

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 2170/DEL/2017
[Assessment Year: 2008-09]
&
ITA No. 2171/DEL/2017
[Assessment Year: 2010-11]**

M/s Shahi Exports Pvt Ltd
F -88, Okhla Industrial Area
Phase - 1, New Delhi

Vs.

The Pr. C.I.T
Circle- 1
New Delhi

PAN: AADCD 8448 F

[Appellant]

[Respondent]

Date of Hearing : 18.03.2021

Date of Pronouncement : 24.03.2021

Assessee by : Shri M.P. Rastogi, Adv
Shri Deepal Malik, Adv

Revenue by : Shri Amitabh Kumar Sinha, CIT- DR

ORDER**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

The above captioned two appeals by the assessee are preferred against two separate orders dated 21.03.2017 framed u/s 263 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] of the Commissioner of Income Tax [Appeals], Central -1, New Delhi pertaining to Assessment Years 2008-09 and 2010-11 respectively. Since both these appeals involve common issues, they are being disposed off by this common order for the sake of convenience and brevity.

2. In both the appeals, the assessee has raised the following additional ground of appeal in addition to the grounds taken in Form No. 36:

"That the Pr. CIT has no jurisdiction u/ s 263 of the Act to review and revise an order passed by the Assessing Officer u/s 153C/153A of the Act dated 30.03.2015 which itself was illegal and bad in law due to invalid assumption of jurisdiction as contemplated u/s 153C/ 153A of the Act."

3. Since the additional ground goes to the root of the matter and requires no verification of any fact, the same is admitted for adjudication in light of the ratio laid down by the Hon'ble Supreme Court in the case of NTPC 229 ITR 383.

4. Since the additional ground goes to the root of the matter, the same is taken up first for adjudication.

5. Representatives of both the sides were heard at length. Case records carefully perused.

6. Assessment order dated 30.03.2015 for A.Y 2008-09 was framed u/s 153A r.w.s 153C and 143(3) of the Act for A.Y 2008-09 and 2010-11 separately. Assessment for A.Y 2008-09 was previously framed u/s 143(3) of the Act and assessed income was computed as under:

M/s Shahi Exports Pvt. Ltd., 3262, Ranjeet Nagar, New Delhi-110003, PAN no. AAJCS1175L, Asstt. Yr. 2008-09

In view of the above, income of the assessee is recomputed as under:-

		Amt. (In Rs.)
BUSINESS INCOME as per computation		8,14,75,686
Add: Clubs Membership & Subscription-as per para 1	10,30,637	
Repair & Maintenance as per para 2	11,26,923	
Fine & Penalty as per para 3	32,715	21,90,275
Total Business Income		8,36,65,961
CAPITAL GAIN		0
INCOME FROM OTHER SOURCES:		1,17,97,777
Gross Total Income.		9,54,63,738
Less: Deduction u/s 80JJAA	8780426	
FY(2006-07)-(FBD-772908), BANG-35775427)	15043539	
FY(2007-08)-(FBD-8067762.41), BANG-40964274)	14709613	
Deduction u/s 80G	4151320	4,26,84,898
Total Income		5,27,78,840
Rounded off		5,27,78,840

Assessed at Rs. 5,27,78,840/-. Issue necessary forms. Charge Interest u/s 234B & C of the Income Tax Act, 1961. Penalty proceedings u/s 271(1)(c) are initiated as per I.T. Act 1961



Copy to Assessee

(R.R. PRASAD)

Addl. Commissioner of Income Tax,
Range-8, New Delhi
(R. R. PRASAD)
Addl. Commissioner of Income Tax
Range-8, New Delhi
(R.R. PRASAD)

Addl. CIT, Range-8, New Delhi

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[Signature]
B. Com. L. L. &
Tax Laws Consultant
32, Kucha Chaudhry,
Opp. S.B.I. Ch. Chowk, Delhi

Page 5/5

7. Assessment for A.Y 2010-11 was previously framed u/s 143(3) of the Act and assessed income was computed as under:

(95)
M/s Shahi Exports Pvt Ltd
Assessment Year 2010-2011

B/f Losses of M/s Sarla Fabrics Pvt Ltd, allowed to be set off in the current year, consequent to the merger approval of the Hon'ble High Court of Delhi:-

Unabsorbed depreciation for AY 2004-05 From business income	:	Rs.(-)6,23,68,996/-
Unabsorbed depreciation for AY 2005-06 From business income	:	Rs.(-)5,36,31,568/-
Unabsorbed depreciation for AY 2007-08 From business income	:	Rs.(-)1,99,18,201/-
Unabsorbed depreciation for AY 2008-09 From business income	:	Rs.(-)5,05,16,927/-
Unabsorbed depreciation for AY 2009-10 From business income	:	Rs.(-)3,53,281/-
Total	:	Rs.(-) 18,67,88,973/-

GROSS TOTAL INCOME:	<u>Rs. 44,68,84,236/-</u>
Less : Deductions (under Chapter VI-A)	
Donation (80G)(100%)	: 1,00,00,000/-
Donation (80G)(50%)	: 68,29,750/-
U/s 80-IA	: 5,13,45,183/-
U/s 80JJAA	: 5,22,35,747/-
Total	: Rs.12,04,10,680/-
	<u>Rs.12,04,10,680/-</u>

TOTAL INCOME :-	Rs. 32,64,73,556/-
	Rounded off to Rs.32,64,73,560/-

8. Assessed at total income of Rs.32,64,73,560/-. Issue demand notice, Challan, ITNS 150 and necessary forms. Give credit of prepaid taxes. Charge interest under Sec. 234 B, 234 C and 234D of the I.T. Act, 1961, as applicable. Penalty proceedings u/s 271(1) (c) of the I.T. Act, 1961 read with section 274 are being initiated separately for furnishing inaccurate particulars of income and for concealment of particulars of income. The assessee has

Page 7 of 8

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M/s Shahi Exports Pvt Ltd
Assessment Year 2010-2011

6.6 Therefore, an addition of Rs. 85,400/- is being made to the income of the assessee, in pursuance of the provisions of section 14A read with Rule 8D of Income-tax Rules, 1962.

(Addition:Rs.85,400/-)

7. In view of the above discussion and after careful examination of the information/documents filed by the assessee and discussion with the AR, the income of the assessee is computed as under :-

Income from Business & Profession:-

Profit as per P&L account : Rs.53,02,83,563/-

Add:-

Depreciation as per P & L A/c	:	36,45,47,221/-
Loss on sale of asset	:	8,89,791/-
Donation	:	2,40,88,603/-
Disallowed u/s 37	:	2,22,876/-
Disallowed u/s 40	:	3,51,360/-
Disallowed u/s 40A	:	5,84,78,402/-
Disallowed u/s 43B	:	7,76,63,586/-

Less:-

Gratuity paid	:	1,63,18,841/-
Profit on sale of share	:	7,09,209/-
Interest	:	11,99,332/-
Allowed u/s 43B	:	2,95,53,341/-
Depreciation u/s 32	:	37,86,83,750/-

Total : Rs.63,00,60,929/-

Addition :

i) As discussed in Para 4 above	:	Rs.16,18,339/-
ii) As discussed in Para 5 above	:	Rs. 7,09,209/-
iii) As discussed in Para 6 above	:	Rs. 85,400/-

Income From Other Sources:

Interest from other parties : Rs.11,99,332/-

Rs. 11,99,332/-

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Delhi

Page 6 of 8

9. A search and seizure action u/s 132 of the Act was conducted on Shahi Exports Group of cases on 16.01.2013 and in response to notice u/s 153A and 153C of the Act, returns of income were filed. Assessment was completed u/s 153A r.w.s 153C and 143(3) of the Act for A.Ys 2008-09 and 2010-11 by making the following observations:

A.Y 2008-09

"Perusal of the submissions filed by the Assessee and information available in the record shows that the case of the Assessee for Assessment Year under consideration was taken up u/s[^] 143(3). The Addl. Commissioner of Income Tax, Range-8, New Delhi vide Order dated 20.12.2010 has assessed the income of the Assessee at Rs. 5,27,78,840/-."

A.Y 2010-11

"Perusal of the submissions filed by the Assessee and information available in the record shows that the case of the Assessee for Assessment Year under consideration was taken up u/s[^] 143(3). The Addl. Commissioner of Income Tax, Range-8, New Delhi vide Order dated 20.12.2010 has assessed the income of the Assessee at Rs. 32,64,73,560/-."

10. The Id. PCIT invoked the provisions of section 263 of the Act and set aside the assessment order dated 30.03.2015 holding that because after the merger of M/s Sarla Fabrics Pvt Ltd with M/s Shahi Exports Pvt Ltd, whatever additions were made in the hands of M/s Sarla Fabrics Pvt Ltd were to be assessed in the hands of M/s Shahi Exports Pvt Ltd and accordingly, order of M/s Shahi Exports Pvt Ltd, as passed by the Assessing Officer u/s 153C of the Act, amounts to erroneous and prejudicial to the interest of the Revenue.

11. As per the facts mentioned hereinabove, additions made u/s 143(3) of the Act were repeated in the assessment order framed/s 153A r.w.s 153C of the Act. This means that no additions had any link with any incriminating material found at the time of search as assessed income u/s 143(3) of the Act is the assessed income u/s 153C of the Act.

12. The Hon'ble High Court of Delhi in the case of Kabul Chawla in 380 ITR 573 has held that *“if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment under Section 153A and 153C of the Act.”*

13. The Hon'ble Supreme Court in the case of Singhad Technical Educational Society 397 ITR 344 has also held that in the absence of any incriminating material, no jurisdiction can be assumed by the Assessing Officer u/s 153C of the Act.

14. In light of the above binding decisions, assessment framed u/s 153C of the Act in A.Ys 2008-09 and 2010-11 are without jurisdiction and, therefore, bad in law and deserve to be quashed as null and void.

15. The Supreme Court in the case of Kiran Singh & Others vs Chaman Paswan & ors [1955] 1 SCR 117 has held as under:

" It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. "

16. In light of the aforesaid ratio laid down by the Hon'ble Supreme Court, we are of the considered opinion that the assumption of jurisdiction u/s 263 of the Act in respect of an assessment which is non-est is also bad in law as a non-est order cannot be erroneous and prejudicial to the interest of the Revenue. An order framed u/s 263 of the Act for both the A.Ys 2008-09 and 2010-11 are accordingly quashed on the principle of Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation, i.e. the order u/s 153C has been removed, the super structure i.e. the order u/s 263 must fall.

13. In the result, both the appeals filed by the assessee in ITA Nos. 2170 & 2071/DEL/2017 are allowed.

The order is pronounced in the open court on 24.03.2021.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 24th March, 2021.

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

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ITAT, New Delhi

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