

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3244/Del/2013
AY: 2004-05**

**ITA No. 3246/Del/2013
AY: 2006-07**

**ITA No. 3247/Del/2013
AY: 2007-08**

**ITA No. 3249/Del/2013
AY: 2008-09**

M/sRamprastha Buidlers Pvt. Ltd., B-23-25, Kailash Colony, New Delhi. (PAN: AADCR3877N) (Appellant)	vs	DCIT, Central Circle-14, New Delhi. (Respondent)
----------------------------------------------------------------------------------------------------------------------------	-----------	--------------------------------------------------------------------------

Appellant by: Shri Satyen Kumar
Respondent by: Shri R.B. Meena, CIT DR

**Date of hearing: 10.02.2016
Date of pronouncement: 29.04.2016**

ORDER

PER BENCH

All the four appeals are preferred by the assessee. The appeals are on similar issues and were heard together and they are being disposed of through this common order. The assessee is a private limited company. Search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called 'the Act') was conducted on 30.07.2009 in the Ramprastha Group of cases.

Subsequently, notices u/s 153A of the Act were issued for all the four years under appeal and the assessments were finalised after making certain additions. The assessee challenged the additions in first appeal on merits as well as took the legal ground that since no incriminating documents had been seized u/s 132(1) of the Act and the documents relied upon by the Assessing Officer for making assessments u/s 143(3)/153A of the Act were duly accounted for in the regular books of account, no addition was legally permissible in the assessee's cases for all the four years. However, the First Appellate Authority dismissed the assessee's appeals on the legal issue as well as on merits in all the four years and now the assessee is in appeal before us for the impugned four years.

2. The facts, in brief, for the four years are as under:-

I.T.A. No. 3244/Del/2013

2.1 The impugned order was passed on 19.2.2013 by the Ld. CIT(A)-XXXIII, New Delhi and the Assessment Year is 2004-05. The original return of income was filed on 01.11.2004 declaring a total income of Rs.58,00,271/-. In response to the notice u/s 153A dated 11.5.2010, the return was filed on 31.5.2010 declaring the same income as in the original return. During the

year, the assessee had shown liabilities in respect of Flat Holder Studio Apartments amounting to Rs.50,000/- and in respect of shops in IDCC amounting to Rs.27,960/- under the head 'current liabilities'. The Assessing Officer added back these liabilities to the income of the assessee. His observations are in page 2, para 3 of the assessment order and are being reproduced for ready reference as under:-

“3. During the course of examination of books of accounts and information filed at the time of assessment proceeding it has come to my notice that the assessee has shown the following liabilities under the heading “current liabilities”

1	<i>Flat Holder studio Apartments</i>	<i>Rs</i>	<i>50,000</i>
2	<i>Shops in IDC.C</i>	<i>Rs</i>	<i>27,960</i>

These liabilities are outstanding in the books of accounts from last many years without any increase or decrease. The assessee was asked to furnish the complete details and confirmation of these liabilities but it has failed to comply, Hence these liabilities are treated as non-existent and added back in the income of the assessee.

Addition 77,960/-”

I.T.A. 3246/Del/2013

3. The impugned order was passed on 19.2.2013 by the Ld. CIT(A)-XXXIII, New Delhi and the relevant Assessment Year is 2006-07. The original return of income was filed on 28.11.2006 declaring a total income of Rs.6,37,62,187/-. In response to notice u/s 153A of the Act dated 11.5.2010, the assessee filed the

return of income on 31.5.2010 declaring the same income as had been assessed u/s 143(3) of the Act earlier i.e. Rs.6,53,96,260/-. During the year the assessee had shown liabilities in respect of Flats at M5, Greater Kailash, amounting to Rs.2,01,430/- under the head 'current liabilities'. The Assessing Officer added back these liabilities to the income of the assessee in his order u/s 143(3)/153A of the Act. The relevant observations of the Assessing Officer are at page 2 of the order and are being reproduced for ready reference as under:-

“ During the course of examination of books of accounts and information filed at the time of assessment proceeding it has come to my notice that the assessee has shown the following liabilities under the heading “current liabilities”

