

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA Nos.3946/Del/2015, 3947/Del/2015 & 3948/Del/2015
Assessment Years : 2005-06, 2006-07 & 2007-08**

**M/s Siddhi Vinayak Aromatics Pvt.Ltd.,
(now merged with and known as Surya Vinayak Hospitalities Pvt.Ltd.),
13-B, 3rd Floor,
Netaji Subhash Marg,
Daryaganj,
New Delhi.
PAN : AAEC56671A.
(Appellant)**

**Vs. Deputy Commissioner of
Income Tax,
Central Circle-1,
New Delhi.

(Respondent)**

**ITA No.3949/Del/2015
Assessment Year : 2009-10**

**M/s Bharat Exports Corporation Pvt.Ltd.,
(now merged with and known as Surya Vinayak Hospitalities Pvt.Ltd.),
13-B, 3rd Floor,
Netaji Subhash Marg,
Daryaganj,
New Delhi.
PAN : AABCB1748E.
(Appellant)**

**Vs. Deputy Commissioner of
Income Tax,
Central Circle-1,
New Delhi.

(Respondent)**

**ITA No.3950/Del/2015
Assessment Year : 2006-07**

**M/s J.H. Business India
Pvt.Ltd.,
(now merged with and
known as Allied Perfumers
Private Limited),
13-B, 3rd Floor,
Netaji Subhash Marg,
Daryaganj,
New Delhi.
PAN : AAACJ9513G.
(Appellant)**

**Vs. Deputy Commissioner of
Income Tax,
Central Circle-1,
New Delhi.**

(Respondent)

**ITA Nos.3951/Del/2015 & 3952/Del/2015
Assessment Years : 2005-06 & 2009-10**

**M/s J.H. Finvest Pvt.Ltd.,
(now merged with and
known as Surya Vinayak
Hospitalities Pvt.Ltd.),
13-B, 3rd Floor,
Netaji Subhash Marg,
Daryaganj,
New Delhi.
PAN : AABCJ1341H.
(Appellant)**

**Vs. Deputy Commissioner of
Income Tax,
Central Circle-1,
New Delhi.**

(Respondent)

Appellants by : Shri Rajiv Saxena, Advocate.
Respondent by : Shri S.S. Rana, CIT-DR.

Date of hearing : **15.04.2019**
Date of pronouncement : **16.04.2019**

ORDER

PER BENCH :-

These appeals by the assesseees for the assessment years 2005-06, 2006-07, 2007-08 and 2009-10 are directed against separate

orders of learned CIT(A)-25, New Delhi dated 25th March, 2015 and 31st March, 2015.

2. In this group of appeals, common grounds have been raised and therefore, they were all heard together and are being adjudicated upon simultaneously.

3. At the time of hearing before us, it is stated by the learned counsel that in all the above group of appeals, assessments have been completed under Section 153A read with Section 143(3). That the additions have been made without any incriminating material and therefore, the addition is uncalled for under Section 153A. In support of his contention, he relied upon the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Kabul Chawla – [2015] 234 Taxman 300 (Delhi). He stated that the additions have been made by changing the head of income i.e., the rental income has been assessed as income from other sources instead of 'income from house property'. Certain disallowance under Section 14A has been made and some additions under Section 68 have been made though there was no incriminating material. He, therefore, stated that all the additions are out of the purview of Section 153A and same should be deleted.

4. Learned CIT-DR, on the other hand, relied upon the orders of authorities below.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that in these appeals, following additions have been made by the Assessing Officer and sustained by the learned CIT(A) :-

- (i) In the case of M/s Sidhi Vinayak Aromatics Pvt.Ltd. – AY 2005-06 & 2006-07 vide ITA No.3946/Del/2015 & 3947/Del/2015 -

In these two years, the Assessing Officer has assessed the rental income under the head 'income from other sources' as against 'income from house property' disclosed by the assessee which resulted in the addition/disallowance of ₹10,08,000/- in each year.

- (ii) In the case of M/s Sidhi Vinayak Aromatics Pvt.Ltd. – AY 2007-08 vide ITA No.3948/Del/2015 -

In assessment year 2007-08, in addition to the assessment of rental income under the head 'income from house property', further depreciation is disallowed amounting to ₹79,297/- and additions have been made under Section 68 amounting to ₹20,00,000/-.

- (iii) In the case of M/s Bharat Exports Corporation Pvt.Ltd. – AY 2009-10 vide ITA No.3949/Del/2015 –

The only dispute is with regard to disallowance under Section 14A amounting to ₹9,15,816/-.

- (iv) In the case of M/s J.H. Business India Pvt.Ltd. – AY 2006-07 vide ITA No.3950/Del/2015 -

The only dispute is with regard to addition of ₹5,00,000/- under Section 68.

- (v) In the case of M/s J.H. Finvest Pvt.Ltd. – AY 2005-06 vide ITA No.3951/Del/2015 -

The only dispute is with regard to addition under Section 68 amounting to ₹12,00,000/-.

- (vi) In the case of M/s J.H. Finvest Pvt.Ltd. – AY 2009-10 vide ITA No.3952/Del/2015 -

The only dispute is disallowance under Section 14A amounting to ₹8,70,089/-.

6. We have heard the arguments of both the sides and perused the material placed before us. We have gone through the assessment order in each assessment year in the case of all the above assesseees and we do not find mention of any incriminating material while making the above additions. Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra) has held as under :-

“Summary of the legal position.

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:-

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs 2002-03, 2005-06 and 2006-07. On the date of the search the said

assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

7. The above view is reiterated by Hon'ble Jurisdictional High Court in various subsequent decisions. Therefore, we, respectfully following the above decision of Hon'ble Jurisdictional High Court, hold that the addition under Section 153A can be made only with reference to the incriminating material found as a result of the search of the assessee. Admittedly, in all the above assessment years, none of the above additions is based on any incriminating material. We, therefore, respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra), delete all the above additions.

8. In the result, all the appeals of the assessees are allowed.
Decision pronounced in the open Court on 16.04.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **M/s Siddhi Vinayak Aromatics Pvt.Ltd.,
M/s Bharat Exports Corporation Pvt.Ltd.,
M/s J.H. Business India Pvt.Ltd. &
M/s J.H. Finvest Pvt.Ltd.,**
2. Respondent : **Deputy Commissioner of Income Tax,
Central Circle-1, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar