

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA Nos. 5180, 5181/Del/2015
Asstt. Years: 2006-07, 2005-06

M/s.PPC Business and Products Pvt. Ltd. (Now merged with and known as Surya Vinayak Hospitalities Pvt. Ltd.) C/o Rajiv Saxena & Co., Advocates & Solicitors, Ho. No. 318-D, Mayur Vihar Phase -II, Delhi 110 091 PAN AAACP7862Q	Vs.	DCIT Central Circle -1, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Rajiv Saxena, Advocate
Department by :	Shri J.K. Mishra, CIT (DR)
Date of Hearing	06/03/2019
Date of pronouncement	16/05/2019

ORDER

PER AMIT SHUKLA, J.M

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 20.3.2015 for the assessment year 2006-07; and order dated 23.3.2015, passed by CIT(Appeals) for the assessment year 2005-06 for the quantum of assessment passed u/s 153A/143(3).

2. We will first take up the appeal for the assessment year 2006-07, wherein the assessee has challenged the determination of income of Rs. 19,74,515/- as against Rs. 12,43,220/-.

3. The facts in brief are that the assessee has filed its return of income for the assessment year 2006-07 at an income of Rs. 12,43,220/- on 30.03.2007. Thereafter, proceedings u/s 153C was initiated in the case of the assessee in view of search and seizure action taken in the case of Surya Vinayak group of industries carried on 3.3.2011. In the assessment order completed u/s 153C / 143(3) on 24.12.2009 assessee's income was computed at Rs. 2,64,74,515/- as against return of income of Rs. 12,43,220/-. In the first appeal Ld. CIT (A) has deleted the addition of Rs. 2,50,00,000/-.

4. Before us, Ld. Counsel has submitted that here in this case the Tribunal has quashed the proceedings u/s 153C which has been confirmed by the Hon'ble High Court also. Thereafter, another search and seizure operation was carried out on 3.3.2011 in the case of Surya Vinayak and also in the case of the assessee and accordingly, notice u/s 153A was issued to the assessee on 8.2.2012. Ld. AO though noted this fact that Ld. CIT (A) has granted relief of Rs. 2,50,00,000/- in the earlier round of proceedings, however, he held that the said relief allowed is the subject matter of further appeal before the Tribunal. After considering the relief granted in the earlier round, AO has taken the income of Rs. 14,74,515/-. He further noted that assessee has received share application money of Rs. 1,25,00,000/- and later on found that the said amount of Rs. 1,25,00,000/- is included in the amount of Rs. 2,50,00,000/- added in the previous assessment order. However, he noted that there is a credit entry of Rs. 5 lacs received from 'Finage Leasing & Finance India Ltd.' which was not covered in the said assessment order.

Therefore, he added the same u/s 68. Accordingly, income was assessed at Rs. 19,74,515/-.

5. Before the Ld. CIT (A) assessee has submitted that the addition of Rs. 5 lacs is beyond the scope of section 153A as no incriminating material whatsoever was found during the course of the search and the earlier assessment order had attained finality and was unabated assessment at the time of search. Therefore, addition of Rs. 5 lacs could not have been made. However, Ld. CIT (A) has confirmed that the said addition on the same reasoning given by the AO.

6. Before us, Ld. Counsel submitted that from a bare perusal of the assessment order it can be seen that there is no reference to any seized material found during the course of search and in fact sum of Rs. 5 lacs was appearing in the books of account. Thus, such an addition is beyond the scope of section 153A in view of the decision of Hon'ble Delhi High Court in the case of CIT vs Kabul **Chawla (2016) 380 ITR 573 (Delhi) and Pr. CIT vs. Meeta Gutgutia 395 ITR 526.**

7. On the other hand, Ld. DR strongly relied upon the order of the AO and Ld. CIT (A).

8. After considering the rival contentions and on perusal of the relevant finding given in the impugned order, we find that on the date of search carried on 3.3.2011, the assessment for the assessment year 2006-07 was not pending as already assessment order was passed on 24.12.2009 as stated above. Thus, in terms of *2nd proviso* to section 153A, the assessment for the assessment year 2006-07 cannot be held to be abated assessment. Further, from the records it is clear that no incriminating material was found qua the addition made during the course of search and therefore, in view of the proposition laid down by the Hon'ble Jurisdictional High Court in the case of **CIT vs. Kabul**

Chawla (supra) and Pr. CIT vs. Meeta Gutgutia (supra), no addition can be made in case of unabated assessment if no incriminating material has been found during the course of the search qua that assessment year. Here in this case AO has simply made the addition on the basis of already material available on record during the course of the original assessment proceedings, therefore, the addition of Rs. 5 lacs is beyond the scope of section 153A and same is directed to be deleted.

9. In the result appeal of the assessee is allowed.

10. Similarly, in the appeal for the assessment year 2005-06, the only issue raised to disallowance u/s 14A of Rs. 41,631/-. Here in this case also, the return of income for the assessment year 2005-06 was filed on 29.10.2005 at an income of Rs. 17,19,760/- and thereafter assessment order was passed vide order dated 24.12.2009 passed u/s 153C/143 (3) at an income of Rs. 18,03,030/-. Later on, fresh proceedings u/s 153(A) was initiated in wake of search and seizure action carried out on 3.3.2011. Thus, on the date of search, assessment proceedings for the assessment year 2005-06 was not pending and in view of *2nd proviso* to section 153A, such an assessment is reckoned as unabated assessment. Ld. AO noted that the Tribunal in the first round of proceedings has set aside the disallowance u/s 14A read with rule 8D to be decided afresh. However, the AO instead of passing the fresh assessment order in view of the direction of the Tribunal has made the disallowance in the present proceedings of Rs. 41,637/-, which has been confirmed by the Ld. CIT (A) also. The disallowance has been worked out by calculating 0.25% of the investment of the average investment. Here in this year also, the aforesaid addition is not based on any incriminating material and therefore, being an unabated assessment, addition could not be

made without any incriminating material. Our reasoning given in the earlier appeal following the ratio and principles laid down by the Hon'ble Jurisdictional High Court, we delete the said addition.

11. In the result both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 16th May, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 16/05/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

