and no incriminating material unearthed during the search, then no addition can be made to the income already assessed. The said dictum of the Hon'ble High Court confirmed by the Hon'ble Apex Court vide order dated 2nd July, 2018 in the case of Pr. Joint CIT vs. Meeta Gutgutia (supra) by dismissing the SLP filed against the judgment of Delhi High Court, wherein the same dictum has been laid down by the Hon'ble Court as laid down in the CIT vs. Kabul Chawla (supra).

7.3 The Hon'ble Bombay High Court in the case of *CIT Vs. Murli Agro Products Ltd.* [(2014) 49 taxmann.com 172 (Bombay)] has held that the AO while passing independent assessment u/sec. 153A read with section 143(3) could not have disturbed the assessment/ reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under section 153A establish that the reliefs granted under the finalised assessment/ reassessment were contrary to the facts unearthed during the course of 153A proceedings. The CIT could not have invoked the jurisdiction u/sec. 263 of the Act on the ground that the assessment order passed by the AO u/sec. 153A r.w.s. 143(3) was erroneous and prejudicial to the interest of revenue.

From the conclusion of the Hon'ble Bombay High Court in the said case it is clear that if no incriminating material found during the course of search operation u/sec. 132 of the Act and the assessment /reassessment has attained finality, then the same cannot be disturbed u/sec. 263 of the Act by the ld. Pr.CIT.

7.4 On the aforesaid facts and circumstances as narrated by us and the dictums of the Hon'ble High Courts, we are of the considered opinion that in the instant case the Pr.CIT could not have invoked the revisional jurisdiction u/sec. 263 of the Act to revise the subjected unabated assessments which have attained finality by accepting the income of the Assessee as "NIL" and yielded no addition, therefore we are inclined to quash the impugned order.

8. As we are inclined to quash the order impugned, therefore do not deem it appropriate to travel to the other grounds of appeal raised by the Assessee as the same would become academic exercise only. Consequently, the impugned order is quashed.

9. In the result, all the appeals filed by the Assessee stand allowed.

Order Pronounced on dated 28-09-2021 as per Rule 34(5) of the IT (Appellate Tribunal) Rules.

sd/-	sd/-
(PRADIP KUMAR KEDIA)	**(N.K. CHOUDHRY)**
Accountant Member	**Judicial Member**

vr/-

Copy to:

1. *The Assessee -* M/s. Topworth Steel & Power Pvt. Ltd., 308, 3rd Floor, Ceejay House, Dr. A.B.Road, Worli, Mumbai
2. *The Revenue – Pr.CIT (Central), Bhopal (MP)*
3. *The D.R., Raipur.*
4. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Raipur (on tour).