

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4905/Del/2017
Assessment Year: 2011-12**

DCIT, Central Circle-18,
New Delhi.

vs. Anant Overseas P. Ltd.,
305, 3rd Floor, Bhanot Corner,
Pamposh Enclave, Gr. Kailash-I,
New Delhi.

PAN : AAACA0234B
(Appellant)

(Respondent)

Appellant by : Sh. Satpal Gulati, CIT/DR
Respondent by: Sh. M.P. Rastogi, Advocate

Date of hearing: 08.07.2021

Date of order : 17.09.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 08.05.2017 passed by the Commissioner of Income Tax (Appeals)-29, New Delhi ("Ld. CIT(A)") in the cases of Anant Overseas P. Ltd. ("the assessee") for the assessment year 2011-12, Revenue preferred this appeal.

2. Assessee is a non banking financial company engaged in making investments and to deal in shares and securities. They have filed their return of income on 20.09.2010 declaring business loss of Rs.4,21,13,627/-. Assessment u/s. 143(3) of the Income-tax Act, 1961

("the Act" for short) was done by order dated 04.01.2013 by disallowing a sum of Rs.2,64,94,305/- u/s. 14A of the Act read with Rule 8D of the Rules and the business loss was assessed at Rs.1,36,59,562/-. When the assessee preferred appeal, out of total disallowance of Rs.2,64,94,305/-, Id. CIT(A) deleted the addition to the tune of Rs.2,64,58,483/- and sustained the addition of Rs.35,822/-. No further appeal was preferred by the assessee.

3. As the matter stood thus, search and seizure operation u/s. 132 of the Act was carried out on 19.02.2014 in M/s. Uflex Group of cases and it covers the assessee also. Pursuant to notice issued u/s. 153A of the Act, the assessee filed return of income on 06.07.2015 declaring total loss at Rs.2,89,51,091/-. By order dated 29.02.2016, Id. Assessing Officer observed that inasmuch as the original assessment u/s. 143(3) was made by way of order dated 04.01.2013 at Rs.1,36,59,562/- after making disallowance u/s. 14A, the assessment u/s. 153A read with sec. 143(3) of the Act was also done at Rs.1,36,59,562/- giving credit to the tax paid.

4. Aggrieved by such an action of the Assessing Officer, assessee preferred appeal before the Id. CIT(A) who, taking note of the appellate proceedings and the order thereunder, recorded a finding that against the first appellate order in original proceedings, Revenue preferred appeal and therefore, the additions made in the original order passed u/s. 143(3) of the Act will be subject to such order of the ITAT, and no fresh additions could be made pursuant to the notice issued u/s. 153A of the Act since no incriminating material was found during the search. With these observations, Id. CIT(A) allowed the appeal of the assessee in part. Challenging the same, Revenue preferred this appeal.

5. It is the submission on behalf of the Revenue that the disallowance was made by the Id. Assessing Officer u/s. 14A read with Rule 8D and, therefore, same could not have been disturbed by the Id. CIT(A); whereas Id. AR submitted that in the absence of any incriminating material, no new addition could be made and since the findings of the Id. CIT(A) are in accordance with law, the grounds of appeal of the Revenue are devoid of merits.

6. We have gone through the record in the light of submissions made on either side. It is not in dispute that no incriminating material was found during the search and the decision of Hon'ble High Court in CIT vs. Kabul Chawla, 380 ITR 573(Del), is applicable to the facts of the case.

7. In so far as the original disallowance is concerned, in the appeal preferred against the order u/s. 143(3) of the Act, Id. CIT(A) granted relief to the assessee to the tune of Rs.2,64,58,483/- and upheld the addition of Rs.35,822/-. Id. CIT(A) rightly observed that the Assessing Officer did not give effect to the appellate order in repeating the addition. May be because the Revenue preferred appeal before the ITAT against the order of the Id. CIT(A) granting relief to the assessee, Id. Assessing Officer might have repeated the addition. However, Id. CIT(A) in his order observed that in case the ITAT alters the order of the Id. CIT(A), such an order of ITAT will prevail and therefore, observing so, he partly allowed the appeal. Order of the Id. CIT(A) protects the interest of the Revenue and does not warrant any interference. With this view of the matter, we uphold the finding of the Id. CIT(A) and dismiss the grounds of appeal.

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

Order pronounced in the open court on this the 17th day of September, 2021.

SD/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 17/09/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER