

Completed assessments cannot be opened by the AO, if no incriminating material is found during search: SC

PRINCIPAL COMMISSIONER OF INCOME TAX

(CENTRAL) 2 vs. KING BUILDCON PVT. LTD. (Civil Appeal No. 4326/2023)

Background:

1. Hon SC was hearing an appeal against the decision of the Delhi High Court which had dismissed the appeals filed by the Revenue Department against the order of the ITAT where the additions made by the AO were deleted.

2. The High Court had noted that the assessment of the assessee had attained finality prior to the date of search and no incriminating documents or materials had been found and seized at the time of search. Accordingly, the court held that no additions could be made under Section 153A of the Act as the cases of the respondent-assessee were of non-abated assessments.

Hon SC held as below:

1. In view of the judgment of the SC in Principal Commissioner of Income Tax vs. Abhisar Buildwell Pvt. Ltd., 2023 LiveLaw (SC) 346, an Assessing Officer (AO) cannot make additions to assessee's income in respect of completed/unabated assessments if no incriminating material has been found during the course of search under Section 132 or requisition under Section 132A of the Income Tax Act, 1961.

2. The powers of the AO under Sections 147/148 of the Income Tax Act are saved. Therefore, 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 the said provisions.

Note: In *Abhisar Buildwell* (2023) had dealt with the scope of assessment under Section 153A of the Income Tax Act, 1961. It had ruled that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under Section 153A and all pending assessments/ reassessments shall stand abated.

It was held that even in cases of unabated/completed assessments, if any incriminating material was found/unearthed during the search, 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