

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER,  
AND**

**SHRI M. BALAGANESH, ACCOUNTANT MEMBER,**

**ITA No.1300/DEL/2017  
[Assessment Year: 2007-08]**

ACIT, Circle-8, Room No.333, ARA Centre, Jhandewalan Extn. New Delhi	Kuldip SinghDhingra (Ind.), 19, DDA Commercial Complex Kailash Colony, Ext. Zamrudpur, New Delhi-110048
	PAN- <b>AAJPD8095P</b>
Appellant	Respondent

Appellant by	Shri J. K. Mishra CIT-DR
Respondent by	Shri Pradeep Dinodia, & Shri R. K. Kapoor

Date of Hearing	20/01/2020
Date of Pronouncement	23/01/2020

**ORDER**

**PER M. Balaganesh, AM**

This appeal has been filed by the Revenue against the order of the Ld. CIT(A)-24, New Delhi, dated 26/12/2016, for Assessment Year 2007-08.

2. The Revenue has raised following grounds of appeal:-
  1. *The order of Ld. CIT(A) is not correct in law and on facts.*
  2. *On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 2,27,51,586/- on account of undisclosed consultancy fee.*
  3. *On the facts and circumstances, the case, the CIT(A) has erred in*

*holding that the income pertains to the company who raised the invoice and not the assessee despite the fact that there was no documentary evidence to establish that any consultancy service was provided by it.*

4. *On the facts and circumstances of the case, the CIT(A) has erred in holding that the income does not pertain to the assessee despite the statement of payee stating that the service was provided by the assessee and invoice was raised by the company at the behest of the assessee.*
5. *On the facts and circumstances of the case, the CIT(A) has erred in holding that the statement of the payee, recorded on oath has no relevance.*

3. The only effective issue that emanates from the grounds of Revenue is as to whether an addition in the sum of Rs.2,27,51,586/- on account of undisclosed consultancy fee could be assessed in the hands of the assessee herein.

4. We have heard the rival submissions and perused the material available on record. We find that there was a search and seizure action conducted on u/s 132 of the Act in the hands of the assessee on 16/09/2011 which got concluded on 17/09/2011. The assessee is main promoter and Chairman and Managing Director of U. K. Paints group of companies, the flagship company in the U. K. Paints India Ltd. This group has overseas business concerns also. M/s U. K. Paints (Overseas) Ltd. is one such foreign company which is 100% subsidiary of U.K. Paints India Ltd. Parallely, a survey u/s 133A of the Act was also conducted on U.K. Paints (Overseas) Ltd. on 17/09/2011. The first notice u/s 153A of the Act in respect of search conducted on 16/09/2011 was issued on the assessee on

22/05/2013. The assessee filed its return of income in response to such notice on 12/06/2013. Notice u/s 143(2) of the Act was issued for the said return on 30/09/2013. The last date for completion of assessment u/s 153A of the Act in respect of search conducted on 16/09/2011 was 31/03/2014 i.e. two years from the end of the financial year, in which the search was conducted and concluded in terms of section 153B of the Act. The Ld. AR before us, submitted that no assessment was framed u/s 153A of the Act for the AY 2007-08 on or before 31/03/2014 in respect of search conducted on 16/09/2011 in the hands of the assessee.

5. Subsequently, there was a second search conducted u/s 132 of the Act on assessee on 16/01/2013. Notice u/s 153A of the Act was issued on 15/10/2013 pursuant to the said search on 16/01/2013. The assessee filed its return on 05/11/2013 in response to notice issued u/s 153A of the Act. The assessment u/s 153A r.w.s 143(3) of the Act for the AY 2007-08 was framed on 30/03/2015 after adding a sum of Rs.2,27,51,586/- on account of undisclosed consultancy income in the hands of the assessee. This addition was made based on an invoice which was raised by M/s U.K. Paints (Overseas) Ltd. for USD \$ 515909 (equivalent to Rs.2,27,51,586/-) on unrelated Indian company M/s ERA Construction India Ltd. This invoice was duly impounded on 16/09/2011 from the office premises of the U.K.

Paints Ltd. at 38, DDA Commercial Complex, Zamrudpur, at the time of survey proceedings u/s 133A of the Act on the said concern. We find that the assessee had duly submitted that this invoice had been duly recorded and accounted in the books of M/s U. K. Paints (Overseas) Ltd. prior to date of search and seizure itself. Accordingly, the assessee had submitted before the AO that the said invoice which was impounded during survey conducted on 17/09/2011 in the office premises of U.K. Paints (Overseas) Ltd. would not become incriminating material to be used in the search assessment framed in the hands of the assessee herein. We find that the assessee had pleaded that in any case, this invoice had already been accounted in the books of the U.K. Paints (Overseas) Ltd. as consultancy income and there is no question of making any further addition in the hands of the assessee in respect of very same sum of Rs.2,27,51,586/-. In fact, the assessee had also given proper explanation with reason as to how the said invoice was found at the time of survey by stating that M/s U.K. (Overseas) Pvt. Ltd. was outsourcing its book keeping activity to the office of M/s U. K. Paints India Ltd. which is parent company. The documents of overseas company and books of accounts, bank statements were kept in the premises in India. Therefore, this invoice which was raised by U.K. Paints (Overseas) Pvt. Ltd. on unrelated Indian party was found in the said office premises at the time of survey/search. The assessee had further

pleaded that in any case, this document was only found in the premises of U.K. Paints Overseas Pvt. Ltd. and the presumption in terms of section 132(4A) and Section 292C of the Act would be only in favour of U. K. Paints (Overseas) Ltd. and not the assessee. In any case, the assessee had also pleaded that even if any addition need to be made pursuant to this invoice which was found on 17/09/2011, the assessee could have at best been proceeded only u/s 153C of the Act and not u/s 153A of the Act.

6. We find that the Ld. AO disregarded all these contentions in the assessment and proceeded to make the addition in the hands of the assessee for the very same sum and completed the assessment u/s 153A of the Act. We find that the Ld. CIT(A) had categorically observed that the Ld. AO had not conducted any enquiry to ascertain the facts as to who had actually rendered services to M/s ERA constructions in order to derive the income of Rs.2,27,51,586/-. Accordingly, the Ld. CIT(A) had directed the Ld. AO to conduct further enquiry in the remand proceedings. We find that in the remand report, the AO had categorically submitted that no documentary information was provided by the M/s ERA Construction India Ltd. by way of formal agreement executed between them either with the assessee herein or U. K. Paints (Overseas) Pvt. Ltd. In the said remand report, the Ld. AO had also stated that the invoice for

Rs.2,27,51,586/- was raised by M/s U.K. (Overseas) Ltd. on ERA Construction India Ltd. The assessee has also filed a rejoinder to the remand report submitted by the Ld. AO. We find that the Ld. CIT(A) after considering the remand report of the Ld. AO and the rejoinder given by the assessee had deleted the addition by observing as under:-

*“4.2.5 I have considered the submissions of the appellant, the first question that needs to be addressed is whether the addition could have been justifiably be made u/s 153A. There were two searches on the appellant. The first search was conducted in November, 2011 on the appellant. The document in question viz., the invoice was impounded from the office premises of U.K. Paints group, of which the appellant is the Managing Director. Thus to say that the office premises at 38, DDA Commercial Complex, Zamrudpur is not the premises of the appellant but of U.K. Paints Overseas Ltd. is an erroneous distinction. No doubt the document has been recovered in a survey at the premises, was conducted along with the search and seizure action at the appellant’s residence. This document was recovered in the survey before the completion of the search at the residence premises and in conjunction with the search. The distinction made by the appellant is hypertechnical. To my mind, this constitutes evidence recovered in the course of the search. Having said that, it docs however look like the document in question is only an invoice which has already been recorded in the books of U.K. Paints Overseas Ltd. Nothing in the document per se suggests that the document was false or that the income pertains to Shri Kuldip Singh Dhingra and not to U.K. Paints Overseas Pvt. Ltd. Therefore this document cannot be said to be incriminating itself. The only other material relating to this addition is the statement of Sh. U.S. Bharana, MD of the lira Constructions group. This statement was recorded on an independent survey made on 02.12.2011. Nothing in this statement, as reproduced by the A.O. in the assessment order indicates that the services were rendered by Sh. Kuldip Singh Dhingra for which the received would as income in his own hands. The only grounds on which the addition*

*has been made in the appellant's hands is that Sh.H.S. Bharana had stated that he had requested assistance of the appellant; however, by itself this does not prove that the appellant provided consultancy services on his own account. No evidence is available to this effect also. The fact that a copy of this invoice was found in the office premises of the appellant is also not evidence against the appellant, since the premises is also the office of UK Paints Ltd, which is the holding company of UK Paints Overseas P. Ltd , and the appellant is the MD of both. The appellant is the MD of UK Paints Overseas Ltd., the company in whose books the transaction appears in the regular course of its business. The documents forwarded by the A.O. in the Remand Report, in the form of the Offer Document for the FCCB issue also does not mention the name of the appellant as a consultancy provider for the FCCB issue. Therefore, I am of the view that there is no evidence to pin this consultancy income on the appellant. Consequently, the addition made in the hands of the appellant has to be deleted.”*

7. We find that the Ld. CIT(A) had categorically stated that the invoice that was found during the course of survey in the office premises of the U.K. Paints (Overseas) Ltd. suggested that the services were rendered only by U. K. Paints Overseas Ltd. and not by the assessee herein. He had also stated that this invoice had already been accounted in the books of U.K. Paints (Overseas) Ltd. much prior to the date of search and survey. Hence this document cannot be said to be of incriminating nature to be used in the search assessment framed u/s 153A of the Act. We find that the Ld. CIT(A) had categorically stated that no services were rendered by the assessee to M/s ERA Construction Ltd. in order to earn consultancy income of Rs.2,27,51,586/-. These two crucial findings of the Ld. CIT(A) were not controverted by the Revenue before us. In any case,

we find that said sum of Rs.2,27,51,586/- had already been offered as consultancy income in the books of U.K. Paints (Overseas) Ltd. and there cannot be double taxation of the same in the hands of the assessee. We do not find any infirmity in the order of the Ld. CIT(A) and accordingly deem it fit not to interfere in the same. Accordingly, grounds raised by the Revenue are dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 23/01/2020.

**Sd/-**

**[AMIT SHUKLA]  
JUDICIAL MEMBER**

**Sd/-**

**[M. BALAGANESH]  
ACCOUNTANT MEMBER**

**Delhi;** Dated: 23/01/2020.

*Shekhar, Sr. P.S*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सहायक रजिस्ट्रार/Assistant Registrar,  
आयकर अपीलीय अधिकरण ,दिल्ली / ITAT, Delhi