

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 4710/DEL/2016 (A.Y 2003-04)

(THROUGH VIDEO CONFERENCING)

Dhiraj Jain C/o. Prakash K. Prakash B-1, Sagar Apartments, 6, Tilak Marg, New Delhi PAN: AADPJ4043R (APPELLANT)	Vs	DCIT Central Circle-3, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi (RESPONDENT)
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**C. O.No. 16/Del/2012 in
(ITA No. 5525/DEL/2011 (A.Y 2005-06)**

Dheeraj Kumar Jain C/215, Vivek Vihar, New Delhi PAN: AADPJ4043R (APPELLANT)	Vs	ACIT Central Circle-3 Room No. 355, ARA Centre,E-2,Jhandewalan Extension, New Delhi (RESPONDENT)
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ITA No. 4711/DEL/2011 (A.Y 2006-07)

Dhiraj Jain C/o. Prakash K. Prakash B-1, Sagar Apartments, 6, Tilak Marg, New Delhi PAN: AADPJ4043R (APPELLANT)	Vs	DCIT Central Circle-3, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi (RESPONDENT)
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ITA No. 5526/DEL/2011 (A.Y 2006-07)

ACIT Central Circle-3 Room No. 355, ARA Centre,E-2, Jhandewalan Extension, New Delhi (APPELLANT)	Vs	Dheeraj Kumar Jain C/215, Vivek Vihar, New Delhi PAN: AADPJ4043R (RESPONDENT)
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C.O No. 19/DEL/2012 (A.Y 2007-08) in
(In ITA No. 5527/Del/2011 (A.Y 2007-08)

Dheeraj Kumar Jain C/215, Vivek Vihar, New Delhi PAN: AADPJ4043R (APPELLANT)	Vs	ACIT Central Circle-3 Room No. 355, ARA Centre,E-2,Jhandewalan Extension, New Delhi (RESPONDENT)
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Appellant by	Sh. Rakesh Gupta, Adv
Respondent by	Sh. Jawed Akhtar, CIT DR

Date of Hearing	12.10.2021
Date of Pronouncement	17.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

These five appeals are filed by the assessee and the Revenue and Cross Objection filed by the assessee against the orders dated 16/09/2011 & 20/09/2011 passed by the CIT(A)-III, New Delhi For Assessment Years 2003-04, 2005-06, 2006-07 & 2007-08 respectively.

2. The grounds of appeal are as under:-

ITA No. 4710/DEL/2016 (A.Y 2003-04)

1. *That the order passed by the Ld. Assessing Officer and confirmed by Ld. CIT (A) is not only bad in law but also against the facts of the case.*
2. *The Ld. CIT (A) is erred under the law while holding that A.O. has a valid jurisdiction u/s 153C of the Act particularly in view of following reasons:-*
 - a. *The issuance of notice u/s 153C of the Act is not as per law as the same has been issued beyond the time limit prescribed under the Act.*
 - b. *No incriminate document, if any belonging to the appellant was seized*

during search operation on the group companies.

c. The Ld. AO has not recorded any satisfaction before issuance of the notice.

d. The re-assessment proceedings u/s 153-A r.w.s. 153C of the Act can be with reference to pending assessments as per sub section 2 of 153-A of the Act and qua seized material found during the search.

3. That the CIT (A) has erred under the law and facts while confirming the order of Ld. A.O. with regard to disallowance of interest paid to Mrs. Sunita Dua, Mrs. Shruti Jain & M/s. PNB Housing Finance totaling Rs 1,82,560/-.

4. That any other grounds of appeal may be added/deleted or amended at the time of hearing.

Therefore, it is prayed as under:

a) The entire assessment proceedings may please be declared as null and void in view of provisions contained u/s 153-A, 153-C of the Act. Or alternatively,

b) The disallowance of interest as made by the A.O. may please be allowed or

c) any other suitable order as your honour may deem fit may please be passed.

**C. O.No. 16/Del/2012 in
(ITA No. 5525/DEL/2011 (A.Y 2005-06)**

1. The Ld. CIT (A) is erred under the law while holding that A.O. has a valid jurisdiction u/s 153C of the Act.

2. That the CIT (A) has erred under the law and facts while confirming disallowance of interest paid to Mrs. Sunita Dua, amounting to Rs. 37,500/-.

3. That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs.3,90,000/-as made by the A.O. u/s 68.

4. That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs. 84,50,000/-as made by the A.O. u/s 69 as unexplained investment in Property No. 76, Vigyan Lok New Delhi.

ITA No. 4711/DEL/2011 (A.Y 2006-07)

1. *That the order passed by the Ld. Assessing Officer and confirmed by Ld. CIT (A) is not only bad in law but also against the facts of the case.*
2. *The Ld. CIT (A) is erred under the law while holding that A.O. has a valid jurisdiction u/s 153C of the Act particularly in view of following reasons:-*
 - a. *The issuance of notice u/s 153C of the Act is not as per law as the same has been issued beyond the time limit prescribed under the Act.*
 - b. *No incriminate document, if any belonging to the appellant was seized during search operation on the group companies.*
 - c. *The Ld. AO has not recorded any satisfaction before issuance of the notice.*
 - d. *The re-assessment proceedings u/s 153-A r.w.s. 153C of the Act can be with reference to pending assessments as per sub section 2 of 153-A of the Act and qua seized material found during the search.*
3. *That the CIT (A) has erred under the law and facts while confirming the order of Ld. A.O. with regard to disallowance of interest paid to Mrs. Sunita Dua, Mrs. Shruti Jain & M/s. PNB Housing Finance totaling Rs 30,000/-.*

Therefore, it is prayed as under:

- a. *The entire assessment proceedings may please be declared as null and void in view of provisions contained u/s 153-A, 153-C of the Act. Or alternatively,*
- b. *The disallowance of interest as made by the A.O. may please be allowed or*
- c. *The addition made u/s 68 may please be deleted.*
- d) *any other suitable order as your honour may deem fit may please be passed.*

ITA No. 5526/DEL/2011 (A.Y 2006-07)

“1.That the Ld.CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 3,15,000/- made on account of investment in purchase of property.

2. *The Ld.CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 1,48,00,000/- made on account of Investment in purchase of property.*
 (a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*

C.O No. 19/DEL/2012 (A.Y 2007-08)

1. *The Ld. CIT (A) is erred under the law while holding that A.O. has a valid jurisdiction u/s 153C of the Act.*
2. *That the CIT (A) has erred under the law and facts while confirming the disallowance of interest paid to Mrs. Sunita Dua & Mrs. Rachna Batra, amounting to Rs. 30,000/- & Rs. 48,000/- respectively.*
3. *That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs.8,05,150/-as made by the A.O. u/s 50C of the Act.*
4. *That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs.1,00,34,270/-which was made by Ld. AO on the ground of alleged sale proceeds of shares received by the appellant as against Rs. 81,000/- declared by him.*
5. *That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs.58,03,316/- on account of deemed dividend u/s 2(22)(e) of the Act.”*
3. Since the issue relating to seized material/no incriminating documents found has been contested in all these appeals, we are taking up the issue for Assessment Year 2003-04 and fact thereof (2003-04).
4. The assessee is a Director of Mahagun India Pvt. Ltd. a flagship company of Mahagun Group of Companies. A search proceedings u/s 132 of the Act was conducted at the business premises of the Mahagun Group of Companies on 26/8/2008. The original return declaring net taxable income of Rs. 3,68,555/-was filed on 4/8/2003. At the time of search, certain documents

pertaining to the assessee as envisaged by the Assessing Officer were found and seized. Accordingly, after recording the satisfaction within the meaning of Section 153C, notice u/s 153C was issued on 8/11/2010. The assessee furnished reply on 15/11/2010 stating that the return filed on 18/2/2010 in response to notice u/ 153A may be treated as having been filed in response to this notice. Return declaring net taxable income of Rs. 3,68,555/- was filed on 18/2/2010. Subsequently, notice u/s143(2), 142(1) along with questionnaire was issued on 22/11/2010. The Assessing Officer made addition of Rs. 1,82,560/- on account of disallowance of interest expense.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that Section 153C notice dated 8/11/2010 is out of Block Period of Assessment Year 2005-06 to 2010-11 in view of the decision of the Hon'ble Delhi High Court in case of CIT(A) vs. R. R. J Securities Ltd. 380 ITR 612. The Ld. AR further submitted that there was no incriminating material found during the search and hence the assessee's case is covered by the decision of the Hon'ble Supreme Court in case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (S.C) as well as CIT Vs. Kabul Chawla 380 ITR 573.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further submitted that the satisfaction was properly recorded and after conducting the post search enquiry, the addition was rightly made.

8. We have heard both the parties and perused the material available on record. It is pertinent to note that the material on which the Assessing Officer placed reliance on, was not at all part of the addition set out in the assessment order. Thus, the assessment order and the additions therein are not based on any material. As per the provisions of Section 153C of the Act, incriminating

material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these Assessment Years as well as related to the addition made by the Assessing Officer. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. Therefore, the decision of the Hon'ble Supreme Court in case of Singhad Technical Education Society (Supra) is squarely applicable along with the decision of the Hon'ble Delhi High Court in case of Kabul Chawla (Supra). Thus, the applicability of decision of the Hon'ble Delhi High Court in case of Kabul Chawla is relevant in the present case as no incriminating material was found and there is no mention in the assessment order as well as in the order of the CIT(A) relating to the reliance of any material for making specific addition in the assessment. Thus, assessment itself becomes void ab initio. Thus, the appeal of the assessee is allowed.

9. As regards Cross Objection No. 16/Del/12 for Assessment Year 2005-06, the assessment is based on no incriminating material and hence is identical to that of Assessment Year 2003-04. Hence, Cross Objection No. 16/Del/2016 is allowed.

10. As regards ITA No. 4711/Del/2011 and ITA No. 5526/Del/2011 for Assessment Year 2006-07, the issue contested herein is also identical and the assessee has filed additional ground to the extent of no incriminating material found during the course of search. Therefore, ITA No. 4711/Del/2011 is allowed and ITA No. 5526/Del/2011 of the Revenue's appeal is dismissed.

11. As regards Cross Objection No. 19/Del/2012, the assessee has taken additional ground in respect of no incriminating material found during the course of search. The Cross Objection of the assessee is allowed for Assessment Year 2007-08.

12. In result, all the appeals of the assessee along with cross objection are allowed and the appeal of the revenue is dismissed.

Order pronounced in the Open Court in presence of both the parties on this 17th Day of November, 2021.

sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER

sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 17 /11/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI