

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA Nos.-5386 to 5389/Del/2014  
(Assessment Years: 2006-07 to 2009-10)**

Tinna Overseas Ltd. 6, Sultanpur, Mandir Road, New Delhi. AAACT3586D	vs	DCIT Central Circle – 17 New Delhi.
<b>Assessee by</b>		<b>Sh. Salil Agrawal, Adv. Sh. Shailesh Gupta, Adv.</b>
<b>Revenue by</b>		<b>Sh. Vijay Verma, CIT- DR</b>

<b>Date of Hearing</b>	<b>18.09.2017</b>
<b>Date of Pronouncement</b>	<b>09.10.2017</b>

**ORDER**

**PER BENCH**

All these appeals of the same assessee relate to assessment years 2006-07 to 2009-10 and are the consequence of the search proceedings that took place on 11.11.2010 in Tinna Group of Cases. Facts involved are the same. So also the issues involved. Hence, we find it just and convenient to dispose them off by way of this common order.

2. Briefly stated facts are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (for short called as the "Act") on 11.11.2010 was conducted in Tinna Group of cases, wherein various books of account/documents were seized. Pursuant to the notice issued u/s 153C/153A of the Act on 19.11.2012, assessee stated that, the original return of income filed u/s 139 of the Act may be treated as return filed in that respect. AO completed the assessment u/s 143(3) read with Section 153C of the Act by orders dated 28.03.2013. For the AY 2009-10 AO discussed the additions on account of the alleged bogus claim of expenditure in respect of purchase of blown bitumen and also transport expenses (Freight Inward – Crumb Rubber) and following the same for the AYs 2006-07 to 2008-09 made similar additions.

3. Challenging these additions assessee preferred appeals before the Ld. CIT (A) and Ld. CIT (A) dismissed the appeals by way of impugned orders. Therefore, in all these appeals the assessee is challenging the addition relating to the transport expenses.

4. At the outset, in respect of the appeal relating to the AY 2006-07, it is the argument of the Ld. AR that this assessment is

time barred in as much as under the proviso to Section 153C, the date of search is to be taken as the date of receiving the books of account or documents or assets seized, for the purpose of framing of assessment u/s 153C of the Act. He submitted that since the seized papers were handed over by the AO of the searched person to the AO of the other person on 16/19.11.2012, assessments could be framed for the preceding six years i.e. AYs 2007-08 to 2012-13, whereas in the case on hand the AO had framed the assessments for the AY 2006-07 to 2011-12. Ld. AR placed reliance on the decisions reported in CIT Vs. RRH Securities Ltd. 380 ITR 612 and PCIT vs. Surver Agency Pvt. Ltd. in ITA No. 422/2017 decided on 17.08.2017 for this principle.

5. On a careful consideration of the matter, we are convinced that in view of the provisions contained in the first proviso to Section 153C of the Act in the light of the decisions of the Hon'ble Jurisdictional High Court referred to above, the assessment for the AY 2006-07 is time barred and AO did not have jurisdiction to frame such assessment. On that score, we quash the assessment for the year 2006-07.

6. Now coming to the AY 2009-10, AO made an addition of Rs. 39,48,963/- on account of disallowance of transportation expenses and a sum of Rs. 30 lacs on account of bogus purchases. On this aspect the facts are that at the time of search a criminal complaint dated 18.12.2008 by one Bhupinder Kumar Sekhri addressed to the Commission of Police (Chennai) was found, wherein it was alleged that the company claimed excessive expenditure during the period between 30.04.2005 and 14.11.2008 and so also there is no Mahesh Roadways at all. Basing on this and also on the statement of Bhupinder Kumar Sekhri AO found that 60% of the expenses are excessively booked. So also the Ld. CIT (A) in his order on paragraph no. 7.4 found that the booking of purchase of blown bitumen is bogus, since it is not a suitable raw material for the product manufactured by the Chennai and Silvassa Divisions of the assessee company. In that process Ld. CIT (A) confirmed the additions made by the AO besides and enhancing the addition of Rs. 30 lacs made by the AO in respect of the purchase of blown bitumen from Rs. 30 lacs to 32,31,360/-.

6. It is the argument of the Ld. AR that in this matter though a criminal complaint was found at the time of the search, along with it a family settlement dated 27.03.2009 resolving the disputes amicably before the Hon'ble Company Law Board order dated 09.06.2009 were also found but they were not considered by the AO. It is further contended by the Ld. AR that the complaint dated 27.11.2008 was withdrawn by the said Bhupinder, as such, nothing contained in the complaint could be considered. Lastly, he submits that the complaint of a Director of the assessee company which was withdrawn subsequently cannot be a basis for disallowance of the expenses in the hands of the assessee company and secondly in the absence of any material incriminating or corroborating the statement of Bhupinder Kumar Sekhri one of the Directors, cannot be acted upon. While placing reliance on the decisions reported in CIT vs. Sh Harjeev Aggarwal (Delhi High Court) 241 Taxmann 199, PCIT vs. Meeta Gutgutia (Delhi High Court) 395 ITR 526 and PCIT vs. Best Infrastructure (India) P. Ltd. (Delhi High Court) 397 ITR 82, Ld. AR argued that a statement recorded u/s 132(4) can form basis for a block assessment only if such statement relates to any incriminating

evidence of undisclosed income unearthed during search and mere statement cannot be held as unincriminating material and additions solely on the basis of statement recorded during the course of search cannot be made. He also placed reliance on CIT vs. Fair Finvest Ltd. (Delhi High Court) 357 ITR 146, CIT vs. Gangeshwari Metals Ltd. (Delhi High Court) 361 ITR 10, CIT vs. FCS International Marketing Ltd. (Punjab & Haryana High Court) 203 CTR 601, ACIT vs. Anima Investment Ltd. (3<sup>rd</sup> Member Delhi ITAT) 73 ITD 125, for the principles that no disallowance could be made or sustained on the basis of FIR or statements without enquiry by the AO as to the correctness or otherwise of the contents of such FIR or statement and in case of any disallowance basing on such statements can be sustained.

7. On a careful consideration of the matter, firstly in respect of the observations of the Ld. CIT (A) in paragraph no. 7.4 that blown bitumen is not a suitable raw material for production of Crumb Rubber modifier, whereas its raw material is natural asphalt is concerned, record does not support this observation of the Ld.CIT (A). In our opinion on this aspect there should have some enquiry

conducted by the authorities below as to whether the blown bitumen has got any role in the manufacturing of Crumb Rubber Modifier, let alone it is not a suitable raw material. Nextly, insofar as the existence or non existence of Mahesh Roadways is concerned, except the bald statement that was made by Bhupinder in the complaint that Mahesh Roadways does not exist at all, the AO did not make any enquiries on that aspect by taking steps under law. So also the AO relied upon the statement of Bhupinder on the aspect of any excessive expenditure. In all fairness the AO should have enquired the truth or otherwise of the statement of Bhupinder Kumar Sekhri instead of believing it to be a gospel truth. We, therefore, find that there is want of enquiry on the part of the AO in respect of the purchase of blown bitumen and also about the transport charges. Since we believe that the verification of the fact on this aspect has a bearing on the assessment of the income of the assessee for the relevant years, we deem it just and necessary to set aside these two issues to the file of the AO for ascertaining the truth by making enquiries by affording an opportunity to the assessee to produce the relevant documents, if any.

8. With this view of the matter, we restore the issues to the file of the AO for making enquiries on the aspects indicated above and to reach a conclusion after affording an opportunity to the assessee to produce the evidence, if any on those aspects.

9. In the result, the ITA No. 5386/Del/2014 is dismissed and ITA Nos. 5387 to 5389/Del/2014 are allowed for statistical purposes.

Order pronounced in the open court on 09.10.2017

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Dated: 09.10.2017

\*Kavita Arora

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

