

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3348/Del./2014
(ASSESSMENT YEAR : 2005-06)**

**ITA No.3349/Del./2014
(ASSESSMENT YEAR : 2006-07)**

DCIT, Central Circle 3, vs. M/s. M.K.R. Construction Pvt. Ltd.,
New Delhi. 2042, Katra Tobacco, Khari Baoli,
Delhi.

(PAN : AADCM6195J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Gupta, Advocate
REVENUE BY : Ms. Shefali Swroop, CIT DR

Date of Hearing : 08.11.2017

Date of Order : 16.11.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The Appellant, Deputy Commissioner of Income-tax, Central Circle 3, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the

impugned order dated 03.03.2014 passed by the Commissioner of Income-tax (Appeals)-I, New Delhi qua the assessment years 2005-06 & 2006-07 on the grounds inter alia that :-

ITA NO.3348/Del/2014 (AY 2005-06)

“1. That the Commissioner of Income Tax(Appeals) has erred in law and on facts of the case in deleting the addition of Rs.1,55,00,000/ - made by AO on account of unexplained cash credit.

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.75,500/ - made by AO on account of commission paid on procurement of accommodation entries of Rs.1,55,00,000/- .

3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.43,00,000/ - made by AO on account of income from undisclosed sources u/s 68 of I.T. Act, 1961.

4. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 52,965/ - made by AO on account of interest paid on TDS payable on unsecured loans.”

ITA NO.3349/Del/2014 (AY 2006-07)

““1. That the Commissioner of Income Tax(Appeals) has erred in law and on facts of the case in deleting the addition of Rs.2,10,00,000/ - made by AO on account of unexplained cash credit.

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.1,05,500/ - made by AO on account of commission paid on procurement of accommodation entries of Rs.2,10,00,000/- .

3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.70,00,000/- made by AO on account of income from undisclosed sources u/s 68 of I.T. Act, 1961.

4. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.3,78,021/- made by AO on account of interest paid on TDS payable on unsecured loans.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessment in these cases were completed under section 153A read with 143 (3) of the Income-tax Act, 1961 (for short 'the Act') on the basis of search and seizure operation conducted in Mahesh Mehta Group of cases on 30.06.2009.

4. AO made addition of Rs.1,55,00,000/-, Rs.77,500/-, Rs.43,00,000/- and Rs.52,965/- on account of unexplained cash credit, commission payment paid @ 0.5%, unexplained cash credit and disallowance of interest paid on unsecured loans & TDS payable respectively in AY 2005-06.

5. In AY 2006-07, AO made addition of Rs.2,10,00,000/-, Rs.1,05,000/-, Rs.70,00,000/- and Rs.3,78,021/- on account of unexplained cash credit, commission payment paid @ 0.5%, unexplained cash credit and disallowance of interest paid on unsecured loans & TDS payable respectively.

6. Assessee carried the matter by way of filing appeals before the Id. CIT (A) who has deleted the additions by allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Assessee while moving an application under Rule 27 of Income Tax (Appellate Tribunal) Rules, 1963 (for short 'the Rules') sought to raise the following ground :-

“That on the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the proceedings initiated under section 153A of I.T. Act, which is bad in law in the absence my incriminating material belonging to the assessee being found during the course of search.”

9. From the grounds raised before CIT (A) and the impugned order, it is clear that CIT (A) by following his own order for AY 2005-06 decided the legal issue as to initiation of proceedings u/s 153A of the Act against the assessee. The Id. DR for the Revenue opposed the application u/s 27 of the Rules. Since this issue was

raised before the Id. CIT (A) but was rejected, we are of the considered view that legal ground can be taken by the assessee even by supporting the impugned order challenged before the Tribunal. Consequently, for complete adjudication of the controversy at hand, the assessee is allowed to raise the aforesaid ground in both the appeals for AYs 2005-06 and 2006-07.

10. Ld. AR for the assessee contended that both the appeals are covered in *assessee's own case vide order dated 10.07.2017 passed by the coordinate Bench of the Tribunal in ITA No.5444/Del/2013 for AY 2004-05*, which fact is not controverted by the Id. DR for the Revenue.

11. Undisputedly, the assessee had filled original return u/s 139 (1). It is also not in dispute that no incriminating material has come on record qua the assessment years under consideration to make addition in question nor there is any bleak reference concerning share application money received by the assessee in the statement of Mahesh Mehta recorded on 01.07.2009.

12. Keeping in view the aforementioned facts, the coordinate Bench of the Tribunal in assessee's own case for AY 2004-05 (supra) deleted the addition by returning the following findings :-

“11. Thus, following the above aforesaid proposition of law and admitted fact of the case are that there is no incriminating material qua the assessment year for.

which impugned addition has been made, we hold that such an addition cannot be roped in the assessment order passed u/s 153A. Accordingly same is directed to be deleted. So far as the reliance placed by the learned CIT DR on the judgment of Anil Kumar Bhatia, we find that the Hon'ble High Court itself had clarified that there is no incriminating material was found during the course of search and therefore, no express opinion as to whether the addition can be made u/s 153A was made by their Lordships. The relevant observation in para 23 of the judgment is reproduced here under :-

“We are not concerned with a case where no incriminating material was found during the search conducted u/s 132 of the Act. We, therefore, express no opinion as to whether Section 153A be invoked even in such a situation. That question is therefore left open.”

Hence, the reliance placed by the Learned CIT DR on this judgment is wholly misplaced.”

13. In the impugned orders challenged before this Bench for AYs 2005-06 and 2006-07, the ld. CIT (A) also relied upon case cited as *CIT vs. Anil Kumar Bhatia reported in 352 ITR 493* which has been distinguished by the coordinate Bench of the Tribunal in preceding reproduced para 12 (11).

14. In view of the principle laid down by Hon'ble Delhi High Court in *CIT vs. Kabul Chawla – (2016) 380 ITR 570*, we are of the considered view that since the AO could not lay hand on any incriminating material qua the impugned addition, the assessment order u/s 153A is not sustainable, which is beyond the purview of

assessment made u/s 153A. So, by following the decision rendered by coordinate Bench of the Tribunal in assessee's own case for AY 2004-05 (supra), we are of the considered view that ld. CIT (A) has erred in confirming the proceedings initiated u/s 153A of the Act by the AO, hence legal ground raised by the assessee under Rule 27 is allowed. Since assessment order passed u/s 153A has failed to withstand the legal scrutiny, assessments made thereunder stand quashed, we do not feel it necessary to go into the grounds raised by the Revenue which has since become infructuous. Consequently, the appeals filed by the Revenue are hereby dismissed.

Order pronounced in open court on this 16th day of November, 2017.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 16th day of November, 2017
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**