

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

Before Sh. Amit Shukla, Judicial Member

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

(E-Court Module)

ITA No. 926/Del/2019 : Asstt. Year : 2012-13

Indogreen International, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	DCIT, Central Circle, Noida-201301
(APPELLANT)		(RESPONDENT)
PAN No. AACFI4218C		

**Assessee by : Sh. Neel Kanth Khandelwal, Adv.
Revenue by : Ms. Sunita Singh, CIT DR**

Date of Hearing: 02.09.2020	Date of Pronouncement: 15.10.2020
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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)-IV, Kanpur dated 30.11.2018.

2. Following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and further erred in passing the impugned assessment order.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A, is bad in law and against the facts and circumstances of the case and the same

is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 1,50,00,000/- on account of unsecured loan received from M/s Cindy Goods & Supply (P) Ltd. by treating it as alleged income of assessee u/s 68 of the Act, more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without providing the entire adverse material on record and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,50,00,000/- on account of unsecured loan u/s 68, is bad in law and against the facts and circumstances of the case.

5. That in any case and in any view of the matter, addition made in the impugned assessment order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order passed by Ld. AO without obtaining the valid approval u/s 153D as per law."

3. A search and seizure operation u/s 132 of the Act was conducted on 26.08.2015 in the case of Nimbus group of cases, a warrant of authorization on the assessee and incriminating documents relating to the assessee were found & seized. Accordingly, notices u/s 153A of the Act were issued on 19.12.2017. In response, the assessee filed its return declaring

income of Rs. (-) 4,57,98,957/-. Later on, notices u/s 143(2) & 142(1) were also issued and the A.O. completed the assessment by making addition of Rs.1,50,00,000/- on account of unexplained unsecured loans having received from one entity namely, M/s Cindy Goods & Supply Pvt. Ltd. The total amount received was Rs.3,50,00,000/- out of which the AO made addition of Rs.1,50,00,000/- on the grounds that the assessee could prove the sources of Rs.2,00,00,000/- from M/s Nimbus Multi Commodity Brokers Ltd.

4. Before the Id. CIT (A), the assessee took a plea that the addition has been made devoid of any incriminating material during the search which is an essential requirement for assessment u/s 153A. The Id. CIT (A) held that a number of judgments have passed by various courts contrary to the plea made by the assessee and hence the addition has been confirmed.

5. During the arguments before us, the assessee relied on the following case laws:

- *CIT Vs. Kabul Chawla [2016] 380 ITR 573 (Delhi)*
- *All Cargo Global Logistics Limited Vs. DCIT [2022] 28 ITR 106*
- *ACIT, Central Circle-16, New Delhi vs. Vinsta Chaurasia, ITA No.5957/DEL/2015 dated 05.20.2018*
- *ACIT, Central Circle-4, New Delhi vs. M/s Moolchand Steels Pvt. Ltd., ITA No. 2544/DEL/2015 dated 20.10.2018*

6. On the other hand, the revenue relied on the following cases laws:

- *CIT Vs Raj Kumar Arora (2014) 367 ITR 517 (All.)*

- *CIT Vs Kesarwani Narda Bhandar Sahson Aild. ITA No. 270 of 2014 (All.)*
- *CIT Vs St. Francis Clay Décor Tiles 385 ITR 624 (Ker.)*
- *CIT Vs Anil Kumar Bhatia 352 ITR 493 (Del.)*
- *Filatex India Ltd. Vs CIT 49 taxmann.com 465 (Del.)*

7. We have considered the issue of validity of addition in the absence of incriminating material. As per the judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Kabul Chawla 61 Taxman 412 wherein it was held that where no incriminating material were found during the search & seizure operation additions made u/s 153A are not legally valid. Similar ratio has been confirmed by the Hon'ble Supreme Court in the case of Pr. CIT Vs. Meeta Gutgutia [2018] 96 taxmann.com 468 and also in the case Pr. CIT Vs. Kurele Paper Mills [2016] 380 ITR 571 (Delhi).

8. The date of search in the present case was on 26.08.2015 and the assessment for the assessment year 2012-13 has been completed u/s 143(3) and the amount received from M/s Cindy Goods & Supply Pvt. Ltd. of Rs.3,50,00,000/-, thus the assessment in question has to be treated as a completed assessment not as an assessment kept in abeyance which necessitates the requirement of incriminating material to make any addition u/s 153A. Further, we also find from the record that the addition made by the revenue in the case of Nimbus India Ltd. pertaining to the amount received from M/s Cindy Goods & Supply Pvt. Ltd. has been deleted vide order dated 10.02.2020 by the Co-ordinate Bench of ITAT in ITA Nos. 929 & 930/Del/2019. During the adjudication process, the statement of Sh. Bipin Kumar, Director of M/s Cindy Goods & Supply Pvt.

Ltd. has been duly considered wherein he has admitted to have invested in the Nimbus India Ltd.

9. We have also gone through the returned income of M/s Cindy Goods & Supply Pvt. Ltd. which stands at Rs.75,73,804/- for the current year and Rs.1,40,89,252/- for the earlier year which also gives a credence to rebut the observation of Id. CIT (A) that M/s Cindy Goods & Supply Pvt. Ltd. is a paper company.

10. Hence, keeping in view the fact that no incriminating materials have been found during the search which led to the addition, the fact that the lender company cannot be treated as a paper company owing to the returned income mentioned above, keeping in view the order of the Co-ordinate Bench of the Tribunal regarding the treatment of amounts received from M/s Cindy Goods & Supply Pvt. Ltd. in the case of Nimbus India Ltd. which was also assessed u/s 153A and since the sources have been substantiated, we hereby hold that no addition is warranted in the case of the assessee.

11. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 15/10/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 15/10/2020

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