

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

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

ITA No. 1600/DEL/2014
[A.Y 2007-08]

The Dy.C.I.T
Central Circle - 18
New Delhi

Vs.

M/s MAD Entertainment Network Ltd.
W-82A, Greater Kailash - II
New Delhi

PAN : AAACM 9057 G

[Appellant]

[Respondent]

Date of Hearing : 29.10.2018
Date of Pronouncement : 31.10.2018

Assessee by : Shri Satish Khosla, Adv.

Revenue by : Ms. Paramita M. Biswas CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
CIT(A)-XII dated 19/12/2013 pertaining to A.Y 2007-08.

2. The solitary grievance of the Revenue is that the CIT(A) erred in
deleting the disallowance of expenditure of Rs. 90,76,979/-.

3. Vide an application dated 15.05.2017, the assessee has made an application u/r 27 of the ITAT Rules on the following ground:

“That the disallowances made are de horse of any incriminating material found during the course of search u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].”

4. Since this goes to the root of the matter, we proceed to decide this issue first.

5. Facts on record show that search and seizure operations u/s 132 of the Act was carried out on 05.01.2009 in Taneja-Puri Group of cases. Pursuant to search operation, notice u/s 153C of the Act was issued to the assessee on 06.01.2010. We find that in this case, original return of income was filed on 31.10.2007. The period of limitation for issuing notice u/s 143(2) of the Act expired on 31.10.2008. The date of search was 05.01.2009. This means that on the date of search, no assessment proceedings were pending. Therefore, the ratio laid down by the Hon'ble Jurisdictional High Court

of Delhi in the case of CIT Vs. Kabul Chawla [2016] 380 ITR 573 [Del] squarely applies.

6. The relevant finding of the Hon'ble High Court reads as under:

"In the case of completed assessments, original assessment order can be interfered with by the AO while making assessment u/s 153A of the Act only on the basis of some incriminating material unearthed during the course of search or requisition of documents was undisclosed income or property discovered in the course of search, which were not produced or not already disclosed or made known to the Revenue authorities in the course of original assessment".

7. The Assessing Officer has made additions by observing as under:

"6. As per information/details furnished, the (assessee company, was incorporated on 19.12.1994. The main business of the company is stated to be Promoters, Developers and dealing in Trading of licensed land and Real Estate. During the year under consideration, the assessee company alongwith its holding company M/s Puri Construction Ltd. and other land owner of the group entered into an agreement with M/s 'SSP Properties Pvt.

Ltd. for development of its real estate land. However, no business income has actually been derived by the assessee. On the other hand, expenses of Rs. 90,76,797/- have been claimed against other income of Rs. 4,27,552/- (which is interest on FDR) resulting in claim of net loss of Rs. 86,49,245.

7. As is clear from the above figures, the assessee has not earned any business income during the year. Therefore, the expenses claimed of Rs. 90,76,797/- in the profit & loss account are not related to any business income nor they are related to the interest income of Rs. 4,27,552/- which is the only income declared by the assessee during the year under consideration. Therefore, the expenses claimed of Rs. 90,76,797/- are disallowed and added to the total income of the assessee."

8. It can be seen from the above that the additions so made by the Assessing Officer do not have any reference/corelation with any incriminating material found at the time of search. Respectfully following the judgment of the Hon'ble High Court of Delhi in the case of Kabul Chawla [supra], in our considered opinion, the assessment order framed is bad in law and deserves to be annulled. Since we have annulled the assessment order, we do not find it necessary to dwell into the merits of the case. Application u/r 27 is allowed.

9. In the result, the appeal of the Revenue in ITA No. 1600/DEL/2014 is dismissed.

The order is pronounced in the open court on 31.10.2018.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 31st October, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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Date of dispatch of the Order	