

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

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5036/Del./2012
(ASSESSMENT YEAR : 2004-05)**

**ITA No.5037/Del./2012
(ASSESSMENT YEAR : 2003-04)**

ACIT,
Central Circle 1,
New Delhi.

vs. M/s. Odeon Builders Pvt. Ltd.,
N – 49, 2nd Floor, Connaught Place
New Delhi – 110 001.

(PAN : AAACO0155H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
REVENUE BY : Shri Arun Kumar Yadav, Senior DR

Date of Hearing : 25.10.2017

Date of Order : 17.11.2017

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, Assistant Commissioner of Income-tax, Central Circle 1, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the

impugned order dated 20.07.2012 passed by the Commissioner of Income-tax (Appeals)-III, New Delhi qua the assessment years 2003-04 & 2004-05 on the grounds inter alia that :-

ITA NO.5037/Del/2012 (AY 2003-04)

“1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in deleting the addition of Rs.40,00,000/- made by the Assessing Officer on account of income from undisclosed sources u/s 68 of the Income Tax Act, 1961.

2. The order of the ld. CIT (A) is erroneous and is not tenable on facts and in law.”

ITA NO.5036/Del/2012 (AY 2004-05)

“1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in deleting the addition of Rs.1,00,00,000/- made by the Assessing Officer on account of income from undisclosed sources u/s 68 of the Income Tax Act, 1961.

2. The order of the ld. CIT (A) is erroneous and is not tenable on facts and in law.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : initially assessment for Assessment Year 2003-04 was completed under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) on 28.02.2006 at the returned income of Rs.93,79,390/- and return of income for AY 2004-05 was also decided u/s 143 (3) of the Act by making addition of Rs.1,00,00,000/- on account that assessee had received

accommodation entries under the garb of share application money. Subsequently, assessment for AY 2003-04 was reopened u/s 147 and completed u/s 153A read with section 143(3) at taxable income of Rs.1,36,53,190/-. Both the additions made by AO for AYs 2003-04 & 2004-05 to the tune of Rs.40,80,000/- and Rs.1,01,00,000/- respectively on account of share capital have been deleted by the Id. CIT (A) and the said order has been confirmed by the Tribunal. The decision rendered by the Tribunal has been overturned by the Hon'ble High Court.

4. Then on 25.09.2008, search at the premises of the assessee was conducted and consequently proceedings u/s 153A were initiated. AO made same addition as has already been made for AY 2003-04 u/s 153A read with section 143 (3) and for AY 2004-05 u/s 143 (3) of the Act by elaborately explaining the circumstances.

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

6. 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.

7. Ld. DR for the Revenue challenging the impugned order passed by Id. CIT (A) relied upon the assessment orders dated 24.12.2010 for AYs 2003-04 & 2004-05. However, on the other hand, Id. AR for the assessee by relying upon the order passed by Id. CIT (A) contended that since there is no incriminating material on record against the assessee, the income is required to be assessed as originally assessed by the assessee and no independent addition can be made.

8. Undisputedly both the additions made by the AO for AYs 2003-04 and 2004-05 on account of share capital were subject matter of the earlier assessment made u/s 143 (3) of the Act. However, on the basis of search and seizure operation conducted at the premises of the assessee on 25.09.2008, fresh assessment u/s 153A read with section 143 (3) was made by the AO on the same subject matter. Since assessment made u/s 143(3) in the present case stands substituted by the assessment made u/s 153A, it is required to be examined in the light of assessment made u/s 143 (3) which has yet not attained finality as the matter is pending adjudication before Hon'ble Supreme Court in SLP No.25549/2012.

9. So, we are of the considered view that the income of the assessee qua AYs 2003-04 and 2004-05 would be the same to this extent as originally assessed as subject matter of both the assessment is the share capital money. So, in these circumstances, order passed by Id. CIT (A) deleting the addition is not sustainable in the eyes of law, hence reversed and the additions made by AO u/s 153A/143 (3) are restored. In case, the assessee succeeds in its appeals before the Hon'ble Supreme Court on this score in the SLP (supra) it will be at liberty to approach the AO to have the consequential relief qua the instant proceedings. Consequently, the appeals filed by the Revenue are allowed.

Order pronounced in open court on this 17th day of November, 2017.

**Sd/-
(R.S. SYAL)
VICE PRESIDENT**

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

**Dated the 17th day of November, 2017
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**