

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As. No.3814 & 3815/DEL/2017  
Assessment Years: 2005-2006 & 2006-07

Asst. Commissioner of Income Tax, Central Circle-31, New Delhi.	vs.	M/s. Pernod Ricard India Pvt. Ltd., 104, Ashoka Estate, Barakhamba Road, New Delhi.
TAN/PAN: AAACS 4781P (Appellant)		(Respondent)

Appellant by:	Shri Satpal Gulati, CIT-DR		
Respondent by:	Shri Deepak Chopra, Adv.		
Date of hearing:	23	11	2020
Date of pronouncement:	27	11	2020

**ORDER**

**PER AMIT SHUKLA, JM**

The aforesaid appeals have been filed by the Revenue against the separate impugned order of even date 16.12.2016, passed by Ld. Commissioner of Income Tax (Appeals)-XLIV, New Delhi for the quantum of assessment passed u/s.153A for the Assessment Years 2005-06 and 2006-07. In both the appeals, following grounds of appeal have been raised:-

“1. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in law and on facts in directing the Assessing Officer to delete the disallowance of Rs.9,34,68,532/- made on account of Brand expenses.

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directed the Assessing Officer to delete the disallowance of Rs.131,54,537/- made on account of Brand registration expenses.*

*3. That the grounds of appeal are without prejudice to each other.*

*4. That the appellant craves leave to add, amend, alter to forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

2. At the outset, ld. counsel for the assessee, Mr. Deepak Chopra submitted that in the Cross Appeals filed by the assessee in ITAs No.3847 & 3848/Del/2017 for the same Assessment Year, the Tribunal has quashed the assessment passed u/s.153A on the ground that none of the additions made by the Assessing Officer are based on seized material since these are unabated assessment, therefore, in view of the judgments of Hon’ble Jurisdictional High Court in the case of **CIT vs. Kabul Chawla** reported in **388 ITR 573 (Del)** and **Pr.CIT vs. Meeta Gutgutia** reported in **395 ITR 526 (Del)** and the decision of Hon’ble Supreme Court in the case of CIT vs. Sinhagad Technical Education Society in Civil Appeal No.11081/2017 order dated 29.08.2017, none of the additions made by the Assessing Officer can be sustained.

3. Ld. DR also admitted that in view of the decision of the Tribunal the grounds of appeal raised by the Revenue have become infructuous.

4. After considering the aforesaid submissions and on perusal of the impugned orders, we find that here in this case search and seizure action u/s.132(1) was conducted on 15.02.2011 and accordingly proceedings u/s.153A has been initiated. Admittedly, the additions made by the Assessing Officer are not based on any incriminating or seized material found during the course of search. Ld. CIT(A) had dismissed the said plea of the assessee following the decision of Hon'ble Delhi High Court in the case of **CIT vs. Anil Kumar Bhatia** reported in **352 ITR 433 (Del)**. However, this Tribunal in assessee's appeals for the same assessment year has held that none of the additions made by the Assessing Officer are based on seized material and have allowed the grounds raised by the assessee, challenging the validity of initiation of proceedings u/s.153A by following the judgment of Hon'ble Supreme Court in the case of **CIT vs. Sinhadgad Technical Education Society (supra)** and Hon'ble Jurisdictional High Court judgment in the case of **Kabul Chawla and Meeta Gutgutia (supra)**. The relevant observations of the Tribunal are as under:

“10. ....

*We find the issue is now settled in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of*

*CIT vs. Sinhgad Technical Education Society in Civil Appeal No. 11081/2017 order dated 29.08.2017, wherein the Hon'ble Supreme Court has observed that the seized material must have a co-relation with the assessment year to which they pertain to and therefore invoking jurisdiction u/s. 153C for an assessment year that had no relation to the seized material is bad in law. The Hon'ble Delhi High Court in a plethora of recent decisions has held that completed assessments cannot be re-opened by issue of notice u/s 153A in absence of any incriminating material found during the course of search. Since in the instant case, admittedly no incriminating material relating to these two years were found during the course of search, therefore, in view of the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra), Meeta Gutgutia (supra) and the decision of Hon'ble Supreme Court in the case of Sinhgad Technical Education Society (supra), we hold that the invoking of jurisdiction u/s 153A of the I.T. Act by the Assessing Officer is unsustainable in law. We, therefore, set-aside the order of the CIT(A) on this issue and the grounds raised by the assessee challenging the validity of assessments proceedings initiated u/s 153A are allowed.*

*11. Since the assessee succeeds on this preliminary legal issue, therefore, the other grounds become academic in nature and, therefore, are not being adjudicated.”*

5. In view of the aforesaid findings and observation of the Tribunal, the grounds raised by the Revenue are dismissed as infructuous, because the additions challenged by the Revenue are not based on any seized material found during the course of search. Accordingly, the Revenue's appeals are dismissed.

6. In the result, both the appeals of the Revenue are dismissed.

**Order pronounced in the open Court on 27<sup>th</sup> November, 2020**

Sd/-

**[PRASHANT MAHARISHI]  
[ACCOUNTANT MEMBER]**

DATED: 27/11/2020

PKK:

Sd/-

**[AMIT SHUKLA]  
JUDICIAL MEMBER**