



Hon'ble Bombay High court in the case of PCIT v. JSW Steel Limited [2020] adjudicated the following issues:

- Whether assessee can make an additional claim in return of income filed for assessment year which was already concluded on the date of search or not, and
- Whether assessee can make such a new claim even when the original return of income was already filed on the date of search?

Facts of the Case/Trail of events

1.	<ul style="list-style-type: none">• The assessee is a widely held public limited company engaged in various activities including the production of sponge iron, galvanized sheets and cold-rolled coils through its steel plants located at Dolve and Kalmeshwar in Maharashtra.• The assessee's case was selected for scrutiny under Section 143(2) of the Income Tax Act, 1961 ("the Act") on 03.09.2009.
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2.	The assessee filed original return of income on 30.09.2008 for Assessment Year 2008-09 declaring loss at Rs.104,17,70,752/- under the provisions of Section 139(1) of the Act.
3.	The assessee's case was selected for scrutiny under section 143(2) of the said Act on 03-9-2009.
4.	During the pendency of the assessment proceedings, a search was conducted under Section 132 of the said Act on the ISPAT Group of companies on 30.11.2010.
5.	<ul style="list-style-type: none"> • Following the search, notice under Section 153A of the Act was issued. In response, the assessee filed return of income declaring total loss at Rs.419,48,90,102/- on 29.03.2012. • In this return of income, the assessee made a new claim for treating gain on pre-payment of deferred VAT/sales tax on Net Present Value (NPV) basis for an amount of Rs.318,10,93,993/- as "capital receipt".
6.	<ul style="list-style-type: none"> • This new/fresh claim of the assessee was disallowed by the Assessing Officer (hereinafter referred to as "AO") while finalizing the assessment under Section 143(3) read with Section 153A of the said Act vide the order dated 25.03.2013 by considering the same as "revenue receipt" instead of "capital receipt". • The reasoning given by the AO was that the assessee had availed the sales tax deferral scheme and the State Government had permitted premature re-payment of deferred sales tax liability at the NPV basis. • Therefore, according to the AO, assessee treated this as capital receipt even though the same was credited to the assessee's profit and loss account being the difference between the deferred sales tax and its NPV.
7.	<p>However, the primary question that arose before the AO was:-</p> <ul style="list-style-type: none"> ✓ Whether the claim which was not made in the earlier original return of income filed under Section 139(1) of the Act, could be filed and considered in the subsequent return filed by the assessee in pursuance to notice under Section 153A of the Act? ✓ AO held that the assessee could not raise a new claim in the return filed under Section 153A which was not raised in the original return of income filed under Section 139(1). Thereafter, the claim was disallowed and was treated as "revenue receipt".
8.	<ul style="list-style-type: none"> • CIT(A) has denied such claim. • Hon'ble Mumbai ITAT vide its order dated 28/09/2016 in ITA No. 33/MUM/2015 allowed the claim.

Observations by Hon'ble Bombay High Court

1.	<p><u>Non-obstante clause</u></p> <ul style="list-style-type: none">• From a reading of the above it is clear that Section 153A of the said Act, provides for the procedure for assessment in search cases.• As alluded to hereinabove, the said section starts with a non-obstante clause stating that it is, "notwithstanding anything contained in section 147, 148 and 149....." Further sub Section (a) of Section 153A (1) provides for the issuance of notice to the persons searched under Section 132 of the Act to furnish a return of income.• However, the second proviso to Section 153A of the said act makes it clear that assessment relating to any assessment year filed within a period of the six assessment years pending on the date of search under Section 132 of the Act shall abate.• Thus if on the date of initiation of search under Section 132, any assessment proceeding relating to any assessment year falling within the period of the said six assessment years is pending, the same shall stand abated and the Assessing Authority cannot proceed with such pending assessment after initiation of search under section 132 of the said Act.• The Expression "abate" as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. <p><u>Decisions referred to by High court</u></p> <p>CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd. [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.) wherein the court has interpreted mainly as under:</p> <ul style="list-style-type: none">• Which also explains the second proviso to Section 153A(1). The explanation is that pending assessment or reassessment on the date of initiation of search if abated, then the assessment pending on the date of initiation of the search shall cease to exist and no further action with respect to that assessment shall be taken by the AO.• In such a situation the assessment is required to be undertaken by the AO under Section 153A(1) of the said Act.
2.	<p>As per the second proviso to section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc.</p> <p>✓ The assessee could lodge a new claim for deduction etc. which</p>

remained to be claimed in his earlier/regular return of income. This is so because the assessment was never made in the case of the assessee in such a situation.

- ✓ It is fortified that once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return.
- ✓ In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. If that be the position, all legitimate claims would be open to the assessee to raise in the return of income filed under section 153A(1).
- ✓ The final finding of the Hon'ble Court is as under:

"16. From the above, we conclude that in view of the second proviso to section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income because the assessment was never made/finalized in the case of the assessee in such a situation."

Court Pronouncements relied upon by the High

- a) *The Bombay High court in the case of CIT v. B. G. Shirke Construction Technology (P.) Limited [2017] 79 taxmann.com 306*
- a) *Pune ITAT in the case of UMESH DHONDIRAM SHINDE v. DCIT in ITA No 1363 to 1367/PUN/2014 dated 16th March 2018*
- b) *Kolkata ITAT in the case of Electrosteel Castings Ltd. v. DCIT [2017] 88 taxmann.com 862*
- c) *The Delhi High court in the case of PCIT v. Neeraj Jindal 79 Taxman.com 96*
- d) *Ahmedabad ITAT in the case of Bhanuben Kantibhai Savalia v. DCIT [2019] 111 taxmann.com 150*
- e) *Hyderabad ITAT in the case of DCIT v. Megha Engg. & Infrastructure Limited in ITA No. 607 to 610/H/2016 dated 15/12/2019*
- f) *Rajasthan High Court in Jai Steel (India), Jodhpur v. ACIT [2013] 219 Taxman 223/36 Taxmann.com 523.*
- g) *Mumbai ITAT in the case of DCIT v. Eversmile Construction Co.(P.) Ltd [2013] 33 taxmann.com 657.*

Our View

So far as the issue of making new/additional claim in return of income filed in response to notice u/s 153A of the Act, such claim will be available:-

- ✓ For abated assessment years even though such claims are not connected to search & seizure proceedings and the assessee has already filed original return of income.
- ✓ Various High courts have already held that AO cannot make additions in unabated assessment years as on the date of search.
- ✓ Assessment proceedings already completed or time limit for issuance of notice u/s 143(2) has expired on the date of search which is not based upon any incriminating material, Assessee cannot claim additional claim or new claim for those assessee years.

By:-

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