

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.1420/Del/2016
Assessment Year: 2008-09

ACIT Central Circle -26, Room No. 323, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi (APPELLANT)	Vs	Bina Fashion N Food Pvt. Ltd. 53, Community Centre New Friend's Colony Delhi-110065 PAN No. AABCB5582A (RESPONDENT)
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Appellant by	Ms. Nidhi Srivastava, CIT DR
Respondent by	Ms. Sweety Kothari, CA

Date of hearing:	29/08/2019
Date of Pronouncement:	23/09/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 31.12.2015 of the CIT(A)-29, New Delhi relating to A. Y. 2008-09.

2. Facts of the case, in brief, are that the assessee is a company and had filed its return of income on 29.11.2006 declaring 'nil' income after setting off loss amounting to Rs.1,19,96,117/-. A search and seizure operation was carried out in the case of Modi Family Group on 09.11.2011. During

the course of search at the residential premises of Sh. Krishna Kumar Modi at A-1, Maharani Bagh, New Delhi a copy of sale deed executed on 18.12.2007 by Sh. Sanjeev Lal in favour of M/s. Beena Fashions N Foods Private Limited through its director Ms. Beena Modi was seized and annexed as A-1, page 93 to 101 by page No. D-I. The Assessing Officer after recording his satisfaction vide order sheet entry dated 29.01.2014 issued notice u/s. 153C of the IT Act to the assessee on 05.02.2014. In response to the notice u/s. 153C, the assessee submitted that the return filed originally on 29.11.2006 may be treated as return filed in response to notice u/s. 153 C.

3. The Assessing Officer, during the course of assessment proceedings, observed that assessee has debited an amount of Rs.79,12,080/- on account of travelling and conveyance in the profit and loss account. He asked the assessee to file details of the same. From the details so furnished by the assessee he observed that a major portion of this expenses was on account of foreign travel. He noted from the details filed that Smt. Beena Modi was travelling extensively. He further noted that Ms. Beena Modi is also full time employee of following companies from where she had received salary the details of which are as under :-

M/s. Beacon Travels Pvt. Ltd.	12,00,000/-
M/s. Bina Fashions N Food Pvt. Ltd.	24,00,000/-
M/s. HMA Udyog Ltd.	41,79,232/-
M/s. Indo Euro Investment Co. Ltd.	60,000/-

4. Rejecting the various explanation given by the assessee and observing that the assessee could not substantiate and justify the claim of foreign travel expenses undertaken by the director to the extent of Rs.65,89,151/-, the Assessing Officer made addition of the same to the total income of the assessee.

5. Similarly the Assessing Officer observed from the P & L account that an amount of Rs.8,01,683/- has been debited to the profit and loss on account of purchase of jewellery under the head purchases. However, there is neither any closing stock of the jewellery nor any sale of jewellery. On being questioned by the Assessing Officer it was submitted that the assessee has sold jewellery to the extent of Rs.9,69,307/-. However, in absence of any supporting evidence to his satisfaction the Assessing Officer made addition of Rs.8,01,683/- to the total income of the assessee on account of purchase of jewellery.

6. The Assessing Officer similarly made addition of Rs.1,74,00,000/- on account of unexplained cash deposit in the bank account and subsequently converted into investment by invoking the provision of section 68 of the IT Act. The Assessing Officer also made addition of Rs.29,24,328/- on account of depreciation claimed on land. Accordingly the Assessing Officer determined the total income of the assessee at Rs.3,97,11,278/-

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7. In appeal the Ld. CIT(A) deleted the various additions made. The relevant findings of the CIT(A) from 7.1.1. read as under :-

7.11 *From the various arguments as put forth by the appellant and as per the discussions made in the foregoing paragraphs, the following position emerges:*

- a) *On the date of search, the assessment stood completed and not abated.*
- b) *The document seized during search cannot be termed as incriminating in nature as the information contained therein does not lead to any undisclosed income and not substantial enough to initiate proceedings under section 153C/153A of the Act.*
- c) *The due procedure for recording of satisfaction as envisaged by law has not been followed. Only one satisfaction note was recorded by the AO with respect to the present appellant and no such satisfaction note was recorded in the case of Sh. KK Modi. AO has not clearly brought out that the seized document is incriminating in nature and how the AO has satisfied himself that the said document leads to undisclosed income of the appellant.*
- d) *The asset, whose sale deed seized during search was already declared by the appellant in its return of income as fixed asset, which is also acknowledged by the AO. The same was already subjected to scrutiny as mentioned above.*
- e) *No undisclosed account or any valuables, jewellery, cash, investments or any material found during search to show the generation of undisclosed income of the appellant.*
- f) *The additions made are not emanating from any incriminating material found during search but on the basis of details obtained during proceedings under section 153C/153A.*

7.12 *In view of the above discussions and findings and looking to the facts of this case and position of law as supported by various judgments including the decisions by the jurisdictional High Court, the additions so made by the AO is not found sustainable, as far as this proceedings are concerned, and the same is directed to be deleted.*

8. *Since, the issue has been decided on the legal grounds stating that such additions cannot be made under section 153C/153A of the Act and accordingly, the addition has not been sustained, the other grounds relating to the merit of this case has not been considered. However, in the case of depreciation on land the*

AO may take suitable action, if permitted under law, as under this proceedings no interference can be made looking to the decision of the Hon'ble Delhi High Court in ITA No.707/2014 and 709/2014 vide order dated 28.08.2015 in the case of CIT vs. Kabul Chawla. Subject to these remarks, appeal is decided in favour of the appellant.

8. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds of appeal :-

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the additions of Rs.65,89,151/-, on account of foreign travel expenses, Rs.8,01,686/-, on account of purchase of jewellery, Rs.1,74,00,000/-, on account of unaccounted cash credit, and Rs.29,24,328/-, on account of excess claim of depreciation by the AO, without discussing the merit of the case.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the Hon'ble Allahabad High Court has held in the case of Commissioner of Income-tax, Central, Kanpur v. Raj Kumar Arora [2014] 52 taxmann.com 172 (Allahabad) , after considering the judgement given by the Hon'ble Delhi High Court in case of CIT v. Anil Kumar Bhatia [2012] 211 Taxman 453/24 taxmann.com 98, that the AO has power to reassess returns of assessee not only for undisclosed income, which was found during search operation but also with regard to material that was available at time of original assessment.

3. /That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that due process for recording of satisfaction u/s 153C has not been followed as there was no

requirement as per the provision of the Income tax Act, to record separate Satisfaction Note in case of searched party as the AO was same.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that no incriminating document was seized as the requirement of seized documents being incriminating in nature for initiation of proceeding u/s 153C is not given in the Act. The only requirement is that the seized document should have a bearing on the determination of total income.

5. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

6. That the grounds of appeal are without prejudice to each other.

7. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”

9. The Ld. Counsel for the assessee at the outset submitted that the addition has not been made on the basis of any incriminating material found during the course of search and all the additions made by the Assessing Officer are on the basis of books of account regularly maintained by the assessee. Referring to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla reported in 380 ITR 573 she submitted that no addition can be made in the completed assessment under the provisions of section 153 A/ 153C in absence of any

incriminating material found during the course of search. Referring to the decision of Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society reported in 2017-TIOL-309-SCs he submitted that the Hon'ble Apex Court in the said decision has held that seized incriminating material have to pertain to the assessment year in question and have co-relation, document-wise with the assessment year.

10. She accordingly submitted that since the additions are not based on any incriminating material found or unearthed during the course of search and addition has been made on the basis of material already available on record and no assessment was pending, therefore, the Ld. CIT(A) was fully justified in deleting the various additions.

11. The Ld. DR on the other hand heavily relied on the order of the Assessing Officer. She submitted that the Assessing Officer of the search party and the Assessing Officer of the assessee in the instant case are one and same, therefore, the findings of the CIT(A) that due process of recording of satisfactions u/s. 153 C has not been followed is incorrect.

12. Referring to the provision to section 153C of the Act she submitted that there is nothing in the Act that provisions of section 153C cannot be invoked, in absence of any incriminating document found or seized during the course of search. The only requirement is that the seized document

should have a bearing on the determination of the total income. She accordingly submitted that the order of the CIT(A) is erroneous and, therefore, should be set aside.

13. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decision cited before us. A perusal of the assessment order shows that the various additions made by the Assessing Officer are not based on any incriminating material found during the course of search from the premises of the search party. The document which was found during the search from the premises of Sh. Krishan Kumar Modi being the copy of the sale deed executed on 18.12.2007 by Sh. Sanjeev Lal in favour of M/s. Beena Fashions N Foods Private Limited is already recorded in the books of the assessee and said document per se is not incriminating in nature. Since the addition is not based on any incriminating material found during the course of search, therefore, we concur with the findings given by the Ld. CIT(A) that the addition so made by the Assessing Officer is not sustainable.

14. The Hon'ble Delhi High court in the case of Kabul Chawla (supra) has held that when the assessment which is completed on the date of search and no incriminating material were found during the course of search no addition can be made to the income already assessed. The Hon'ble Apex Court in the case of Singhad Technical Education Society (supra) has held that the seized incriminating material have to pertain to the assessment year in question and have co-relation, document wise with the

assessment year.

15. Since in the instant case the assessment was completed on the date when the satisfaction note was recorded by the Assessing Officer and the additions are not based on any incriminating material found but on the basis of the books of account regularly maintained or unearthed, during the course of search therefore, the various additions made by the Assessing Officer are not sustainable. We, therefore, uphold the order of the CIT(A) deleting the additions made by the Assessing Officer on this ground itself. The grounds raised by the revenue are accordingly dismissed.

16. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23.09.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 23 .09.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	23.09.2019

Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	