

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4174/Del/2018
(Assessment Year : 2009-10)

DCIT Circle – 1 Gurgaon PAN : AADCK 3276 G (APPELLANT)	Vs.	Krrish Infrastructure Pvt. Ltd., C-654, New Friends Colony New Delhi (RESPONDENT)
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Assessee by	Shri Vinod Kumar Bindal, C.A.
Revenue by	Ms. Sunita Singh, CIT-D.R.

Date of hearing:	14.10.2021
Date of Pronouncement:	14.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 28.03.2018 of the Commissioner of Income Tax (Appeals) – 3, Gurgaon relating to Assessment Year 2009-10.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing of liquor beverages. AO has noted that in the case of the assessee, the residential as well as office premises of Krrish Group of cases was subject to search and seizure operations on 09.11.2011 and during the course of search various incriminating papers were found and seized from the office premises as well as the residential premises of the directors. Consequently, notice dated 14.08.2013 u/s 153A(1)(a) of the Act was issued and served on the assessee. In response to the aforesaid notice assessee vide letter dated 11.09.2013 furnished return of income declaring income of Rs.74,02,040/-. Thereafter case was taken up for scrutiny and consequently assessment was framed u/s 153A(1)(b) of the Act vide order dated 27.02.2014 and the total income was determined at Rs.8,39,02,040/- by *inter alia* making addition of Rs.7,65,00,000/- u/s 68 of the Act on account of introduction of share capital/ share application money and share premium which was treated as unexplained cash credit.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A), CIT(A) decided the issue in favour of the assessee. While deciding the issue he noted that assessee had originally filed its return of income u/s 139 of the Act on 29.09.2009. Thereafter on 29.11.2006 the return of income was processed u/s 143(1) of the Act and at the time of search action on 26.05.2011, no assessment/ reassessment proceedings were pending nor abated. He has further given a finding that the only addition made in the assessment order u/s 153A r.w.s 143(3) of the Act was on account of unexplained cash credit u/s 68 of the

Act amounting to Rs. 7,65,00,000/- and the addition was not based on any incriminating material found during the search action. He has further noted that no incriminating document/record or any other material found was seized during the course of search proceedings which resulted into any addition. He thereafter by relying on the decision rendered by Hon'ble Delhi High Court in the case of **Kabul Chawla reported in 380 ITR 573** held that in the absence of any incriminating document/material no addition could be made in the case of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- (i) *Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in concluding that there was a difference in scope of proceedings under section 153A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment.*
- (ii) *Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in holding that no addition can be made u/s 153A in respect of completed assessment if no incriminating material is found during search.*
- (iii) *Whether there is any restriction on the power of the Assessing officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search , even though such words or conditions are not mentioned in the section per se.*
- (iv) *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was correct in interpreting section 153A which starts with a non-obstinate clause stating therein that the operation of section 139,147,148,149,151&153 was deposed meaning thereby that in search cases the Assessing officer is duty bound to take up the assessment u/s 153A and that the above-mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if any escaped income or under-assessed income undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceedings u/s 153A, the proceedings u/s 147 of the Income Tax Act, 1961 cannot be initiated.*

- (v) *Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in following Delhi High Court decision in the case of CIT vs. Kabul Chawla 380 ITR 173 when the Hon'ble HC itself admits in Para 37(iv) that "Although section 153A does not say that additions should strictly be made on the basic of evidence found in course of search..." there by interpreting the statute in the manner which were never worded or intended by the legislature.*
- (vi) *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in ignoring the principles of strict interpretation of statute when the words used in the statute i.e. sec 153A(l)(b) of the IT Act, 1961 are assess or reassess the "Total Income".*
- (vii) *Whether on the facts and in the circumstance of the case the Ld. CIT(A) has erred in not deciding the issue of addition of Rs. 7,65,00,000/- as unexplained share application/ share application money u/s 68 of the Income Tax Act. 1961 on merits.*
- (viii) *Whether on the facts and in the circumstances of the case the Ld. CIT(A) has failed to appreciate that the information collected during the enquiries conducted by the Investigation Wing/Assessing officer and statement recorded of Sh. Kashi Prasad Chotia pointing towards the finding that the assessee company has received the said share application/premium through accommodation entries constituted incriminating material which could have been utilized for making the addition of Rs. 7,65,00,000/- as unexplained share application money in the assessment order framed u/s 153A by the Assessing officer.*
- (ix) *The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing."*

5. Before us, Learned DR at the outset submitted that though Revenue has raised various grounds but the sole controversy is with respect to the action of CIT(A) in holding that no addition was warranted in the present case. She supported the order of AO.

6. Learned AR on the other hand reiterated the submissions made before the AO/CIT(A) and supported the order of CIT(A).

7. We have heard the rival submissions and perused the material available on record. The issue in the present case is with respect to the addition made u/s 68 of the Act in the assessment framed u/s 153A(1)(a) of the Act. We find that CIT(A) while deciding the issue in favour of the assessee has given a finding that the original return of income filed by assessee was processed u/s 143(1) of the Act and at the time of search action no assessment or reassessment proceedings were pending or abated. He has further given a finding that the addition made u/s 68 of the Act was not based on any incriminating document/ record or any other material found/seized during the course of search proceedings. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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

Order pronounced in the open court on 14.10.2021, immediately after conclusion of the hearing of the matter in virtual mode.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 14.10.2021

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Copy forwarded to:

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