

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 4871/DEL/2014 (A.Y 2005-06)

(THROUGH VIDEO CONFERENCING)

Arti Chadha & Puja Chadha (In their Capacity as Members of the HUF known as Mohan Lal Chadha & Sons (HUF) 23/10A, Moti Nagar New Delhi AAAHC1800L (APPELLANT)	Vs	ACIT Central Circle-21 New Delhi (RESPONDENT)
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Appellant by	None
Respondent by	Ms. Sunita Singh, CIT DR

Date of Hearing	14.09.2021
Date of Pronouncement	15 .11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 04/08/2014 passed by CIT(A)-II, New Delhi for Assessment Year 2005-06.

2. The grounds of appeal are as under:

1. *“That the learned Assessing Officer was not justified to ignore the fact that the assessment proceedings for the year under appeal were not pending on the date of recording of satisfaction u/s 153C of the Income Tax Act and accordingly these proceedings did not abate in proceedings u/s 153C of the Income Tax Act and the assessment being bad in law deserves to be*

quashed.

2. *That the learned Assessing Officer was not justified to ignore the fact that the assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents and in absence of any seized documents in the case of appellant for the year under assessment, the assessment framed u/s 153C of the Income Tax Act is bad in law and deserves to be quashed.*

3. *That the learned Assessing Officer was not justified to make assessment in respect of income of M/s Mohan Lai & Sons (HUF) in the hands of Ms. Arti Chadha & Ms. Puja Chadha since HUF had ceased to exist in the absence of Sh. Mohan Lai Chadha, the earlier karta and Sh. S. P. Chadha, the son of karta and the assessment framed in the hands of individual may kindly be quashed.*

4. (a). *That the learned Assessing Officer was not justified to make ex-party assessment u/s144 issuing alleged notice dated 13.12.2010 fixing the case for the first time 20.12.2010 being the fag end of the time-barring period upto 31.12.2010 without any reasonable . cause.*

(b) *That the learned Assessing Officer was not justified to frame the assessment without issue of statutory notice u/s 143(2) of the Income Tax Act and the assessment being against provisions of law may kindly be quashed.*

(c) *That the learned Assessing Officer was not justified to ignore the procedure to be followed for affixture of notice and the assessment framed by way of illegal affixture of notice u/s 142(1) of the Income Tax Act may kindly be quashed.*

(d) *That the learned Assessing Officer was not justified to commence the assessment proceedings by way of alleged affixture of notice at the first instance without making any attempt of properly serve the notice, which is being highly unusual and unnatural and the assessment framed against principles of natural justice may kindly be quashed.*

5. *That the learned Assessing Officer was not justified to make ex-party assessment rejecting the audited accounts along with Tax Audit Report*

without any basis or incriminating document against the business results for the year.

6. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (Appeals)-II, has failed to appreciate that the Ld. AO. was not justified to ignore the submissions of the appellant that assessment u/s. 153C of the IT Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for the year under consideration and in absence of any incriminating seized document in the case of appellant, assessment framed u/s. 153C of the IT Act for the year under consideration, is bad in law and deserve to be quashed.*

7. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (Appeals)-II, has erred in not admitting the additional evidences i.e. confirmations, confirmed copies of accounts of all the parties filed during the appellate proceedings and also in not considering the remand report of the AO.*

8. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (Appeals)-II, has erred in holding the conclusion that the 'audited books' notwithstanding, the book results are required to be rejected, since the narrations are artificial, sham and not reflective of the actual business/commercial transactions. However, the Ld. CIT (Appeals)-II, still relying on these books/book results for the purpose of calculating the peak from the entries in the cash book and /or bank book of the appellant, amounting ? 26,45,567/- for the relevant year under consideration.*

8. (a). *That on the facts and on the circumstances of the case and the provisions of law, the Ld. CIT (Appeals)-II, New Delhi has erred in sustaining the addition of ? 6,89,078/- as unexplained Investment/Expenditure, ignoring the fact that the same are duly reflected/entered in the books of the accounts of the appellant for the year under consideration;*

(b) . *That on the facts and on the circumstances of the case and the provisions of law, the Ld. CIT (Appeals)- has erred in enhancing the assessment by Rs.19,56,,489/-as unexplained Investment / Expenditure, ignoring the fact*

that the same are duly reflected/entered in the books of the accounts of the appellant for the year under consideration;

(c) . That the Ld. CIT (Appeals)-II, has wrongly calculated the amount of Rs.26,45,567/- (i.e. Rs. 6,89,078/- + Rs. 19,56,489/-) for the purpose of sustaining/enhancing addition / assessment as unexplained Investment/Expenditure;

(d) . That the Ld. CIT (Appeals)-II, did not give sufficient opportunity of being heard to the appellant to represent its case and also failed in ensuring proper services of alleged notices calling for appellate proceedings on time;

(e) That the Ld. CIT (Appeals)-II ignored the concept of 'Real Income' and wrongly calculated/confirmed/enhanced the addition/assessment of Rs.26,45,567/- without granting the credit of the peak of financial transactions as per the cash book/bank book for the preceding years.

(f) That the Ld. CIT (Appeals)-II has erred in initiating the penalty proceedings u/s 271(1) (c) of the IT Act, 1961.

9. That the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.

10. That the Ld. CIT (Appeals)-II, has erred in ignoring the explanation given, evidences and material placed and available on record. The same has not been properly considered and judicially interpreted and the same do not justify the additions made. The additions have been sustained with preset mind of the Ld. CIT Appeals and her order is based on surmises, conjectures and suspicion.

11. That on the facts and the circumstances of the case and the provisions of law, the various observations and findings of the Ld. CIT (Appeals)-II, and Ld AO in the impugned appellate order and assessment order, respectively, Assessment Year irrelevant and vitiated in the law.”

3. Search and seizure u/s 132 of the Income Tax Act was carried out in the cases of Sh. B. K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan

Buildcon Pvt. Ltd. on 20/10/2008 and during the course of search at the residential premises and F-6/5, Vasant Vihar, New Delhi certain documents belonging to the assessee were seized. On the basis of documents so found, the Revenue Authorities observed that the same belong to the assessee and seized from a person covered u/s 132 of the Act, after recording satisfaction note, proceedings were initiated u/s 153C read with Section 153A of the Income Tax Act. Notice u/s 153C dated 8/9/2010 was issued requiring the assessee to file return of income for the Assessment Year 2005-06 within 15 days of service of notice. In response thereto, the assessee's Counsel filed letter dated 12/10/2010 on 13/10/2010 stating that the assessee filed original return for the Assessment Year 2005-06 on 17/8/2005 declaring income of Rs. 70,922/-, the respondent further stated that Sh. Mohan Lal Chadha has expired on 23/04/2009 and as per information with him, the assessee has no legal heirs. The copy of death certificate was placed on record. On assignment of this case u/s 127, notice u/s 153C assessee again issued on 22/11/2010 requiring the members of the HUF namely Ms. Arti Chadha, Ms. Puja Chadha to furnish return of income for the Assessment Year 2005-06 within 15 days of service of the notice. In compliance thereto the members of the HUF have stated vide letter dated 13/12/2010 that they are granddaughters of Late Sh. Mohan Lal Chadha who has expired. Moreover, their father Sh. S. P. Chdha and mother Smt. Usha Chadha have also expired and they are working in a show room on salaries of Rs. 7-8000 per month. There is no HUF in existence as there is no male member in the family. Notice u/s 142(1) along with the detailed questionnaire were issued on 13/12/2010 fixing the case for 20/12/2010. A copy of the Panchnama, reasons for issuing notice u/s 153C and jurisdiction order dated 19/21-10-2010 u/s 127 were sent to the assessee address on 13/12/2010. On the stipulated dated, no one attended personally nor filed any letter seeking adjournment of the case. The Assessing Officer proceeded u/s 144 of the Act ex-parte assessment and thereby vide order dated 30/12/2010 made addition of Rs. 2,54,311/- towards the trading resolutions as well as Rs. 4,34,767/- which is 100% of the expenses and Rs. 1,89,94,639/-

as unaccounted receipts. Thus, the Assessing Officer assessed the total income at Rs.7,60,000/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) enhanced the assessment and dismissed the appeal of the assessee vide order dated 4/8/2013.

5. At the time of hearing, none appeared on behalf of the assessee despite giving notices and remark given by the postal authorities is that no one is available at the given address. Therefore, we are proceeding on the basis of the written submissions filed before the Assessing Officer and the CIT(A) which are incorporated in the orders as assessee's submissions and proceedings this appeal.

6. The Ld. DR submitted that the CIT(A) has rightly enhanced the assessment as there was unaccounted cash which was not at all explained by the assessee at any point of time. The Ld. DR further submitted that the total unexplained investment made by the assessee through the cash and the cheques during the year under consideration has been worked out at Rs.26,45,567.14. Thus, the CIT(A) has rightly enhanced the addition by Rs. 19,56,489.14 and unexplained income is determined at Rs. 26,45,567.14.

7. We have heard Ld. DR and perused all the relevant material available on record. It is pertinent to note that despite giving proper opportunity before the Assessing Officer as well as before the CIT(A), the assessee preferred not appear before the authorities. Therefore, the CIT(A) has rightly proceeded in the appeal filed by the assessee by taking cognizance of the material available at the time of appellate proceedings. The CIT(A) has given a detailed finding relating to the additional evidence filed and held that in light of the findings of the search in Thapar Dhingra Group, the textile trade transactions claimed by the various

entities of the group have been found to be sham and mere artificial entries in their books of account. The working of peak submitted by the assessee before the CIT(A) also appears to be incorrect. Thus, all the aspects were properly determined by the CIT(A) and there is no need to interfere with the findings of the CIT(A). Thus, the appeal of the assessee is dismissed.

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

Order pronounced in the Open Court on this 15th Day of November, 2021

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 15/11/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

