

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 6467/Del/2014

AY: 2006-07

ACIT, Central Circle-3 New Delhi	vs.	Baweja Export Pvt.Ltd. D 37, Defence Colony New Delhi 110 024 PAN: AABCB6318G
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Cross Objection No.180/Del/2015

(In ITA No. 6467/Del/2014)

AY: 2006-07

Baweja Export Pvt.Ltd. D 37, Defence Colony New Delhi 110 024	vs.	ACIT, Central Circle-3 New Delhi
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(Appellant)

(Respondent)

Department by : Shri Sanjay Goyal, CIT, D.R.

Assessee by : Smt. Ragini Honda, C.A.

Date of Hearing : 07/03/2019

Date of Pronouncement: 14 /03/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present Cross appeals have been filed by revenue and assessee against order dated 22/09/14 passed by Ld. CIT (A)-1, New Delhi for assessment year 2006-07 on following grounds of appeal:

ITA No. 6467/Del/2014 (Revenue's appeal)

- "1. The order of Ld.CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs.2,75,50,000/- made by A.O. on account of bogus purchase of shares by the assessee company.*
- 3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."*

CO No. 180/Del/2015 (Assessee's cross appeal)

- 1. That the order u/s 153A r.w.s. 143(3) of the Act dated 27.03.2014 passed by the Id. AO is bad on facts and in law.*
 - 1.1 That on the facts and in law the Id. AO has erred in not granting a proper opportunity of being heard and hereby violating the well settled principles of audi alteram partem.*
- 2. That on the facts and in the circumstances of the case, the Id. AO erred in making huge additions/disallowances to the total income without any incrementing evidence in support thereof.*
- 3. That on facts and in law in absence of any information leading to action of search u/s. 132(1) of the Income Tax Act, 1961 the Id. CIT(A) erred in assuming jurisdiction to assess u/s 153A /143(3) of the Act.*
 - 3.1 That on facts and in law block assessment u/s 153A is not warranted if search warrant was issued in joint names to search premises belonging to one assessee.*
- 4. That the assessee craves leave to add, alter or amend any ground of cross objection on or at the time of hearing of the appeal.*

2. Brief facts of the case are as under:

Search and seizure action under section 132 of the Income Tax Act, 1961 (the Act) was conducted in case of M/s J Pollychem India Ltd and its associates on 14/03/2012. Ld. AO observed that the group is engaged in trading of bulk petrochemicals, chemicals, polymers, engineering plastics etc. Assessee's case was also covered under section 132 of the Act. Ld. AO observed that assessee had paid up capital of Rs. 14.09 lakhs. Notice under section 153A was issued to assessee on 18/01/13 in response to which return was filed on 23/12/13 declaring income of Rs.3,110/-. Subsequently notice under section 143(2) and 142(1) along with questionnaire was issued to assessee, in response to which representative of assessee appeared before Ld.AO and filed requisite details. Ld.AO while completing assessment made addition of Rs. 2,75,46,890/-in the hands of assessee.

3. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld.CIT(A), who allowed the claim of assessee on merits.

4. Aggrieved by order of Ld.CIT(A), revenue preferred appeal before this Tribunal contesting addition being deleted and assessee filed Cross Objection on the ground that the addition has been made by Ld.AO under section 153A read with 143 (3) of the Act without there being any incriminating materials in support thereof. As the Cross Objection raised by assessee goes to the root of the assessment, we are inclined to take up the cross objection first.

5. It has been submitted by Ld.AR that no incriminating documents were found as a result of search indicating undisclosed income in hands of assessee for year under consideration. She placed reliance upon paragraph 5.2 of assessment order wherein addition is based on profit and loss account for year ending 31/03/06.

5.1. Ld.AR placed heavy reliance upon decision of *Hon'ble Delhi High Court* in case of *CIT vs Kabul Chawla* reported in (2016) 380 ITR 573.

5.2. On the contrary, though Ld.Sr.DR supported order of Ld.AO in assumption of jurisdiction under section 153, but could not controvert argument that no materials were seized during search which was basis of addition in hands of assessee.

6. We have perused records placed before us in light of arguments advanced by both sides.

7. It is observed that present Assessment Year being Assessment Year 2006-7 has not abated as on the date of search. Under such circumstances without there being incriminating material unearthed during the course of search no addition could be made in the hands of assessee. We referred to and rely upon the decision of *Hon'ble High Court* in case of *CIT vs Kabul Chawla (supra)*.

7.1. It is observed that in present case, Ld.AO in paragraph 5.2 of his order for purposes of making addition relied upon profit and loss account. We are therefore of considered opinion that cross objection deserves to be allowed.

8. Respectfully following the decision of *Hon'ble Delhi High Court* in case of *CIT vs Kabul Chawla (supra)*, we are inclined to allow Cross Objection filed by assessee, thereby quashing assessment order passed by Ld.AO under section 153A of the Act.

9. As we have already allowed the assessee's Cross Objection on legal issue, we are of the considered opinion that appeal filed by revenue does not survive and the same is dismissed.

10. In the result appeal filed by revenue stands dismissed and Cross Objection filed by assessee stands allowed.

Order pronounced in the open court on 14/03/2019.

Sd/-

(N.S. SAINI)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 14th March, 2019

- GMV

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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