

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2591/Del./2016
Assessment Year 2009-2010

M/s. Era Infra Engineering Ltd., C-56/41, Sector – 62, Noida – 201 301. U.P. PAN AAACE1268K	vs.,	The DCIT, Central Circle – 17, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Himanshu Sharma, C.A. Shri Saurabh Jain, C.A.
For Revenue :	Ms. Pratima M. Biswas, CIT-DR

Date of Hearing :	14.01.2020
Date of Pronouncement :	.01.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 31.03.2016, for the A.Y. 2009-2010.

2. The facts of the case are that a search and seizure operation under section 132 of the I.T. Act, 1961 was conducted at the business/residential premises of the

assessee on 16.11.2010. The A.O. issued statutory notices and called for the details from the assessee. The A.O. considered the issue of bogus expenses in relation to transaction with Safeco Projects Pvt. Ltd., and ultimately made addition of Rs.3,55,18,075/- on account of protective assessment. The assessment order was passed under section 153A read with Section 143(3) of the I.T. Act, 1961. The assessee challenged the addition before the Ld. CIT(A). However, the appeal of assessee has been dismissed. The assessee in the present appeal has challenged the above addition made on protective basis and also stated that no addition could be made because the addition to the returned income is not referable to incriminating material found during the course of search on 16.11.2010. Since no assessment was pending on the date of search, therefore, no addition could be made without reference to the material found during the course of search.

3. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

4. We have considered the rival submissions. The assessee at page-72 of the PB filed copy of the acknowledgment of filing of the original return under section 139(1) of the I.T. Act in appeal for the A.Y. 2009-2010 is Dated 30.09.2009. According to Second Proviso to Section 143(2), no notice under this Section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. Thus the period of issuing notice under section 143(2) would expire on 30.09.2010. Thus on the date of search on 16.11.2010 no assessment was pending for the assessment year under appeal i.e., 2009-2010. The A.O. on the basis of information submitted by assessee found that assessee has entered into transaction with M/s. Safeco Projects Pvt. Ltd., of Rs.355.18 lakhs, for which, addition is made. Thus, no incriminating material was found during the course of search so as to make the above addition. Further, the addition is made only on protective basis which would clearly support that no incriminating material was found during the course of search against the assessee. The issue

is, therefore, covered by Judgment of the Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573 (Del.) (HC) in which it was held as under :

“Completed assessments can be interfered with by the A.O. 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”

4.1. The above decision has been followed by the Hon'ble jurisdictional Delhi High Court in its subsequent decision in the case of Pr. CIT vs., Meeta Gutgutia 395 ITR 526 (Del.) (HC), which Judgment have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department reported in 257 Taxman 441 (SC). In view of the above, we are of the view that no such addition could be made against the assessee. We, accordingly, set aside the

Orders of the authorities below and delete the addition.

Appeal of assessee is allowed.

5. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 20th January, 2020

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.