Flats at M5 Greater Kailash Rs 2,01,430/-

These liabilities are outstanding in the books of accounts from last many years without any increase or decrease. The assessee was asked to furnish the complete details and confirmation of these liabilities but was failed to comply with, Hence these liabilities are treated as non-existent and added back in assessee income

Addition Rs 2,01,430/-”

I.T.A. 3247/Del/2013

4. The impugned order was passed on 19.2.2013 by the Ld. CIT(A)-XXXIII, New Delhi and the relevant Assessment Year is 2007-08. The assessee had filed its original return of income on 31.10.2007 at a total income of Rs.5,06,67,773/-. In response to the notice u/s 153A of the Act, the return was filed on 31.5.2010 declaring the same income as in the original return filed on 31st October, 2007. During the year under consideration, the assessee had shown liabilities amounting to Rs.400,400/- in respect of land at Alaknanda, D-Block which was added back to the income of the assessee vide para 3 of the assessment order as under:-

“3 During the course of examination of books of accounts and information filed at the time of assessment proceeding it has come to my notice that the assessee has shown the following liabilities under the heading “current liabilities”

1 For land Alaknanda D-Block Rs4,00,400/-

These liabilities are outstanding in the books of accounts from last many years without any increase or decrease. The assessee was asked to furnish the complete details and confirmation of these liabilities but it has failed to comply with. Hence these liabilities are treated as non-existent and added back in the income of the assessee.

Addition Rs 4,00,400/-”

4.1 The Assessing Officer also disallowed a sum of Rs.50,400/- under the provisions of section 40A(3) of the Act.

I.T.A. 3249/Del/2013

5. The order under appeal has been passed on 19.2.2013 by the Ld. CIT(A)-XXXIII, New Delhi and the relevant Assessment Year is 2008-09. The original return of income was filed on 30.09.2008 declaring a total income of Rs. 2,64,01,801/-. The return in response to notice issued u/s 153A of the Act was filed on 31.5.2010 declaring the same income as declared in the original return of income. During the relevant Assessment Year, assessee had shown liabilities in respect of expense for Kamla Market amounting to Rs. 3,35,146/- and project M-84A amounting to Rs. 5,59,341 under the head 'current liabilities'. Both these amounts were added back to the income of the assessee vide page 2 of his order as under:-

“During the course of examination of books of accounts and information filed at the time of assessment proceeding it has come to my notice that the assessee has shown the following liabilities under the heading “current liabilities”

1	For expenses Kamla Market	Rs. 3,35,146/-
2	Project M-84A	5,59,341/-

These liabilities are outstanding in the books of accounts from last many years without any increase or decrease. The assessee was asked to furnish the complete details and confirmation of these liabilities but it has failed to comply with, Hence these liabilities are treated as non-existent and added back in the income of the assessee.

6. In all these four appeals, it was the contention of the assessee before the Ld. CIT(A) that the impugned additions were made without having any reference to any incriminating document seized during the course of search. This plea of the assessee was rejected by the Ld. First Appellate Authority and now in the appeals before us, the assessee has taken numerous grounds but ground no.2 is common to all the appeals and is germane to the settlement of the entire controversy and is being taken up by us for consideration first. Ground no. 2 for Assessment Year 2005-06 reads as under:-

“2. Without prejudice to ground no.1 above

2.1 That the Learned CIT(A) erred in upholding addition of Rs.77,960/- in spite of the fact that no incriminating document has been seized u/s 132(1) of the Act and the documents relied by the Assessing Officer for making addition in the Assessment u/s 153A/143(3) of the Act, were duly accounted for in the regular books of accounts.

1.1 That the Learned CIT(A) erred in upholding the contentions of Assessing Officer for challenging the genuineness of the liabilities in respect of Flat Holder Studio Apartments amounting to Rs.50,000/- and Shops in IDC.C amounting to Rs.27,960/- shown under the head “Current Liabilities” without any basis and upholding addition of the amount received by the appellant in the preceding years arbitrarily.

- 1.2 *That the learned CIT(A) erred in not adjudicating the ground that addition of Rs.27,960/- had already been made by the Assessing Officer in the Assessment for the A.Y.2006-07 prior to search on the appellant and hence addition of the same amount in the year under appeal is double addition.*
- 1.3 *That the Learned CIT(A) erred in upholding the Assessment u/s 153A/143(3) of the Act without giving reasonable opportunity of being heard to the appellant.*

That there was no justification for levying of interest u/s 234A and 234B of the Act on the facts and circumstances of the case and as per Law.

Without prejudice to the Ground No.2.5, interest u/s 234A and 234B of the Act has been wrongly calculated as the starting date for calculation should have been the date of intimation Order u/s 143(1) of the Act. The credit for the tax paid has been given only for Rs.20,80,847/- against Rs.22,23,805/- paid by the assessee.

That the appellant craves leave to add to, alter, amend, modify, substitute, delete and/or rescind all or any of the Grounds of Appeal on/or before the final hearing.

That the Orders of the Assessing Officer & CIT(Appeals) are not based on the facts of the case & as per law and hence additions sustained by the CIT(Appeals) are totally illegal and not based on binding judicial precedents.”

Before us, the Ld. AR for the assessee submitted that it is not the case of the Department that the additions in all the four years have been made on account of any incriminating material found

during the course of search and seizure proceedings. It was further submitted by the Ld. AR that as per the second provision of section 153A only the assessments which were pending on the date of initiation of search u/s 132 of the Act will abate and the assessment proceedings which have become final as on the date will not stand abated. It was further submitted that no incriminating material was found during the course of search to show that the gifts were not genuine. Ld. AR also drew our attention to the decision of the Hon'ble High Court of Delhi in CIT Central-III vs. Kabul Chawla in ITA Nos. 707/2014, 709/2014 and 713/2014.

3. Ld. DR on the other hand supported the order of the Assessing Officer and the CIT(A).

4. We have carefully considered the material placed before us and the issue involved. Section 153A of the Act provides that where a search is initiated u/s 132 of the Act, the AO shall “ assess or reassess the total income of the six assessment years immediately preceding the assessment year “ relevant to the previous year in which the search is conducted or requisition is made. The first proviso states that the AO shall “” assess or reassess the total income in respect of each assessment year

falling within such six assessment years “. The second proviso states that the assessment or reassessment relating to the said six assessment years pending on the date of initiation of the search u/s 132 shall abate. It is seen that in assessee’s case search action was initiated and assessments u/s 153A were framed for making various additions. It is assessee’s claim that various additions were not tenable as the regular return had been filed where the particulars relating to the addition has been disclosed and the same had been accepted u/s 143 (1) of the Act or order u/s 143(3) of the Act had already been passed and that no material has been found during the search to justify the addition. In our considered opinion section 153A does not authorise the making of a denovo assessment in these particular assessment years.

While under the first proviso, the AO is empowered to frame assessment for six years , under the second proviso only assessments which are pending on the date of initiation of search abate. The effect is that completed assessments do not abate. The assessments can be said to be pending only if the AO is statutorily required to do something further. If the section 143(2) notice has been issued, the assessment can be said to be

pending. However the assessment in respect of a return processed u/s 143(1) or completed u/s 143(3) is not pending because the AO is not required to do anything further about such a return. The power given by the first proviso to assess income for six assessment years has to be confined to the undisclosed income unearthed during search and cannot include items which are disclosed in the original assessment proceedings

5. It is seen on facts that for all the four year under appeal, the assessments were not pending and as no material was found during the search, the additions are not legally sustainable. It will also be worthwhile to reproduce para 37 of the judgment of the Hon'ble High Court of Delhi in the case of CIT Central – III vs. Kabul Chawla (supra) which lays down the entire law with regard to section 153A as under :-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is under:

I. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' 'of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings '(i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the finding of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

Thus, on the facts of the case and respectfully following the Hon'ble High Court of Delhi in CIT Central-III vs Kabul Chawla (supra) we find that the impugned additions cannot be sustained and we set aside the orders of the Ld. CIT(A) for all the four years under appeal and direct the Assessing Officer to delete the additions. The remaining rounds are not being adjudicated upon and are dismissed as having become infructuous.

In the result, all the four appeals of the assessee are allowed.

Order pronounced in the Open Court on 29th April, 2016.

Sd/-

**(N.K. SAINI)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: the 29th of April, 2016

‘GS’

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR