

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

**BEFORE, SHRI G.S. PANNU, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.5216/Del/2015  
(ASSESSMENT YEAR-2010-11)**

Dy. CIT, Central Circle-29, New Delhi.	Vs.	M/s. S.R. Credits Pvt. Ltd. 4828-29/24, 1 <sup>st</sup> Floor, Prahlad Lane, Ansari Road, Daryaganj, Delhi  PAN -AAAPK 4569Q
<b>(Appellant)</b>		<b>(Respondent)</b>

**Cross Objection No.86/Del/ 2019  
(Arising out of ITA No.5216/Del/2015)  
(ASSESSMENT YEAR-2010-11)**

M/s. S.R. Credits Pvt. Ltd. 4828-29/24, 1 <sup>st</sup> Floor, Prahlad Lane, Ansari Road, Daryaganj, Delhi  PAN -AAAPK 4569Q	Vs.	Dy. CIT, Central Circle-29, New Delhi
<b>(Cross Objector)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. J.K. Mishra, CIT- DR</b>
Respondent by	<b>Sh. R.S.Singhvi &amp; Sh. Satyajeet Goyal, CAs</b>
Date of Hearing	<b>19.02.2020</b>
Date of Pronouncement	<b>26 .05.2020</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

This appeal is preferred by the Department against order dated 08.05.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-30,

New Delhi {CIT (A)} and pertains to Assessment Year: 2010-11. The Cross Objection is preferred by the assessee.

2.0 The brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was carried out on 21.01.2011 in the Dharampal Satyapal Group of cases. This Group is engaged in manufacturing and trading of Chewing Tobacco and premium *pan masala* besides being involved in Food Products, Packing, Hospitality, Rubber, Steel and Education businesses. The main objects of this assessee company are sale and purchase of shares/mutual funds/other securities and finance business. During the year, under consideration, the return had been filed declaring a income of Rs.13,36,22,526/- which had been set off against the business loss brought forward. The company, however, paid tax under 115JB of the Act at book profits of Rs.13,25,59,160/-

2.1 In response to the statutory notice issued u/s 153A of the Act, the assessee company filed return of income declaring Nil taxable income after set off of the brought forward losses. The assessment was completed u/s 153A of the Act at an income of Rs.5,60,11,176/- after allowing set of

brought forward losses of Rs.17,58,85,403/-. This income was computed after making the following disallowances:

- (i) disallowance on account of legal and professional expenses - Rs.2,78,43,961/-.
- (ii) addition on account of losses on account of shares – Rs.7,03,15,125/-
- (iii) disallowance u/s 14A - Rs.1,14,967/-.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority who was pleased to delete the addition of Rs.2,78,43,961/- made on account of disallowance of legal and professional expenses. The Ld. CIT (A) also allowed the losses of Rs.7,03,15,125/- on account of sale of shares of M/s Blue Wings Tours & Travels Pvt. Ltd. and also held that these transactions were genuine. The Ld. CIT (A) also held that the transactions of sale of shares of M/s Costal Power Projects (P) Ltd. were real transactions relating to the assessee company.

2.3 The Department is now in appeal before this Tribunal challenging the adjudication by the Ld. CIT (A). The following grounds have been raised by the Department:

*“1. Whether on the facts & circumstances of the case, the Ld. CIT(A) has erred in law & on facts in deleting the addition of*

*Rs.2,78,43,961/- made by AO on account of disallowances of legal and professional expenses.*

*2. Whether on the facts & circumstances of the case, the Ld. CIT(A) has erred in law & on facts in allowing the losses of Rs. 7,03,15,125/- on account of sale of shares of M/s Blue Wing Tours & Travels (P) Ltd.*

*3. Whether on the facts & circumstances of the case, the Ld. CIT (A) erred in law & on facts by holding that transaction of sale of shares of M/s Costal Power Projects (P) Ltd is a real transaction and relates to the assessee company.*

*4. Whether on the facts & circumstances of the case, the Ld. CIT (A) has erred in law & on facts by accepting the transaction of sale of shares of M/s Blue Wing Tours & Travels (P) Ltd. as a genuine transaction without appreciating the facts that has brought on record by the AO during assessment proceedings.*

*5. The order of the CIT (A) is erroneous and is not tenable on facts and in law.*

*6. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2.4 The assessee, in its Cross Objection, has primary contended that the impugned assessment was made without any incriminating material found during the course of search. The following grounds have been raised in the memorandum of cross objections.

*“1(i) That on facts and circumstances of the case, the impugned disallowance of legal and professional expenses to the extent of Rs. 2,78,43,961/- and loss on sale of shares of Rs. 7,03,15,125/-*

*being not based on any incriminating found during course of search on the assessee, the same are illegal and without jurisdiction u/s 153A of the Act.*

*(ii) That the whole basis of disallowance being based on third party document and there being no case of any incriminating document found from the premises of the assessee, the impugned disallowances could not have been made in proceedings u/s 153A of the Act.*

*(iii) That the assessing officer having failed to comply with provisions of section 153C and in absence of recording of requisite satisfaction with regard to document found during search on third party, the impugned disallowances are not sustainable u/s 153A of the Act.*

*2. That in any case, in absence of issuance and service of notice u/s 143(2) of the Act, the entire proceedings u/s 153A are illegal and in disregard to scheme of the act and settled legal principle.”*

3.0 At the outset, the Ld. Authorized Representative submitted that the Cross Objection filed by the assessee challenged the very foundation of the assessment and prayed that the Cross Objection of the assessee must be heard first because if the same is decided in assessee's favour, the impugned assessment would not stand.

3.1 The Ld. CIT-DR had no objection to this proposal of the assessee.

4.0 The Ld. AR submitted that the impugned assessment was framed without having any incriminating material being found and seized in the case of the assessee. He drew our attention to page -7 of the Paper Book filed by the assessee, which is copy of the reply dated 06.01.2020 received by the assessee in response to the application moved under the Right to Information Act, 2005 by the assessee. The Ld. AR submitted that in response to the details required under Serial No. a.c. in the said reply wherein the details were required regarding any incriminating material relating to or belonging to the assessee found from the premises of the assessee during search u/s 132 of the Act, the response against this query is left blank. He also drew our attention to the reply to assessee's application under Right to Information Act, 2005 wherein the assessee had requested copy of documents found and seized from the premises of the Dharampal Satyapal Group which were considered for the purposes of making disallowances in the assessment order. It was submitted that, as per the reply received, these documents were contained in Pages 1 to 158 of Annexure AA-1 seized from A-85, Sector-2, Noida, being offices of M/s Dharampal Satyapal Ltd. and Pages 1 to 30 of Annexure AA-10 seized from the same address. It was submitted that, thus, it was apparent that

third party documents were used for making the impugned assessment. He also drew our attention to the fact that the impugned assessment had been framed u/s 153A of the Act and not u/s 153C of the Act. It was submitted that, thus, the impugned assessment was made on alleged incriminating material found at the third party premises. Reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of *Pr. CIT vs. Meeta Gutgutia reported in 395 ITR 526 (Del.)* for the proposition that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search *qua* each such earlier assessment year. It was also submitted that the Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court in the case of *Pr.CIT vs. Meeta Gutgutia reported in 257 Taxman 441 (SC)*. Reliance was also placed on the order of ITAT Delhi Bench in the case of *Trilok Chand Choudhary vs. ACIT in ITA No.5870/Del/2017* and another case of *DCIT vs. Shivali Mahajan in ITA No.5585/Del/2015*.

4.1 The Ld. Authorized Representative submitted that the search was conducted only at 4828/24, Prahlad Lane, Ansari Road, Daryaganj, New

Delhi whereas the documents were found at A-85, Sec.2, Noida. He also drew our attention to the fact that even in the *Panchnama*, name of the assessee did not appear. He drew our attention to copy of the *Panchnama* placed at page-9 of the Paper Book, it was submitted that in view of the settled judicial precedents, the impugned assessment deserved to be quashed.

5.0 In response, the Ld. CIT-DR vehemently supported the assessment framed u/s 153A of the Act and said that the warrant contained the name of the assessee and, therefore, the assessment framed was correct in law.

6.0 We have heard the rival submissions and have also perused the material on record. We have also perused copy of the *Panchnama* through which the documents in dispute was seized. On perusal of the *Panchnama*, we find that the *Panchnama* is not containing the name of the assessee. Therefore, it is evident that the material relied upon for making the impugned addition was not found from the premises of the assessee. We also note that during relevant period, for using any material found from the premises of the third party during the course of the search in the assessment proceedings of the assessee, the Assessing Officer of the third

party was required to record satisfaction as the material belonging to the assessee in terms of section 153C of the Act and was then required to proceed as per the provisions of section 153C of the Act. In the instant case, it is evident that addition in dispute has been made in the assessment completed under section 153A of the Act. The Act has provided separate provisions for making assessments in case of material found in the course of the search from the premises of the assessee as well as the material found in the course of search at the premises of the third party. The Assessing Officer is required to follow the procedure laid down in the Act for making the assessment and he cannot devise his own procedure. In our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party, then provisions of section 153C of the Act would be applicable and have to be adhered to.

6.1.1 In the case of Shivani Mahajan (supra), identical question was raised before the Tribunal as under:

*“9. We have carefully considered the arguments of both the sides and perused the material placed before us. After considering the facts of the case and the rival submissions, we find that in these appeals, following two questions arise for our consideration:*

- (i) *Whether any material found in the search of any other person than the assessee in appeal can be considered in the assessment under 153A of the assessee.*

6.1.2 The Tribunal after considering arguments of the parties held as under:

*“14. From a reading of the above decisions of Hon'ble Jurisdictional High Court, it is evident that completed assessment can be interfered with by the Assessing Officer on the basis of any incriminating material unearthed during the course of search. If in relation to any assessment year no incriminating material is found, no addition or disallowance can be made in relation to that year in exercise of power under Section 153 of the Act. Obviously, the reference to the incriminating material in the above decisions of Hon'ble Jurisdictional High Court is in regard to incriminating material found as a result of search of the assessee's premises and not of any other assessee. The legislature has provided Section 153C by invoking the same the Revenue can utilize the incriminating material found in the case of search of any other person to the different assessee. ....*

*15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course*

*of search of the assessee only can be utilized and not the material found in the search of any other person.”*

6.2 Further, the Hon'ble Delhi High Court in the case of *Pr. CIT vs. Meeta Gutgutia reported in 395 ITR 526 (Del.)* has held that the invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search *qua* each such earlier assessment year. The Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court in the case of *Pr.CIT vs. Meeta Gutgutia reported in 257 Taxman 441 (SC)*. Apparently, in the present case, no incriminating material was found *qua* the assessment year in question. Therefore, the assessment framed by the Assessing Officer in violation of the procedure provided in the Act is bad in law and void *ab initio* and cannot be sustained. Therefore, placing reliance on the above mentioned judicial precedents, we quash the impugned assessment order. Accordingly, the Cross Objection of the assessee stands allowed.

6.3 Since, we have allowed the Cross Objection of the assessee and have quashed the assessment, the appeal of the Department does not survive and it is dismissed as *in fructuous*.

7.0 In the final result, the Cross Objection of the assessee stands allowed whereas the appeal of the Department stands dismissed.

Order pronounced on 26/05/2020.

Sd/-  
**(G.S.PANNU)**  
**VICE PRESIDENT**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated:26/05/2020

*PK/Ps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI