

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A Nos.99 to 101/Ind/2016
Assessment Years: 2008-09 to 2010-11**

&

**ITANo.1044/Ind/2016
Assessment Year: 2012-13**

CIT(Central)-1, Indore	बनाम/ Vs.	Shri Pankaj Kalani 41-42, Sampat, Avenue Bicholi Mardana, Indore
(Revenue)		(Respondent)
P.A. No.ADUPK6103B		

**CO No.25/Ind/2017
(Arising out of ITANo.1044/Ind/2016)
Assessment Year: 2012-13**

Shri Pankaj Kalani 41-42, Sampat, Avenue Bicholi Mardana, Indore	बनाम/ Vs.	CIT(Central)-1, Indore
(Appellant)		(Respondent)
P.A. No.ADUPK6103B		

IT(SS)A Nos.104 to 106/Ind/2016
Assessment Years: 2008-09 to 2010-11

&

ITANo.1045/Ind/2016
Assessment Year: 2012-13

CIT(Central)-1, Indore	<u>बनाम/</u> Vs.	Shri Dipak Kalani 41-42, Sampat, Avenue Bicholi Mardana, Indore
(Revenue)		(Respondent)
P.A. No.ADUPK6102A		

CO No.26/Ind/2017
(Arising out of ITANo.1045/Ind/2016)
Assessment Year: 2012-13

Shri Dipak Kalani 41-42, Sampat, Avenue Bicholi Mardana, Indore	<u>बनाम/</u> Vs.	CIT(Central)-1, Indore
(Appellant)		(Respondent)
P.A. No.ADUPK6102A		

Appellant by	Shri S.N. Agrawal & Pankaj Mogra ARs
Revenue by	Shri S.S. Mantri, CIT-DR

ITANos.451 to 453/Ind/2018
Assessment Years: 2008-09 to 2010-11

DCIT-3(1), Indore	<u>बनाम/</u> Vs.	M/s. Kalani Industries P. Ltd. Indore
(Revenue)		(Respondent)
P.A. No.AAACK7074P		

**CO Nos.39 to 41/Ind/2019
(Arising out of ITANos.451 to 453/Ind/2018)
Assessment Years: 2008-09 to 2010-11**

M/s. Kalani Industries P. Ltd. Indore	<u>बनाम/</u> Vs.	DCIT-3(1), Indore
(Appellant)		(Respondent)
P.A. No. AAACK7074P		

**ITANo.399/Ind/2018
Assessment Year: 2010-11**

M/s. Kalani Industries P. Ltd. Indore	<u>बनाम/</u> Vs.	DCIT-3(1), Indore
(Appellant)		(Respondent)
P.A. No. AAACK7074P		

**ITANo.448/Ind/2018
Assessment Year: 2009-10**

DCIT-1(1), Indore	<u>बनाम/</u> Vs.	M/s. Flexituff International Ltd. 11, Kalani House, Tukoganj Main Road, Indore
(Revenue)		(Respondent)
P.A. No.AAACN5986H		

CO No.38/Ind/2019
(Arising out of ITANo.448/Ind/2018)
Assessment Year: 2009-10

M/s. Flexituff International Ltd. 11, Kalani House, Tukoganj Main Road, Indore (Appellant)	<u>बनाम/</u> Vs.	DCIT-3(1) Indore (Respondent)
P.A. No. AAACN5986H		

Appellant by	Shri Sumit Nema, & Shri Manjit Sachdeva ARs
Revenue by	Shri S.S. Mantri CIT-DR
Date of Hearing:	29.01.2020
Date of Pronouncement:	13.03.2020

आदेश / O R D E R

PER BENCH :

This bunch of 19 appeals by the assessee(s) & Revenue against the order of Commissioner of Income Tax(Appeals)-III, Indore dated 21.03.2016, & 25.07.2016, 05.02.2018 pertaining to assessment years 2008-09 to 2010-11 & 2012-13.

2. All these appeals were taken for hearing simultaneously being interconnected as same relate to a Kalani Group. The

Revenue has raised following grounds of appeal in IT(SS)ANos.99 & 104/Ind/2016(Pankaj Kalani & Dipak Kalani):

“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.1,67,63,500/- Rs.1,43,000/- & Rs.5,01,500/- on account of unexplained receipt on protective basis without appreciating the facts and evidences brought into light by the AO during the assessment proceedings.”

IT(SS)A Nos.100 & 105/Ind/16 (Pankaj Kalani & Dipak Kalani):

“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.3,47,41,500/- Rs.3,33,70,000/-,Rs.18,000/- Rs.12,50,000/- & Rs.12,71,500/- on account of unexplained receipt on protective basis without appreciating the facts and evidences brought into light by the AO during the assessment proceedings.”

IT(SS)A Nos.101 & 106/Ind/16 (Pankaj Kalani & Dipak Kalani):

“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.35,00,000/- Rs.15,75,000/-,Rs.3,75,79,500/- Rs.6,76,500/- & Rs.80,68,500/- on account of unexplained receipt on protective basis without appreciating the facts and evidences brought into light by the AO during the assessment proceedings.”

ITANo.1044 & 1045/Ind/2016 for Assessment Year 2012-13(Pankaj Kalani & Dipak Kalani):

1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in giving relief to the assessee by deleting the additions of Rs. 10,22,882/- by admitting additional documentary evidences without calling remand report.

2. *On the facts and in the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs. 27,19,608/- made as unexplained investment as assessee has failed to explain the source of jewellery.*

3. *On the facts and in the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.32,044/- made by the AO as unexplained investment in silver utensils without any documentary evidences given by the assessee.*

4. *On the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 1,96,58,000/- on account of unexplained receipt on protective basis without appreciating the facts and evidences brought into light by the AO during assessment proceedings.*

5. *On the facts and in the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs. 1,49,75,466/- by holding that the addition made on the basis of statement recorded under section 132(4) has no relevance.*

The appellant reserve the right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.

The assessee has raised following grounds of appeal in CO No.25 & 26/Ind/2017 (Pankaj Kalani & Dipak Kalani):

1.1] That on the facts and in the circumstances of the case the Ld CIT[A] erred in maintaining the additional income as declared and incorporated in the return of total income even when the correct amount of total income was less than what was actually offered by the assessee in his return of total income. It is settled position of law, the correct amount of total income has to be assessed in the hand of the assessee.

1.2] That on the facts and in the circumstances of the case the Ld. Assessing officer erred in maintaining the additional income as offered by the assessee to the tune of Rs 62,50,000/- whereas correct amount of income calculated comes to Rs 33,89,582/ - only.

2] The assessee reserves his right to add, alter and modify the ground of appeal.

The Revenue has raised following grounds of appeal in ITANos.451 to 453/Ind/2018 (Kalani Industries P. Ltd):

1. Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in deleting the addition of Rs. 3,48,16,000/- made on the basis on concrete material evidences seized during the course of the search inventorised in LPS-10 and LPS-11?

2. Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in ignoring the findings of the assessing officer in which it was discussed by DCIT-Central circle, Indore in his assessment order that the details appearing on the loose papers LPS-10 and LPS-11 exactly match with the details appearing on the Page 254 of LPS 2/14 taken from the file of A/3 seized during the search by Excise department on Signet group found and seized during the Income tax search at the office of M/s Signet Industries Ltd., containing details of transaction of Shri. Pankaj Kalani and prepared by Shri. Mukesh Sangla?

3. Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in not considering the fact that in LPS-11, the various transactions entered in different names were admitted as related to the assessee M/s Kalani Industries Private Limited by Shri. Deepak Kalani in his statement recorded on oath on 23/12/2011?

4. Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in not considering the finding of the assessing officer that the amount in Column No.3 of LPS-11 represents the amount received by Shri Deepak Kalani in Cash from M/s Kalani Industries Private Limited which are

the undisclosed income of the assessee?

5. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the facts that the names appearing in the seized document were belonged to the assessee and employee of assessee and also apparent from the statement recorded on 10.03.2016 from Shri Matakawala, the director of the assessee company.

6. The appellant craves leave to add to, deduct from or otherwise amend the above grounds of appeal.

The Assessee has raised following grounds of appeal in CONos.39 to 41/Ind/2019(Kalani Industries P. Ltd.):

1. That the Ld CIT (A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 147.

2. That the Ld CIT (AJ failed to appreciate that reassessment was initiated pursuant to search and seizure operation carried out at the premises of third parties wherein certain documents were found which allegedly belonged to the present appellant and thus under such facts reassessment could have be done only u/s 153C and not u/s 147 and thus the impugned assessment order was liable to be quashed as being without jurisdiction.

3. That the Ld CIT(A) failed to appreciate that section 153 C overrides section 147/148 and thus proceedings which are initiated pursuant to document seized under search & seizure operations in third persons premises can only be under section 153C and not under section 147/148

The Assessee has raised following grounds of appeal in ITANos.399/Ind/2019 (Kalani Industries P. Ltd.):

“01. That the learned Assessing Officer erred in reassess proceedings to the case under section 148 without applying his mind but on the basis of the direction of Joint Commissioner of Income Tax.

02. That the learned Assessing Officer reassessed the case under section 148 on the basis of change of opinion which is

evident from the fact the proceedings under section 148 were initiated after dropping the proceedings under section 153C of the Income Tax Act.

03.That the learned Assessing Officer without making any further enquiry initiated proceedings under section 148 just on the basis of the finding of DCIT(Central Circle) which is not according to the law.

04.That the order passed under section 148 is bad in law on the facts and circumstances of the case.

05.That the Learned Commissioner of Income Tax (Appeals) erred in confirming addition made of RS.1,11,92,098/- on account of client code modification and considering it as artificial loss.

06.That the appellant craves leave to add, alter and/ or delete any of the grounds of appeal.

The Revenue has raised following grounds of appeal in ITANos.448/Ind/2018 (M/s Flexituff International Ltd.):

1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT- (A) of justified in deleting disallowance of Rs. 6,94,83,000/- made by the AO on account of undisclosed Income of assessee.

2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) failed to appreciate and finding recorded by the Ld. AO pertaining to LPS- 11 where amount of transaction were recorded in the name of the assessee.

3. On the facts and in the circumstances of the case and in law, Ld. CIT(A) is justified in merely reproducing the content of the assessee's submission in his order without discussing the case either on merits or facts and ignoring the fact that Ld. AO during the assessment proceedings rebutted the contention of assessee in its entirety.

4. On the facts and in the circumstances of the case and in law, Ld. CIT(A) is justified in ignoring the facts that Ld. AO has established link between seized loose paper/incriminating documents found at the time of the search and established nexus between these seized documents and assessee and

therefore, addition was made at time of the assessment proceedings.

5. On the facts and in the circumstances of the case and in law, whether Ld.

CIT(A) is justified in ignoring the fact the addition was made on the basis proper verification of books of account and enquiry, after giving proper opportunities to the assessee.

6. On the facts and in the circumstances of the case and in law, whether the Ld. CIT - (A) is justifying in deleting disallowance made by the AO on account of claim of deduction u/s 10A(1A) of the Income Tax Act, 1961 of the assessee without appreciating the CBDT's Circular No. 07/2012 dated 16/07/2013 and provisions of Act.

The Assessee has raised following grounds of appeal in CONo.38/Ind/2019 (M/s Flexituff International Ltd.):

2. That the Ld CIT (A) erred both in law and on facts in upholding the validity of reassessment proceedings u/ s 147.

3. That the Ld CIT (AJ failed to appreciate that reassessment was initiated pursuant to search and seizure operation carried out at the premises of third parties wherein certain documents were found which allegedly belonged to the present appellant and thus under such facts reassessment could have be done only u/s 153C and not u/s 147 and thus the impugned assessment order was liable to be quashed as being without jurisdiction.

3. That the Ld CIT(A) failed to appreciate that section 153 C overrides section 147/148 and thus proceedings which are initiated pursuant to document seized under search & seizure operations in third persons premises can only be under section 153C and not under section 147/148

3. At the outset, Ld. CIT-DR submitted that Ld. CIT(A) while deciding the appeals relating to protective assessments

had concluded that additions should be made in the substantive proceedings initiated in case of M/s. Kalani Industries Pvt. Ltd. and Flexituff International Ltd. However, in appeals related to substantive proceedings the Ld. CIT(A) has not taken into consideration of the above fact in respect of appeals relating to protective assessments.

4. On the other hand, Ld. counsels for respective assesseees opposed the submission of the Ld. CIT-DR but could not controvert the same by bringing any contrary material on record, suggesting that the order of Ld. CIT(A) made in protective proceedings was brought to his notice.

5. We have heard both the parties and perused the orders of lower authorities. On consideration of submission of Ld. CIT-DR which could not be controverted by Ld. Representatives of concerned assesseees, that the divergent view have been taken by the appellate authorities below, we

are of the view that in the interest of justice and fair play the present impugned orders are required to be set aside with direction to Ld. CIT(A) to decide the appeals de novo in the light of aforesaid facts. Accordingly, the issues raised in the present appeals are remitted back to the file of the Ld. CIT(A) for deciding the same afresh as per law with direction that the ld. CIT(A) would decide the appeals relating to substantive proceedings at first and thereafter the appeals relating to protective assessments.

6. In the result appeals of the revenue & assessee are allowed for statistical purposes.

Order was pronounced in the open court on 13 .03.2020.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 13/03/2020

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore