

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

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

ITA No.3174/DEL/2015  
Assessment Year: 2006-07

DCIT Central Circle 13A, Subhash Road, Dehradun	Vs	Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D
(APPELLANT)		(RESPONDENT)

ITA No.3176 to 3179/DEL/2015  
Assessment Years: 2008-09, 2009-10, 2010-11 & 2012-13

DCIT Central Circle 13A, Subhash Road, Dehradun	Vs	Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D
(APPELLANT)		(RESPONDENT)

Cross Objection No.369/Del/2015  
(IN ITA No.3178/DEL/2015)  
Assessment Year: 2010-11

Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D	Vs	DCIT Central Circle 13A, Subhash Road, Dehradun
(APPELLANT)		(RESPONDENT)

Cross Objection No.337/Del/2015  
(IN ITA No.3174/DEL/2015)  
 Assessment Year: 2006-07

Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D (APPELLANT)	Vs	DCIT Central Circle 13A, Subhash Road, Dehradun (RESPONDENT)
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Cross Objection No.329/Del/2015  
(IN ITA No.3176/DEL/2015)  
 Assessment Year: 2008-09

Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D (APPELLANT)	Vs	DCIT Central Circle 13A, Subhash Road, Dehradun (RESPONDENT)
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Cross Objection No.330/Del/2015  
(IN ITA No.3177/DEL/2015)  
 Assessment Year: 2009-10

Sawhney Builders 119-D, Race Course, Dehradun PAN No.AAXFS0947D (APPELLANT)	Vs	DCIT Central Circle 13A, Subhash Road, Dehradun (RESPONDENT)
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Appellant by	Sh. P. C. Yadav, Advocate Sh. Manish Garg, CA
Respondent by	Ms. Nidhi Aggarwal, CIT DR

Date of hearing:	06/02/2019
Date of Pronouncement:	28/02/2019

**ORDER****PER N. K. BILLAIYA, AM:**

This is a bunch of appeals filed by the Revenue and cross objections by the assessee preferred against the captioned assessment years. Since all the appeals and cross objections pertain to same assessee and were heard together, we are disposing them off by this common order for the sake of convenience and brevity.

2. At the very outset, the ld. counsel for the assessee stated that he is not pressing the cross objections filed by the assessee. Therefore, the cross objections are dismissed as not pressed.

3. Roots lie in the search and seizure proceedings conducted at the business and residential premises of the assessee firm and its partners on 17.02.2012.

4. In the Revenue's appeals for assessment year 2006-07 to 2010-11, common grievance is the deletion of disallowance of bogus labour expenses, though the quantum may differ.

5. Facts on record show that the basis for making addition is the seized loose sheets, which have been considered hereinabove. Taking a leaf out of the said loose sheet, the Assessing Officer treated 34% of the total labour expenses as bogus and on 66% as genuine. Applying this ratio for assessment year 2006-07 to 2010-11, the Assessing Officer made the addition.

6. When the matter was agitated before the Id. CIT(A), the Id. CIT(A) found that the so called incriminating material pertains to F.Y. 2010-11 and was relevant to assessment year 2011-12. The Id. CIT(A) further observed that no similar incriminating material has been found for the other assessment years. The Id. CIT(A) further observed that though the Assessing Officer is not restricted in assessing undisclosed income but he has to assess total income. But at the same time, without reference to any incriminating material found during search, the Assessing Officer cannot make additions. The Id. CIT(A) conclusively held that each assessment year is a separate accounting period and has to be viewed on its own merits with reference to material relating specifically to it and since no material was found at the time of search, the Id. CIT(A) directed the Assessing Officer to delete the impugned disallowances. Since the additions were directed

to be deleted there was no occasion to invoke provisions of section 40a(ia) of the Act.

7. Before us, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that the assessee himself has bifurcated the surrendered amount into several assessment years and, therefore, it cannot be said that no incriminating material was found for the year under consideration.

8. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

9. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. There is no dispute that in assessment years 2011-12, the Assessing Officer has treated 34% of the labour expenses as bogus which was totally based upon the notings on some loose sheets. In our considered opinion, the Assessing Officer grossly erred in applying 34% and treating the labour wages expenses for assessment years 2006-07 to 2010-11 bogus at this rate i.e. 34%. There is no dispute that there is not even a whisper of any incriminating material for the A.Ys 2006-07 to 2010-11.

10. It is a well-settled proposition of law that in the case of completed assessments, additions can be made only on the basis of incriminating material pertaining to that relevant assessment year as delivered by the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344. The relevant findings read as under:

*"18. The Income-tax Appellate Tribunal permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the Income-tax Appellate Tribunal that as per the provisions of section 153C of the Act, incriminating material which was seized had to pertain to the assessment years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of section 153C of the Act. Para 9 of the order of the Income-tax Appellate Tribunal reveals that the Income-tax Appellate Tribunal had scanned through the satisfaction note and the material which was disclosed therein was culled out and it showed that the same belongs to the assessment year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position*

*that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of the assessment years 2000-01 and 2001-02 was even time barred.*

*19. We, thus, find that the Income-tax Appellate Tribunal rightly permitted this additional ground to be raised and correctly dealt with the same ground on the merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the assessment years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."*

11. Considering the facts of the case in hand in totality, in the light of ratio laid down by the Hon'ble Supreme Court [supra], we decline to interfere with the same. Accordingly, the common grievance raised by the Revenue in assessment years 2006-07 to 2010-11 are dismissed.

12. In the result, appeals of the Revenue as well as the cross objections filed by the assessee are dismissed.

**The order is pronounced in the open court on 28.02.2019.**

**Sd/-**

**[BEENA PILLAI]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 28<sup>th</sup> February, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the approved draft comes to the Sr.PS/PS	
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