

**F.No. 279/Misc./M-54/2023-ITJ
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
ITJ Section**

New Delhi
Dated: 23rd August, 2023

Subject: Implementation of the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central-3) v/s Abhisar Buildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)- Instruction regarding

1. On 24.04.2023, the Hon'ble Supreme Court delivered a judgment in a batch of Income-tax matters, the lead matter being Principal Commissioner of Income Tax, Central-III v. Abhisar Buildwell Pvt. Ltd. (CA No. 6580 of 2021) (hereinafter referred to as the Case). The matter of the civil appeal pertained to the scope and ambit of section 153A/153C of the Income-tax Act, 1961 (hereinafter referred to as the Act).

2. The Hon'ble Supreme Court in Civil Appeal No. 6634 of 2021 in the case of DCIT Central Circle 20 v/s U.K. Paints (Overseas) Ltd. delivered a judgement on 25.04.2023 and dealt with the same issue as was in the case of Abhisar Buildwell case in regard to section 153C of the Act. The Hon'ble Supreme Court in the last paragraph of the judgement held that, "However, so far as the prayer made on behalf of the Revenue to permit them to initiate the reassessment proceedings is concerned, it is observed that it will be open for the revenue to initiate the reassessment proceedings in accordance with law and if permissible under the law."

3. Background:

Notices under section 153A were issued for block period (six assessment years prior to year of search) and orders were passed considering incriminating material and other material available with the Assessing Officer (hereinafter referred to as the AO). Further, for a search initiated or requisition made after 1.4.2017, notices for four more years (7th to 10th) could also be issued, if the income represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year. In some cases, orders were passed considering only other material available in the record in the absence of incriminating material. Hon'ble Delhi High Court delivered a decision on 28.08.2015 in the case of Kabul Chawla [ITA No. 707 of 2014 (Commissioner of Income-tax (Central)-III v/s Kabul Chawla)]. It was held that the AO does not have jurisdiction for passing order under Section 153A in the absence of incriminating material found during the search under Section 132 or requisition made under Section 132A of the Act.

4. Hon'ble Supreme Court in the cases of Abhisar Buildwell (cited *supra*) and U.K. Paints (Overseas) Ltd. (cited *supra*), accordingly provided power to the AO to reopen the completed/unabated assessments u/s 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act, in cases where no incriminating material is found during the search.

5. The implementation of the judgment of Hon'ble Supreme Court is required to be done in uniform manner. Accordingly, in exercise of its power under section 119 of the Act, the Central

Board of Direct Taxes (hereinafter referred to as "the Board") directs that the following may be taken into consideration while implementing this judgment.

6. Scenarios and action suggested to be taken:

6.1 Considering that (i) significant time has elapsed from the decisions received in completed cases wherein the assessment was made based on the 'other material' and to provide tax certainty to the taxpayers, the Board has decided that no action is required to be taken under section 147/148 of the Act in cases (except cases covered by paragraph 7.2.1 below) where decisions of the appellate authorities have become final because these decisions have not been contested further in appeal. Further, it is decided that the said judgement is required to be applied in the following cases only:

- (a) The lead and tagged cases in the said judgement.
- (b) All cases which are pending at appellate levels or before AO or any tax authority.
- (c) All cases in which contrary decisions has been given by appellate authorities after the Apex Court judgement in the Abhisar Buildwell case dated 24.04.2023.

7. In this regard, the AOs would have to divide the cases impacted by the judgment into two broad categories i.e.,

- (I) pending/abated assessments, and
- (II) completed/unabated assessments.

7.1 **Pending/abated assessments:** The AO would be required to ascertain assessments falling in the category of assessments that became abated on the date of search or requisition. In such cases, if any proceedings initiated or any order of assessment or reassessment have been annulled in appeal or in any other legal proceedings the same shall stand revived from the date of receipt of order of annulment as per provisions of section 153A(2) of the Act, and AO would need to take necessary action as per provisions of section 153A(2) read with section 153(8) of the Act, in respect of such pending/abated assessments.

Provisions of Section 153A(2) and Section 153(8) of the Act are reproduced as hereunder for ready reference:

Section 153A(2)

"[(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the [Principal Commissioner or] Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.]"

Section 153(8)

"Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later."

7.2 Completed/unabated assessments: In respect of cases that were unabated/completed at the time of issue of notices under section 153A/153C and assessments made, the following scenarios will emerge:

7.2.1 In the lead and all the tagged cases, necessary action u/s 148/147 need to be taken in the situation stated by the Court in the para 14(iv) of the said order in view of section 150 of the Act. The AO will be required to reopen the cases following the currently applicable procedure for reopening i.e., following the procedure prescribed under section 148A of the Act as inserted by Finance Act, 2021 in accordance with the law laid down by Hon'ble Supreme Court by its order dated 04.05.2022 in Union of India v. Ashish Agarwal case (2022 SSC Online SC 543). In view of the specific provisions of section 153(6) of the Act, all the cases reopened u/s 147/148 of the Act will be required to be completed by 30th April, 2024.

7.2.2 Cases where appeal is pending (filed either by the Department or assessee or both).

Appellate level	CIT(A)	ITAT	High Court
Action to be taken	The said judgement is required to be brought to the notice of CIT(A).	The departmental representative should bring the said judgment to the notice of the ITAT in the cases covered by the judgment.	The Standing Counsel should bring the said judgment to the notice of the High Court in the cases covered by the judgment.

Further, as and when the appeals are disposed of by the appellate authorities, action might be required to be taken by AO in appropriate cases under sections 147/148 of the Act read with section 150 of the Act. It is reiterated that the AO will be required to reopen the cases following the currently applicable procedure for reopening as given in para 7.2.1, above.

7.2.3 In all cases where the decisions of appellate authorities rendered after the Apex Court judgement in the Abhisar Buildwell case dated 24.04.2023 are inconsistent with the same, necessary action may be taken to file Miscellaneous Application (MA) and Notice of Motion (NoM) to the ITAT and High Court, respectively, requesting the review of the decision in line with the Abhisar judgement, with a prayer of condonation of delay, wherever necessary. It is brought to attention that the time limit for filing Miscellaneous Application before ITAT is 6 months from the end of the month in which order is passed by the ITAT, as per section 254 of the Act. On receipt of the decision of the Hon'ble ITAT/High Court, as the case may be, necessary action as per law and extant instruction should be taken.

Suggestive template for Miscellaneous Application and Notice of Motion is attached for reference purpose. The facts of the case will be required to be mentioned in the Miscellaneous Application or Notice of Motion.

8. Procedure required to be followed by the field formations to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the AO, in compliance with the order of the Hon'ble Supreme Court, is as under:

- (i) Every AO would have to ascertain which assessments fall in the category of abated assessments and unabated assessments.

- (ii) Out of abated assessment cases, those that have been annulled by an appellate authority on some technical ground or otherwise, may be potential cases for revival u/s 153A(2) of the Act.
- (iii) In respect of unabated assessment cases, the AO shall ascertain the facts of the case in hand and take necessary action as per para 7.2 above.
- (iv) The Hon'ble Supreme Court has held that completed/unabated assessments can be reopened by the AO in exercise of powers u/s 147/148 of the Act, subject to fulfillment of the conditions specified in those sections. The time limit for the issue of notice u/s 148 would be in accordance with the provisions of Section 150 of the Act.
- (v) For the issue of applicability of the conditions for reopening the assessments at the relevant time, the monetary limits applicable at present would apply while reopening assessment of earlier years.
- (vi) Regarding sanction for issue of notice u/s 151 of the Act, the current provisions of the section will apply.
- (vii) Action would be required to be taken under sections 147/148 of the Act read with section 150 of the Act, in cases pending before any appellate authority and depending on the decision, as and when the appellate orders are passed under sections 251, 254, and 260A of the Act.

8.2 The field authorities need to take necessary actions within time limits as mentioned below:

(a) In lead and tagged cases:

- 148A proceedings to be initiated by: 30th September, 2023.

- proceedings u/s 147/148 to be completed by: 30th April, 2024.

(b) In cases where decisions given by appellate authorities after 24.04.2023 are not in consonance with the Supreme Court decision in the case of Abhisar Buildwell:

-Identification of cases where action is to be taken by: 30th September, 2023.

-Filing of Miscellaneous Application/Notice of Motion by: 30th November, 2023.



Tanay Sharma
Jt. CIT(OSD)-ITJ, CBDT
New Delhi

Copy to:

1. Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. All Pr. Chief Commissioner of Income Tax and all Directors General of Income-tax with a request to bring to the attention of all officers.
3. All Directorates of Income-tax, New Delhi and Pr. DGIT (NADT), Nagpur.
4. ITCC (3 copies).
5. ADG (System)-4, for uploading on the Department's website.
6. Data Base Cell for uploading on www.irsofficersonline.gov.in.
7. Hindi Cell for translation.
8. Guard file.



Jt. CIT(OSD)-ITJ, CBDT
New Delhi

Specimen Miscellaneous Application (MA) to file before ITAT

To,

Dated:

The Registrar

ITAT Bench

Subject: Miscellaneous Application in the Case of in the light of Hon'ble Supreme Court Judgement in the Case of Pr.CIT (Central)-3 vs Abhisar Buildwell Pvt Ltd. Civil Appeal No. 6580 of 2021 dated 24.04.2023.

Madam/Sir,

Refer to the appeal in the Case of Order dated:.....

2. The Hon'ble Apex Court vide the above-mentioned judgement in the Case of Pr.CIT (Central)-3 vs Abhisar Buildwell Pvt Ltd. Civil Appeal No. 6580 of 2021 dated 24.04.2023, has held that

- i) *that in Case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) *all pending assessments/reassessments shall stand abated;*
- iii) *in Case any incriminating material is found/unearthed, even, in Case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*
- iv) *in Case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

3. The issue involved in the present case decided by the Hon'ble Bench vide Order dated (ITA No.....) have similar issue as per the law declared by the Supreme Court in above mentioned judgment of the Hon'ble Apex Court.

4. In view of the Article 141 of the Constitution of India, the ratio decidendi of the above-mentioned judgement by the Hon'ble Supreme Court is binding to all courts within the territory of India. Therefore, this Misc. Application is being filed with prayer of condonation of delay of days, with a request that the Order dated (ITA No.....) may be reconsidered by Hon'ble ITAT in view of Hon'ble Apex court's judgement (Civil Appeal No.6580 of 2021).

[Note: The Misc. Application will require to be filed through CIT(DR)/Sr(AR) and the procedure laid down by the ITAT in the matter will require to be followed].

Specimen Notice of Motion (NoM) to file in High Court

To,

Dated:

The Registrar

High Court of

Subject: Notice of Motion in the Case of in the light of Hon'ble Supreme Court Judgement in the Case of Pr.CIT (Central)-3 vs Abhisar Buildwell Pvt Ltd. Civil Appeal No. 6580 of 2021 dated 24.04.2023.

Refer to the appeal in the Case of Order dated:.....

2. The Hon'ble Apex Court vide the above-mentioned judgement in the Case of Pr.CIT (Central)-3 vs Abhisar Buildwell Pvt Ltd. Civil Appeal No. 6580 of 2021 dated 24.04.2023, has held that:

- i) *that in Case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) *all pending assessments/reassessments shall stand abated;*
- iii) *in Case any incriminating material is found/unearthed, even, in Case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*
- iv) *in Case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

3. The issue involved in the present Case decided by the Hon'ble High Court vide Order dated (ITA No.....) have similar issue as per above mentioned decision of the Hon'ble Apex Court.

4. In view of the Article 141 of the Constitution of India, the ratio decidendi of the above-mentioned judgement by the Hon'ble Supreme Court is binding on all courts within the territory of India. Therefore, this Notice of Motion is being filed with prayer of condonation of delay of days, with a request that the Order dated (ITA No.....) may be reconsidered by Hon'ble High Court in view of Hon'ble Apex court's judgement (Civil Appeal No.6580 of 2021).

[Note: The Notice of Motion will require to be filed through Sr./Jr. Standing Counsel and the procedure laid down by the Court in the matter will require to be followed].