

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

**Before Ms. Sushma Chowla, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 219/Del/2017 :Asstt. Year : 2008-09**

Saluja Construction Co. Ltd., Munirka Marg, Vasant Vihar, New Delhi-110057	Vs	ACIT, Central Circle-30, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCS3788H</b>		

**Assessee by : Sh. R. S. Ahuja, Adv.**

**Revenue by : Sh. H. K. Choudhary, CIT DR**

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<b>Date of Hearing: 28.01.2020</b>	<b>Date of Pronouncement: 20.04.2020</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-31, New Delhi dated 25.10.2016.

2. Following grounds have been raised by the assessee:

*"(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in:*

*i) Making addition u/s 68 of the act of Rs. 3,50,00,000/- being the advance received against sale of its agricultural land at Jaipur arbitrarily rejecting all the documents and evidences filed by the appellant company to discharge its onus of proving genuineness and credit worthiness of the persons from whom advance money has been received.*

*ii) Making addition u/s 68 of the act of Rs. 3,50,00,000/- although he has himself independently verified it by issuing summon for which M/s Instronics*

*Ltd. has duly submitted its reply during the course of assessment proceeding.*

*iii) Making addition u/s 68 of the act of Rs. 3,50,00,000/- although it has already been assessed u/s 143(3) of the act and no incriminating document relating to it was seized during the search proceeding or no evidence /facts come up as a result of search.*

*iv) Making addition u/s 68 of the act of Rs. 3,50,00,000/- although this advance was duly refunded in the subsequent period.*

*v) Passing the order which is erroneous and unsustainable in law as well as on merits and so the addition made therein.*

*vi) Passing the order which is bad in law and against the principals of natural justice."*

3. Brief facts of the case are that a search & seizure action u/s 132 of the Income Tax Act, 1961 was conducted on 12.01.2012 and 11.09.2013 at his /her / its residential / business /office premises at 30, Basant Lok Commercial Community Centre, Vasant Vihar, New Delhi-110057. The search on the assessee was made along with Saluja group of cases which were also covered in the said search. During the course of search, the assessee has disclosed Rs.13.95 crores as additional income for the assessment year 2012-13

4. The relevant history pertaining to the case of the assessee for the instant assessment year is as under:

1. 30.09.2008 – Date of filing of return
2. 23.12.2010 – Date of completion of assessment u/s 143(3)
3. 12.01.2012 – Date of search
4. 11.09.2013 – Date of another search.

5. The provisions of the Income Tax Act u/s 153A of the Income Tax Act, 1961 provides for assessment of the assessee for a previous period of 6 assessment years from the date of search.

6. During the assessment u/s 153A, the Assessing Officer issued letter to the assessee on 30.12.2015 enquiring about the unsecured loans received during the assessment year 2008-09 and disclosed in the balance sheet which is a part of books of accounts produced before him. After due enquiries, the AO made addition of unsecured loan received from one party namely, Aerodyne Electronics Pvt. Ltd. treating it as bogus and liable to be taxed u/s 68 of the Act.

7. The moot jurisdictional issue before us to be adjudicated is whether such addition which is a part of books of accounts can be added to the income of the u/s 68 of the Act in the absence of any incriminating material found during the search especially when the assessment u/s 143(3) of the Act has already been completed in the regular course of proceedings under Income Tax Act even before the date of search.

8. The sum and substance of the provisions of the Section 153A are as under:

*"i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for*

*such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other: words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment: under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.”*

9. From the above, it can be concluded that, once a search takes place u/s 132 of the Act, the assessee is obliged to file returns for the six assessment years immediately proceeding the previous year relevant to the assessment year in which the search took place. In so far as the completed assessment as on the date of the search are concerned, the same are to be repeated as increased by additions, only if, based on incriminating material found during the course of search. In other words, if no incriminating material is found during the course of search, then, the amount of total income determined under the earlier completed assessments is to be adopted in a fresh assessments u/s 153A without making any further addition.

10. Juxtaposing these principles to the facts of the instant case, we find that the case of the assessee doesn't fall under the category of abated assessment. It falls under the category of completed assessments. In the completed assessment, it is an admitted position that if no incriminating material was found during the search, no addition is called for. In the instant case too, no incriminating material was found with regard to the addition made by the Assessing Officer.

11. Even, the Id. CIT (A), the Id. CIT DR failed to establish that the additions made in the case of the assessee were based on any incriminating material found in the course of search u/s 132 of the Act. On perusal of the assessment order and on

examination of the order of the Id. CIT (A), we find that the addition made is not based on any incriminating material.

12. Since, the addition was not based on incriminating material and the fact that assessment has not been abated, these twin conditions go against the order of the revenue as declared by the judicial pronouncement of the Hon'ble Jurisdictional High Court in the case of CIT Vs Kabul Chawala 380 ITR 057 and PCIT Vs Meeta Gutgutia 395 ITR 526 (Del.). Hence the addition is liable to be deleted.

13. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 20/04/2020.

Sd/-

**(Sushma Chowla)**  
**Vice President**

**Dated: 20/04/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**