

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.2210 & 2211/Del./2017
Assessment Years 2010-2011 & 2011-2012

The ACIT, Central Circle-13, Room No.355, 3 rd Floor, Jhandewalan Extension, New Delhi.	vs.,	M/s. Minda Corporation Ltd., 36A, Rajasthan Udyog Nagar, New Delhi – 110 033 PAN AAACM0344C
(Appellant)		(Respondent)

For Revenue :	Ms. Rinku Singh, Sr. D.R.
For Assessee :	Shri Rakesh Gupta And Shri Somil Aggarwal, Advocates

Date of Hearing :	10.07.2019
Date of Pronouncement :	12.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by the Revenue are directed against different Orders of the Ld. CIT(A)-35 Dated 11.01.2017, for the A.Ys. 2010-2011 and 2011-2012.

1.1. The appeal for the A.Y. 2010-2011 have been filed on the following grounds :

1. *Whether the order of Ld. CIT(A) is erroneous & contrary to facts & law.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in holding that the AO could not have proceeded to frame assessment u/s.153A of the Act as no incriminating documents/assets were found during the search without appreciating that the provision of section 153A of the Act does not stipulates any such conditionality.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.65,362/- on account of bad debts written off.*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.20,68,039/- on account of commission paid to M/s Minda Europe B.V. Netherland.*

5. *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.19,12,118/- on account of provision of warranty.*

1.2. The appeal for the A.Y. 2011-2012 have been filed on the following grounds :

1. *The order of Ld. CIT(A) is erroneous & contrary to facts & law.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in holding that the AO could not have proceeded to frame assessment u/s 153 A of the Act as no incriminating documents/assets were found during the search without appreciating that the provision of section 153A of the Act does not stipulates any such conditionality.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.19,857/- on account of bad debts written off.*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.47.37,299/- on account of commission paid to M/s Minda Europe B.V. Netherland.*
5. *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.49,35,476/- on account of provision of warranty.*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.3,50,695/- on account of disallowance u/s 14A.*

2. Briefly the facts of the case are that original return declaring income of Rs.6.86 crores was filed for the A.Y. 2010-2011 on 30.09.2010 and the same was processed under section 143(1) of the I.T. Act. Similarly, original return declaring income of Rs.19.02 crores was filed for A.Y. 2011-2012 on 29.09.2011 and same was also processed under section 143(1). Search and seizure operations under

section 132(1) of the Act in this case was carried out on 10.01.2012 at the business as well as residential premises of Minda Group. The case was centralised along with other cases of Minda Group of cases/companies. The A.O. completed the assessment under section 143(3) r.w.s. 153A of the I.T. Act for both the years and made the above additions on account of bad debts written off, commission, provision of warrantee, depreciation of printer and disallowance under section 14A in both the years. The assessee challenged the legality of the assessment orders and additions before the Ld. CIT(A). It was contended that no incriminating document or material was found during the course of search so as to make these additions. It was submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573. The Ld. CIT(A) noted that since no incriminating material was unearthed during the course of search as regards the above additions, therefore, no additions would be made in the assessment orders under section 153A of the I.T. Act. All the additions were,

therefore, deleted for A.Y. 2010-2011. The Ld. CIT(A) followed the Order for the A.Y. 2010-2011 in A.Y. 2011-2012 also and directed to delete the addition. As regards the addition on merit, the Ld. CIT(A) noted that all the issues are covered by earlier order of ITAT in the case of same assessee. Following the same, the Ld. CIT(A) deleted all the additions.

3. The Ld. D.R. fairly stated that the issue is covered by the Judgment of Hon'ble Delhi High Court on legal issue in the case of CIT vs. Kabul Chawla (supra). Therefore, Ground No.2 of departmental appeals shall have to be decided against the Revenue. We find no error in the order of the Ld. CIT(A) in deciding Ground No.2 in favour of the assessee. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 held as under :

“Completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was

not produced or not already disclosed or made known in course of original assessment.”

4. It is an admitted fact that during the course of search no incriminating material was unearthed which have not been produced or not already disclosed or made known in the course of the original assessment. Therefore, completed assessment cannot be interfered with by the A.O. while making the assessment under section 153A of the I.T. Act. Therefore, there is no error in the Order of Ld. CIT(A) in deciding this issue in favour of the assessee. On other issue also on merit the same are covered by earlier Orders of the Tribunal. Further, Ground No.2 on legal issue has been decided in favour of the assessee, there is no need to decide the other grounds on merit which are left with academic discussion only. In view of the above, both the departmental appeals fails and are dismissed.

5. In the result, appeals of the Department are dismissed.

Order pronounced in the open Court.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.