

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA No.2900/Del/2024
Assessment Year : 2009-10

Suryavanshi Finlease Private Ltd.,
C-5/2A, Rana Pratap Bagh,
Opp. CC Colony,
New Delhi – 110 085.

Vs. ACIT,
Central Circle,
Karnal.

PAN: AABCS1933N

Assessee by : Shri Ved Jain, Advocate;
Shri Pawan Garg, CA &
Shri Ishika Dua, CA
Revenue by : Shri Mahesh Kumar, CIT-DR
Date of Hearing : 25.09.2025
Date of Pronouncement : 29.10.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 27.05.2024 of the Ld. Commissioner of Income-tax (Appeals)-3, Gurgaon (hereinafter referred to as the First Appellate Authority or 'the ld. FAA' for short) in appeal No.10392/2019-20, filed before him against the order dated 31.12.2019 passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the DCIT, CC, Karnal (hereinafter referred to as the Ld. AO, for short).

2. This is an appeal filed by assessee against the Ld. CIT(A) Order dated 27.05.2024, whereby CIT(A) has confirmed the addition of share capital and share premium received by assessee of Rs. 78,00,000/- made by AO via order dated 31.12.2019 passed u/s 153A of the Income Tax Act, 1961. This is a recalled matter. The co-ordinate bench has pronounced an order in case of the assessee vide ITA No. 2899 & 2900/Del/2024 for the AY 2008-09 & AY 2009-10 on 17.01.2025. However, only the AY 2009-10 has been recalled, specifically for non-adjudication of other grounds of appeal.

3. In the order passed earlier only Ground No. 7 has been adjudicated, which relates to assessment order passed section 153A of the Act, being bad in law as the same has been passed in the absence of any incriminating material found during the course of search.

4. As per Id. Counsel, in this case, AO has initiated the assessment proceedings invoking 4th proviso to section 153A of the Act. But, the initiation of proceedings under section 153A of the Act beyond 6 years from the end of the assessment year relevant to the previous year in which the alleged search was conducted, without satisfying the mandate of the 4th proviso of section 153A of the Act, is without jurisdiction and the assessment is liable to be quashed. In this respect, the Ground no. 5 reads as under:-

“5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by AO is illegal and bad in law as the notice under section 153A of the Act has been issued and consequential order has been passed wrongly invoking the fourth proviso to section 153 A of the Act.”

5. We have heard both sides and find that search in the present case was conducted on 22.01.2018 on M/s Oswal Group. Accordingly, assessment year relevant to the previous year in which search was conducted is AY 2018-19 and the six assessment years immediately preceding the assessment year relevant for the previous year in which search was conducted would be A.Y. 2017-18 to A.Y. 2012-13. However, AO can assume jurisdiction to reopen any year beyond 6 years and up to 10 years only upon strict fulfillment of the conditions laid down in the 4th proviso to section 153A of the Act. In the present case, period of 10 years under section 153A of the Act is to be reckoned from the end of the relevant assessment year. Now, the 4th proviso to section 153A of the Act extends the period of reopening from 6 years upto 10 years, but only in limited circumstances, mainly where the Assessing Officer possesses books of account, documents or evidence which reveal that income represented in the '**form of an asset**', amounting to Rs. 50 lakhs or more and has escaped assessment. Impliedly the Act now excludes the other items of income i.e. liabilities/credit, explained expenditure etc. as same do not fall in the expressions 'income in the form of asset' as limited by the definition of 'asset' spelled out in Explanation 2. As law now mandates Ld. AO must be in the possession of some evidences which reveal that income represented in the form of asset has escaped assessment, same should be reflected in reopening reasons.

6. In the present case, the addition were made on account of share capital and share premium received by the assessee which is in the nature of 'liability' and would fall beyond the scope of phrase 'undisclosed asset' valued at Rs. 50 Lakhs or more. The nature of addition in case of assessee are thus not on account of undisclosed asset, vitiating the assumption of jurisdiction u/s 153A for AY 2009-10. This view has been also taken by Gauhati Bench in the case ACIT, CIRCLE-1, Vs. Goldstone Cements Ltd. I.T.A. Nos. 126 to 131/GAU/2020 And C.O. Nos. 03 to 08/Gau/2020 (2021 (12) TMI 1459) order dated 10.12.2021.

7. Even otherwise, it comes up that the undisclosed asset is found to be less than Rs. 50 lakhs. The relevant Para 4.1 of the assessment order reads as under:

“4.1 During the course of assessment proceedings, ail facts were confronted to the assessee vide this office questionnaire dated 18.11.2019 and was asked to show caused as to why total investment in current assets i.e. shares & securities, loans & advances amounting to Rs. 46,80,000/- made during the F.Y. 2008-09 may not be considered as unexplained investment and accordingly added back to its total income for the A. Y. 2009-10. In response to this, the assessee company has submitted its reply on dated 09.12.2019.....”

8. The fourth proviso to Section 153A of the Act can extend the period of reopening from 6 years and upto 10 years, only in limited circumstances, mainly where the Assessing Officer possesses books of account, documents or evidence which reveal that income represented in the form of an asset, amounting to Rs. 50 lakhs or more and has escaped assessment. In aforesaid para 4.1 of the assessment order the AO has doubted total investment in current assets i.e. shares & securities, loans & advances amounting to Rs. 46,80,000/-, which is

itself invalid and bad in law as it is below Rs. 50 lakhs as mentioned in fourth proviso to section 153A of the Act.

9. Thus it is established that the assumption of jurisdiction under fourth proviso to Section 153A of the Act was vitiated and accordingly we allow ground no. 6. The appeal is allowed. Impugned assessment is quashed.

Order pronounced in the open court on 29.10.2025.

Sd/-

(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Dated: 29th October, 2025.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi