

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

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 459/DEL/2016 ( A.Y 2009-10)**

DCIT Central Circle-18, Room NO. 327, 3 <sup>rd</sup> Floor, ARA Centre, E-2, Jhandewalan Extn. New Delhi  <b>(APPELLANT)</b>	Vs	Landcraft Developers Pvt. Ltd. 309, 3 <sup>rd</sup> Floor, Plot No. 13, Parmesh Corporate Towers Community Centre, Karkardooma, Delhi AABCL1391F  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Ms. Rachna Singh, CIT DR</b>
<b>Respondent by</b>	<b>Sh. Raj Kumar &amp; Sh. Sumit Goel, CA's</b>

<b>Date of Hearing</b>	<b>28.08.2018</b>
<b>Date of Pronouncement</b>	<b>03.10.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 26/11/2015 passed by CIT(A)-29, Delhi for Assessment Year 2009-10.

2. The grounds for appeal are as under:-

1. *“That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 6,65,00,000/- u/s 68, made on account of unexplained share application money by the AO, without discussing the merit of the case.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the Hon’ble Allahabad High Court has held in the case of Commissioner of Income Tax, Central Kanpur V. Raj Kumar Arora*

*[2014] 52 taxmann. Com 172 (Allahabad), after considering the judgement given by the Hon'ble Delhi High Court in the case of CIT v. Anil Kumar Bhatia [2012] 211 Taxman 453/24 taxmann. Com 98, that the AO has power to reassess returns of assessee not only for undisclosed income, which was found during search operation but also with regard to material that was available at time of original assessment.*

3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 50,00,000/-, on account of unexplained unsecured loan u/s 68, and addition of rs. 77,71,138/- on account of interest earned on unsecured loans, made vide the original assessment order dated 30.12.2011.*
4. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*
5. *That the grounds of appeal are without prejudice to each other.*
6. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

3. Search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on 23.8.2012 in M/s Land craft Group of cases. The case of the assessee was also covered u/s 132(1). Subsequently, the case was centralized with Central Circle - 27, Delhi (Erstwhile Central Circle - IS) vide order dated 5.12.2012 passed by the CIT-II, New Delhi alongwith some other group cases. Notice u/s 153A was issued to the assessee on 5 2014. hr response to this notice, return declaring total income of Rs. Nil was filed on 10.6.2014. Original return in this case was filed on 30.12.2011 declaring total income at Rs. Nil. The same was processed u/s 143(1). The case of the assessee was taken up for scrutiny. Notices u/s 143(2) and 142(1) alongwith questionnaire were issued to the assessee. In response to above notices, CA, attended the proceedings before Assessing Officer. Requisite information/details were filed by them. The case was examined and discussed. As per information provided by the assessee, the company is engaged in the business of development & sales of various types of land and building. In this case, original assessment u/s 143(3) was passed by ITO, Ward-4(3) New Delhi on 30.12.2011 vide which total income was assessed at an income of Rs. Rs. 1,33,86,230/- after making addition of Rs.

1,33,86,230/-. The assessee filed appeal against the order passed by the Assessing Officer before CIT(A), New Delhi. The CIT(A) deleted the addition made by the Assessing Officer. The revenue filed appeal against the order of CIT(A) before the Tribunal. The appeal of the department was pending before Tribunal at the time of 153A proceeding. During the course of assessment proceedings vide questionnaire dated 24.11.2014 and 30.12.2014 which have been placed on record, assessee was asked to file various details with regard to share capital received by it during the year under assessment. From the replies filed by the assessee it was observed that it had received an amount of 6,65,00,000/ - as unsecured loan which was transferred to share application account in A.Y.2010-11 from M/s Raffle Mercantile Pvt. Ltd. In support of the same assessee had produced a confirmation, Bank statement of M/s Raffle Mercantile, copy of balance sheet of the Raffle along with relevant Schedule - 4 of Raffle for A.Y. 2009 - 2010 (showing Advances of Rs. 6.65 Cr. to assessee.) and B/s. of Raffle for A.Y. 2010 - 2011. (showing Investment in Share Appln. Money of Rs. 7.40 Cr.) After analyzing the documents submitted by the assessee and giving it ample opportunity to prove the identity, genuineness and creditworthiness of the above share capital a show cause notice dated 20.3.2015 was served vide which the assessee was asked to show cause why the said amount may not be added to its total income being unexplained credits u/s 68 of the I. T. Act, 1961. In this regard, the assessee filed reply dated 26.03.2015. The reply of the assessee has been duly considered and it has been found that investment in M/s Landcraft Developers Pvt. Ltd. has been routed through a sham enterprise, M/s Raffle Mercantile Pvt. Ltd. which is registered out of Kolkata. On enquiry its credentials are found to be dubious as the money or the funds which were utilized by M/s Raffle Mercantile Pvt. Ltd to invest in Landcraft Developers were arranged from bogus/fictitious entry providing companies which are based out of Kolkata. Thus, the Assessing Officer passed Assessment Order dated 31.03.2015 under Section 153A r.w.s 143(3) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessment proceedings were properly taken out by the Assessing Officer and CIT(A) erred in deleting the addition of Rs.6,65,000/- on account of unexplained share application money by the Assessing Officer without discussing the merit of the case. The Ld. DR submitted that the provisions of Section 153A of the Act is clear and do not mandate requirement of incriminating documents for purpose of finalizing assessment or reassessment under Section 153A of the Act. The Ld. DR relied upon the decisions of the Hon'ble Delhi High Court in case of Smt. Dayawanti vs. CIT (2017) 390 ITR 496, CIT vs. Anil Kumar Bhatia 252 ITR 493, Filatex India Ltd. vs. CIT 49 taxmann.com 465 as well as Navodaya Castle Pvt. Ltd. vs. CIT (2015-TIOL-314-SC-IT), CIT vs. NR Portfolio Pvt. Ltd. 206 (2014) DLT 97.

6. The Ld. AR relied upon the order of the CIT(A) and also that of the assessee's own order in Assessment Year 2010-11 and also for Assessment Year 2009-10 for original Assessment u/s 143(3). The Ld. AR submitted that the CIT(A) in para 1.9 of the order held that the assessment proceedings were already completed and unabated and no incriminating evidence found. Therefore, the case of Kabul Chawla relied by the assessee is applicable to the facts of the case.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the case laws relied upon by the Ld. DR will not be applicable in the present case as each case has its distinct facts. In present case, the assessment proceedings were already completed and unabated and no incriminating evidence found. Thus, the Revenue could not differ from the fact that there was no incriminating evidence found in the

present case. In fact, in Assessee's own case for A.Y. 2010-11, the Tribunal while dismissing the appeal of the revenue held as under:

*"5. After hearing the submissions of both the sides and perusing the materials available on record, we find that the search was conducted on 23.08.2012, but the case relates to the assessment year 2010-11. We observe from the assessment order that the assessing officer has not referred any incriminating material found in the search. During the course of appellate proceedings before the ld. CIT (A), the ld. CIT(A) specifically asked the Assessing Officer for clarifying the status of assessment on the date of search for the impugned assessment year. The Assessing Officer vide his reply dated 16.10.2015 mentioned "after perusal of record, it is observed that as on the date of search, assessment in this case was not pending, hence, it was unabated". The case law relied by the assessee, as noted above is fully applicable. The ld. CIT (A) has made a reasoned order. The findings reached by the ld. CIT (A) are as under :*

*I have carefully considered the submissions made by AO and the appellant. As reported, no notice under section 143(2) is available on record, though it has been mentioned in the assessment order and order sheet. It is a settled law now that there is no need to issue a separate notice under section 143(2) for proceedings related to 153A of the Act. Accordingly, looking to the provisions of section 153A of the Act and also respectfully following the judgment in the case of Ashok Chadda vs. Income Tax Officer, as cited above, the proceedings under section 153A read with section 143(3) is held to be valid as it is not necessary to issue and serve notice under section 143(2) of the Act. Thus, the assessment proceedings are found to be in order and this ground of appeal is not maintainable.*

10. As per ground no. 2,4(A/B,C,D,E and F) and 5(A,B,C,D,E and F), the appellant raised the issue regarding addition of Rs.75 lacs and Rs.1.30 crores respectively, made under section 68 of the Act, considering the unsecured loan/share application money received from M/s Raffle Mercantile P. Ltd. and M/s Purishottam Vinimay P. Ltd. as unexplained. The addition has been disputed on legal ground as well as on the merits.

10.1 The appellant has raised the legality of the addition made by stating that these two additions amounting to Rs.2.05 crores are not emanating from any incriminating material found/seized during search, therefore these additions are outside the scope of assessment under section 153A of the Act, since the proceedings for the AY 2010-11 stands completed and unabated at the date of search.

10.2 Search was conducted in this case on 23.08.2012. Original return was submitted by the appellant on 15.10.2010, declaring nil income. This was processed under section 143(1) of the Act.

10.3 Looking to the argument put forth by the appellant that assessment proceedings were complete and unabated the AO was specifically asked to clarify the status of assessment on the date of search. Vide his reply dated 16.10.2015 it has been mentioned by the AO i.e. ACIT, Central Circle-27 that:-

Y ' ."After perusal of records, 'it is observed that as on the date -of search, assessment in this case was not pending. Hence, it was unabated/'.

10.4 From the above submissions of the AO it is clear that the assessment proceedings were complete on the date of search and hence the proceedings are unabated.

*10.5 With respect to the fact that whether this additions of Rs.2.05 crores are emanating from any incriminating material found/seized during search, nowhere it has been mentioned in the assessment order that any such seized material or otherwise has been found during search to conclude that this amount Ts unexplained cash credit in the hands of the company. Further, nothing has been mentioned in the assessment order to show that during search any unaccounted income, cash, jewellery or any other asset has been found/seized. No trace of any generation of unaccounted income has also been pointed out. Therefore, AO was specifically asked whether the addition made in assessment order is arising out of any incriminating material found/seized during the search, as nothing has been mentioned in the assessment order.*

*10.6 Vide letter dated 16.10.2015 it was submitted that "with regard to point 2 of your letter, it is submitted that an addition of Rs.2.05 crores was made on the grounds that the assessee simply filed copy of confirmation and bank statement of M/s Raffle Mercantile P. Ltd. and Purshottam Vinimay P, Ltd. but failed to prove the genuineness and creditworthiness of the transaction. Although the number of opportunities were provided to the assessee to explain the transactions. On examination of the bank statement submitted by the assessee, it was observed that funds were transferred M/s Landcraft Developers P. Ltd. after the receipts of funds from another entity within a few days of deposit During the course of assessment proceedings, it was observed by the AO that M/s Raffle Mercantile P. Ltd. was registered in Kolkata and it was observed by the AO that M/s Raffle Mercantile P, Ltd. used to arrange bogus entries for the different companies. Notices under section 133(6) were issued in M/s Raffle Mercantile P. Ltd. for the AY 2011-12. However, the reply was not found satisfactory. Since the company involved is same, it was held by*

*the AO that the credentials of the company are dubious/' However no such seized material or incriminating document was referred by the AO, based on which the addition has been made.*

*10.7 In its rejoinder dated 05.11.2015 it was stated by the appellant that all the relevant information and documents were furnished to the AO as well as to the investigation wing and the director of Raffel was also produced. Information under section 133(6) of the Act was also furnished by Raffel and Purushootam Vinimay P. Ltd. and no discrepancy has been found even though the source of SGurts 1 has been explained. Therefore, nothing is available with the AO in the form of seized documents or any other evidence which formed the basis for such additions.*

*10.8 It has also been stated by the appellant that in paragraph 5.4 and 6.3 of the assessment order AO has mentioned about the "unqualified admission of the assessee company" regarding the addition, which is incorrect. No such admission has been made by anybody on behalf of the company and they are vigorously contesting the addition.*

*10.9 The AO in his report has stated that this expression in the assessment order is with respect to the introduction of share capital of Rs.2.05 crores, not found satisfactory by the AO and used in that context which is otherwise not connected with any type of admission by the appellant. Therefore, the said expression of AO in the assessment order is not considered as any such admission of undisclosed income by the appellant.*

*10.10 From the above discussions it is clear that there is no material or evidence found or seized during the course of search proceedings of the appellant nor any evidence found for generation of unaccounted*

*income nor any undisclosed/unaccounted asset, cash, jewellery and investment etc. has been discovered.*

*1.0.11 Therefore, looking to the facts of this case where the assessment proceedings were already completed and unabated and. no such incriminating material or evidence found/seized during search to conclude the generation of undisclosed income of the appellant, the decision ,of Hon'ble Delhi High Court relied upon by the appellant in the case of Kabul Chawla vs. CIT dated 28.08.2015 is applicable in this case.*

*10.12 Accordingly, respectfully following the decision of the jurisdictional high court where it has been held that in an unabated assessment under section 153A of the Act, the addition can be made only on the basis of incriminating material found and seized during the course of search, whereas the addition made in the present case is without having any incriminating material/seized document is not sustainable.*

*10.13 Therefore, the addition cannot be sustained in view of the legal provisions as defined by the Hon'ble Jurisdictions! High Court in the above -effereci case law.*

*10.14 Since, the issue has been decided on the legal grounds regarding jurisdiction of AO to make such additions under section 153A of the Act and the addition has not been sustained, the ground relating to the merit of this case has not been considered.*

*6. In view of the above findings, we dismiss the appeal of the Revenue.*

*7. In the result, the appeal of the Revenue is dismissed.”*

Thus, the issue is squarely covered by the decision of the Tribunal in assessee's own case. Hence, appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on 03<sup>rd</sup> October, 2018.**

Sd/-

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

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 03 /10/2018  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	28.08.2018
Date on which the typed draft is placed before the dictating Member	29.08.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	03.10.2018
Date on which the final order is uploaded on the website of ITAT	03.10.2018
Date on which the file goes to the Bench Clerk	03.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	