

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1986/Del/2016
Assessment Year : 2007-08**

ACIT, Central Circle-14, Room No.354, E-2, ARA Centre, Jhandewalan Extn., New Delhi.	Vs	S.S.Con-Build Pvt.Ltd., Flat No.4, R.R. Apartment, 3-4, Mangolpuri, Mehrauli, New Delhi-110030. PAN-AAJCS7477F
APPELLANT		RESPONDENT
Appellant by		Sh. Satpal Gulati, CIT DR
Respondent by		Sh. B.K.Dhingra, Adv.
Date of Hearing		31.03.2021
Date of Pronouncement		08.04.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue for the assessment year 2007-08 is directed against the order of learned CIT(A)-XXVI, New Delhi dated 07.01.2016. The Revenue has raised following grounds of appeal:-

- 1. "On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in holding that the AO could not have proceeded to frame assessment u/s 153A of the Act as no incriminating documents/assets were found during the search without appreciating that the provision of section 153A of the Act does not stipulates any such conditionality.*
- 2. The CIT(A) has erred on facts and in law in deleting the addition of Rs.33,91,35,982/- made by AO on account of unexplained credit u/s 68 of the Act.*

3. *The CIT(A), being a fact finding authority, has erred in facts and in law in allowing the appeal of the assessee without independently verifying the facts of the case, as mandated by the Hon'ble Delhi High Court in the case of CIT vs Jansampark Advertising (375 ITR 373)."*
2. Facts giving rise to the present appeal are that a search operation was carried out on 20.10.2008. Subsequently, notice u/s 153A of the Income Tax Act, 1961 ('the Act') was issued on 13.11.2009 calling upon the assessee to file return of income. In response thereto, the assessee filed its return of income on 29.12.2009 declaring income of Rs.8,490/-. Further, notice u/s 142(1) & 143(2) of the Act was issued to the assessee. In response thereto, Ld. Authorized Representative of the assessee attended the proceedings. The Assessing Officer while framing the assessment, observed that the assessee had claimed to have received advance from customers against booking of shops/space in the local shopping Centre "Capital City Mall" at Paschim Vihar, New Delhi. The amount of fresh advance received during the year under consideration was Rs.39,62,35,982/-. Therefore, the Assessing Officer issued questionnaire dated 20.10.2010, calling upon the assessee to explain and furnish the complete details of the amount received, including the identity of the party, its capacity to pay and genuineness of the transaction. The Assessing Officer also asked to produce the creditors for verification alongwith their bank records, income tax records and income tax returns etc. It is observed by the Assessing Officer that except in the case of M/s Thapar Homes Ltd., the confirmation was not filed. Therefore, The Assessing Officer treating the amount of

Rs.33,91,35,982/- as unexplained credit made addition u/s 68 of the Act. Hence, the Assessing Officer assessed the income at Rs.33,91,44,472/- against the returned income of Rs.8,490/-.

3. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A) who after considering the submissions, deleted the addition.

4. Ld.CIT(A) deleted the addition on the basis that the Assessing Officer could not have proceeded to frame addition u/s 153A of the Act in respect to the year under consideration as no incriminating documents/assets was found during the course of search operation pertaining to the year under appeal. Further, Ld.CIT(A) on merit having considered the facts placed on record and the evidences i.e. confirmations by the concerned parties, furnished by the assessee as additional evidences, deleted the addition.

5. Aggrieved against this, the Revenue is in appeal before the Tribunal.

6. Ground No.1 raised by the Revenue is against the deletion of addition on account of absence of incriminating documents.

7. Ld.CIT DR supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition. On contrary, Ld. Counsel for the assessee submitted that the Assessing Officer has not made addition on the basis of any incriminating evidence gathered during the course of search. He relied upon the order of Ld.CIT(A) and

also the judgment of Hon'ble Delhi High Court in the case of *Kabul Chawla [Del.] 380 ITR 573*.

8. We have heard the rival contentions and gone through the orders of the authorities below. It is the case of the assessee that the assessment was not abated. Therefore, the Assessing Officer had no jurisdiction to enter into the field beyond the material gathered during the search. The Revenue has not rebutted the factum that the assessment was not abated. During the course of hearing, Ld. Counsel for the assessee has pointed out the date of filing of return of income vis-à-vis the notice issued u/s 153A of the Act. It is well-settled law by the judgement of Jurisdictional Delhi High Court in the case of *Kabul Chawla (supra)* that qua the non-abated years, the assessment is required to be made on the basis of material gathered during the course of search. Undisputedly, the Assessing Officer has not connected the additions made with the material unearthed during the search. The Hon'ble Delhi High Court in the case of *Kabul Chawla (supra)* has held as under:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is 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 ITA Nos. 707, 709 and 713 of 2014 of 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. Respectfully following the same, we do not see any infirmity in the order of Ld.CIT(A). Thus, Ground No.1 raised by the Revenue is dismissed.

10. Ground No.2 raised by the Revenue is against the sustaining of addition of Rs.33,91,35,982/-.

11. Ld.CIT DR relied on the assessment order. On the contrary, Ld. Counsel for the assessee supported the order of Ld.CIT(A).

12. We have heard the rival contentions and perused the material available on record. We find that Ld.CIT(A) has decided the issue in favour of the assessee by giving the finding on facts as under:-

19. *“I have considered the facts of the case, the basis of additions made by the AO and the arguments of the AR, the verifications carried out by the AO during remand proceedings and the rejoinder of the AR on the same during assessment as well as re-assessment proceedings. The facts of the case are that the appellant company had been in the process of building local shopping complex under the name and style of capital city mall at Paschim Vihar and in the process, had received funds from various entities on account of sale of space/floors. The assessee company had received an amount of Rs 63,31,50,982 during FY 06-07 from the following parties:-*

Sl. No.	Name of the Party	Amount (Rs.)
1.	Anu Infotech Private Ltd.	24,00,000/-
2.	Aarushi Enterprises (P) Ltd.	26,00,000/-
3.	Sh. Gaurav Duggal	1,05,00,000/-
4.	Mare Software Development (P) Ltd.	47,00,000/-
5.	Capital Equipment Co. (P) Ltd.	53,00,000/-
6.	Rankur Promoters (P) Ltd	15,00,000/-
7.	Realtech Infrastructure Ltd. (under two separate accounts)	40,99,20,000/- (10,31,00,000/-+30,68,20,000/-)
8.	Kashyap Commercial (P) Ltd.	8,40,00,000/-
9.	Sachdeva Build Con (P) Ltd.	4,63,65,000/-
10.	Sh. B N Chandok	1,25,00,000/-
11.	Thapar Homes Limited	5,33,65,982/-
	Total	63,31,50,982/-

20. The AO, during the remand proceedings had issued notices u/s 131 for personal attendance of the entities concerned which could only be complied with by two major entities namely Realtech Infrastructure Ltd and M/s Thapar Homes Ltd. Further notices u/s 133(6) had been issued by the AO wherein the following information had been sought to verify the transaction:-

To
**The Principal Officer,
M/s Realtech Infrastructure Ltd
C/o Rajeev Bahl, Director
B-8,1st Floor, Panchsheel Enclave,
New Delhi-17.**

Sub:- Information required under Section 133f61 of the Income Tax Act. 1961 for the period from 01.04.06 to 31.03.07 relevant to A.Y. 2007-08 in the case of M/s S.S. Con Build Pvt Ltd (PAN: AAICS7477F1).

My assessee M/s S.S. Con Build Pvt Ltd (PAN: AAICS7477F) has entered into business transactions with you during the period 01.04.2006 to 31.03.2007. In this connection, you are required to furnish the following information's:-

- Complete copy of Account for the period from 01.04.2006 to 31.03.2007 relevant to A.Y.2007-08 of the assessee as appearing in your books of accounts.
- Please provide details as to how you related to the Directors of M/s S.S. Con Build P Ltd

The information is being called u/s 133(6) of the Act. You are requested to furnish the said information by 06.08.2013. I may also draw your attention to the provisions of section 272A(2), which provides for penalty @ Rs 100/- per day for non-compliance of the provisions of this notice.”

21. The verifications carried out u/s 133(6) were complied by all the parties confirming the transactions as claimed by the appellant

and reflected in its books of account. It is seen that the amounts received from M/s Realtech Infrastructure. Ltd. and Thapar Homes Ltd. had been duly confirmed by the said parties u/s 131 proceedings. It is also important to appreciate that various amounts received by these two entities on behalf of the appellant on account of proposed sale of shop/spaces had been accordingly recorded in the books of account. The assessment of M/s Realtech Infrastructure Ltd. and Thapar Homes Ltd. for the year under consideration had also been framed u/s 143(3) and no adverse view has been taken in the said cases with regard to the their sources/investments. It means that amount show received by the appellant and subjected to examination by the AO u/s 68 have passed the test of creditworthiness as well as genuineness . The appellant, in the process had also filed allotment letters in respect of all parties to whom commercial space had been sold in lieu of the amounts received.

22. Further the observation of the AO in the remand report and rejoinder of the AR on the same with reference to the following parties is examined hereunder:

1. Capital Equipment company P.Ltd:- The AO has observed that account statement were not legible but the perusal of the same shows that the observation is factually wrong. The entries in the bank statement are clearly legible and confirmation submitted u/s 133(6) is also in place. In the circumstances there could not be anything to doubt the impugned advance received.

2. Realtech Infrastructure Ltd. _ The AO had raised the issue that bank account statement was not available for certain specific entries. The issue raised is examined and it is seen that amount of Rs. 2.5 crore had been paid by Thapar Homes Ltd to DDA on behalf of Realtech Infrastructure Ltd. and for this reason was not seen in the bank statement of

Reatech Infrastructure Ltd. This aspect had also been confirmed by Thapar Home Ltd. It is also seen that Journal entries had also been passed in the books of Thapar homes Ltd. as well as Realtech infrastructure Ltd. to give effect to the same transaction. It is quite apparent that the AO did not confront this issue and hence could not be clarified by the appellant. Further two entries of Rs. 2 crore and Rs. 1,18,20,000 had been highlighted by the AO on the ground that same were not found in the bank statement. I have perused the bank statement, as highlighted by the appellant in the rejoinder. The said entries are clearly recorded in the HDFC Bank account No. 1342320002417 maintained with Defence Colony Branch. The AO had also raised entry of Rs. 4,01,00,000 dated 6.12.2006 which is found to be representative of four separate cheques that had been issued by associate concern of Realtech Infrastructure Ltd. namely Realtech Construction P. Ltd. The following cheques had been issued by Realtech Construction P. Ltd. and recorded in the books of Realtech Infrastructure Ltd. on the basis of Journal entry, hence were not to be found in the bank statement of Realtech Infrastrucuture Ltd.

<i>Dated</i>	<i>Amount</i>
<i>18.09.2006</i>	<i>51,00,000</i>
<i>18.09.2006</i>	<i>50,00,000</i>
<i>27.09.2006</i>	<i>20,00,000</i>
<i>29.09.2006</i>	<i><u>1,00,00,000</u></i>
<i>Total</i>	<i><u>2,21,00,000</u></i>

The above said amounts have been received in appellant's bank account with UTI bank on same dates as detailed above but the Journal entries have been passed in the books of Realtech infrastructure Ltd. on 6.12.2006.

- 3. Lastly two entries of Rs. 30,00,000 and 7.5 Crores dated. 31.3.2007/ 5.12.2006 with Punjab & Sindh bank have not been in the bank statement submitted by Realtech infrastructure Ltd. as the*

said bank account of the Realtech Infrastructure Ltd. with Punjab and Sindh bank could not be supplied by the bank as highlighted by the appellant. It has been attributed to non availability of the bank statements pertaining to F.Y. 06-07 by the concerned bank. But here it needs to be appreciated that the amount shown as advance stands recorded in the financial statement of Realtech Infrastructure Ltd. and had been confirmed accordingly before the AO u/s 131 proceedings. The said sources / investment of Realtech Infrastructure Ltd. have also been independently examined by its Assessing Officer u/s 143(3) and accepted without making any addition. In view of the above analysis the amounts credited in the books of account of the appellant as received from Realtech Infrastructure Ltd. cannot be said to be suffering from the essential prior requisites as stipulated u/s 68.

4. B.N Chandok:- The AO has highlighted that bank statement was not filed by B.N chandok to support the credit of Rs. 2.2 crore. The perusal of the rejoinder of the AR shows that the amount of 2.2 crore represents following cheques/ Parties :

1.	Microbrain Software Private Limited	52,50,000
2.	Capital Equipment co.	52,50,000
3.	Gaurav Duggal (his son in law)	95,00,000
4.	Hamilton Technology India P.Ltd.	<u>20,00,000</u>
	Total	<u>2,20,00,000</u>

The confirmation of BN chandok clearly specified the amounts advance as detailed above supported by the bank statements / financial statements. The AO seems to have missed the evidence. The AO has also raised the issue of certain discrepancies in appellant's submissions made on different occasions as under:

“While perusing the assessment records/documents submitted during remand proceedings/appellate proceedings, it is observed that assessee had been submitting different details of advances from the customers. Assessee has submitted different names & different amounts at various

points of time. This raises serious doubts about the veracity of the books of accounts of the assessee and various other documents submitted. Few examples are narrated as under:-

<i>Names</i>	<i>As per audited Balance Sheet(Rs.)</i>	<i>As per Assessment Proceedings(Rs.)</i>	<i>During remand Proceedings(Rs.)</i>	<i>Under Section 133(6)(Rs.)</i>
<i>Mr.GauravDuggal</i>	<i>1000000(Sr.No.4)</i>	<i>10500000 (Sr.No.3-reply dt.4.12.2010 to Q no. 33 & Q No.10)</i>	<i>1000000(Sr.No.4)</i>	<i>9500000</i>
<i>Capital Equipment Co.</i>	<i>Name does not appear</i>	<i>5250000 (Sr. No. 5-reply dt.04.12.2010)</i>	<i>Name does not appear</i>	<i>5250000</i>
<i>Microbrain Software (p) Ltd.</i>	<i>Name does not appear</i>	<i>5250000 (Sr. No. 8-reply dt.04.12.2010)</i>	<i>Name does not appear</i>	<i>5250000</i>
<i>B.N.Chandok</i>	<i>22000000</i>	<i>2000000 (Sr. No.8-reply dt.4.12.2010)</i>	<i>22000000</i>	<i>2000000</i>
<i>Hamilton Technologies(P)Ltd</i>	<i>Name does not appear</i>	<i>Nil</i>	<i>Nil</i>	<i>2000000(For the first time name introduce)</i>
<i>M/s S.P.D Infotech Pvt. Ltd.</i>		<i>2600000</i>	<i>Nil</i>	
<i>M/s Aarushi Enterprises</i>			<i>2600000</i>	
<i>M/s J&S Mandeep Chatwal</i>		<i>8589250</i>		
<i>Mr.Mandeep Chatwal</i>		<i>-</i>	<i>8589250</i>	
<i>Mr.Sudesh Kumar gupta</i>			<i>4500000</i>	
<i>Mr. Sudheer Kumar</i>		<i>4500000</i>		
<i>Sunny Ahuja</i>		<i>5000000</i>		
<i>SavinaAhujaSumesh Ahuja</i>			<i>5000000</i>	
<i>Thapar Homes Ltd.</i>		<i>5710182</i>	<i>53365982(vide letter dt.</i>	

It may kindly be noted that Mr.Gaurav Duggal has signed the confirmation in the case of M/s. Annualfotech Pvt.ltd., M/s. Rankur Promoters (P) Ltd., and M/s. Aarushi Enterprises Pvt.Ltd.

Confirmations in case of Allied engineering and M/s. Sachdeva Build Con have been filed at Dak Counter, not by post.

Confirmations in case of Capital Equipment Co.Pvt. Ltd.M (53 Lakhs) is not signed by the competent person.”

The above said discrepancies have already been reconciled in the forgoing paragraphs of this order.

In view of the above detailed analysis of facts and circumstances of the case the addition made by the Assessing Officer to the tune of Rs.39,91,35,982/- is directed to be deleted.”

13. The above finding on facts as arrived by Ld.CIT(A) is not rebutted by the Revenue by placing any contrary evidences. Thus, Ground No.2 raised by the Revenue is dismissed.

14. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 08th April, 2021.

Sd/-

**(G.S. PANNU)
VICE PRESIDENT**

Date: 08.04.2021

** Amit Kumar **

Copy forwarded to:

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

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI