

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]**

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

ITA No. 3360/DEL/2017  
[A.Y 2008-09]

The Dy. C.I.T  
Circle - 1(1)  
New Delhi

Vs.

M/s Inmstronics Ltd  
F - 345, Lado Sarai  
New Delhi

PAN: AAACI 0163 R

[Appellant]

[Respondent]

Assessee by : None

Revenue by : Ms. Anima, Sr. DR

**Date of Hearing : 22.07.2021**

**Date of Pronouncement : 22.07.2021**

**ORDER**

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

This appeal by the Revenue is preferred against the order of the  
CIT(A) - 29, New Delhi dated 17.02.2017 pertaining to A.Y 2008-09.

2. The solitary grievance of the Revenue reads as under:

- 1) "On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in law as well as facts in deleting the addition of Rs. 2,67,970/- made on account of unexplained expenditure. Disallowance of expense of Rs. 11,45,939/- and disallowance u/s 35D of Rs. 2,32,25,000/- by relying on the decision in the case of Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before the Hon'ble Supreme Court,"

3. None appeared on behalf of the assessee inspite of notice. We decided to proceed ex parte.

4. The ld. DR was heard at length, who placed strong reliance on the assessment order.

5. We have carefully perused the orders of the authorities below. The facts of the case are that search and seizure operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was carried out on 18.02.2013 in Unitech Machines Group of cases which

also included the business premises of the assessee. Accordingly, proceedings u/s 153A of the Act were initiated, in response to which the assessee filed return of income on 13.01.2015 declaring total income of Rs. 42,98,460/-

6. Assessment was completed by making the following observations:

5. Against the, order passed u/s 153A r.w.s 153C of the Act, the assessee filed appeal before the Id. CIT(A) wherein the appeal of the assessee has been partly allowed. Against the Id. CIT(A) order both the assessee and the department filed appeal before the ITAT. The ITAT vide para no. 5 of their order dated 13.03.2015 quashed the assessment order for the A.Ys. 2003-04 to 2008-09 passed u/s 153A r.w. 153C of the Income Tax Act, 1961. The Para 5 of the said order is reproduced hereunder:-

"5. In the instant case also, the revenue has not placed any satisfaction recorded by the A.O. of the searched persons on record pertaining to Assessment Years 2003-04 to 2008-09. Therefore, in the absence of such satisfaction by the A.O. of the searched persons, the assessment framed by invoking the provisions of Sections 153C cannot be sustained. Accordingly, the assessment orders pertaining to assessment years 2003-04 to 2008-09 are hereby quashed..... "

6. The ITAT vide their order dated 15.03.2015 has quashed the assessment order for the A.Ys. 2003-04 to 2008-09 on technical ground without going into merit of the case as mentioned above. The additions/disallowances made in the original order passed u/s 153A r.w.s. 153C on 31.12.2010 is hereby made again for the reason mentioned therein under the following heads:-

I. Unexplained purchases u/s 69C	Rs. 2,67,970/-
II Expenses disallowed as discussed above	Rs. 11,45,939/-
III Addition u/s 35D	<u>Rs.2,32,25,000/-</u>
Total addition	<u>Rs.2,46,38,909/-</u>

Thus, total addition of Rs. 2,46,38,909/- is hereby made. The said assessment order passed u/s 153A r.w.s. 153C on 31.12.2010 is made part of this assessment order. (Addition:- 2,46,38,909/-)

7. When the assessment was agitated before the ld. CIT(A), the ld. CIT(A) observed as under:

12. *I have gone through the above submissions of the appellant and have considered the facts and evidences on record and also the case laws relied upon by the appellant.*

12.1 *It is an undisputed fact that the additions made in the order under section 143(3)/153C dated 31.12.2010 amounting to Rs.2,46,38,909/- has been deleted by Hon'ble ITAT, by quashing*

*the order of AO. It is also undisputed fact that before invocation of present proceedings, the assessment was completed twice and nothing incriminating in this regard was found during search. Accordingly, the AO cannot make any incremental additions. It is also stated that the revenue has filed appeal with the Hon'ble Delhi High Court against the order of Hon'ble ITAT, which is pending adjudication. Therefore, this addition amounting to Rs.2,46,38,909/- will be governed by the final decision by Hon'ble Delhi High Court or till it reaches finality. However, as of now, the decision by Hon'ble ITAT shall be binding and hence addition cannot be made again for the same reasoning. Further, present proceedings are with reference to search cases therefore this cannot be subject matter of new addition. Therefore, this addition shall depend upon the final judgement with reference to the earlier proceedings under section 153A/143(3) of the Act. The decision of Hon'ble High Court shall be merged together with the present order under appeal. Accordingly, this ground of appeal is partly allowed."*

8. While deciding the appeal, the ld. CIT(A) followed the binding decision in the case of *Kabul Chawla* 61 Taxmann.com 412 [Delhi]. Merely because the revenue has preferred an appeal against the decision of *Kabul Chawla* before the Hon'ble Supreme Court would not make the order of the ld. CIT(A) erroneous. Considering the facts of the case in totality as mentioned hereinabove, we decline to interfere with the findings of the ld. CIT(A).

9. In the result the appeal of the Revenue in ITA No. 3360/DEL/2017 is dismissed.

The order is pronounced in the open court in the presence of both the rival representative on 22.07.2021.

Sd/-

**[K.N. CHARY]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 22<sup>nd</sup> July, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	