

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

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 4400/Del/2017 : Asstt. Year : 2010-11**

ACIT, Central Circle-3, Meerut	Vs	Jotindra Steel & Tubes Ltd., 14/3, Mathura Road, Village- Mewla Maharajpur, Faridaba-121003
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACJ1872C</b>		

**Assessee by : Sh. Ved Jain, CA**

**Revenue by : Ms. Shivani Singh, CIT DR**

<b>Date of Hearing: 16.09.2021</b>
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<b>Date of Pronouncement: 25.11.2021</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-23, New Delhi dated 18.04.2017.

2. A search and seizure action u/s 132 of the Income Tax Act, 1961 has been conducted on the assessee on 07.08.2013. The assessment year before us pertains to A.Y. 2010-11 which is not an abated assessment as per the provisions of the Section 153A of the Act.

3. The Revenue challenged the deletion of the additions made in the Assessment Order passed u/s 153A of the Act.

4. The relevant facts required for adjudication of the issue are that,

- A search & seizure operation was conducted in the Mauria Group cases on 07.08.2013.
- The return of income of the appellant was filed originally u/s 139(1) of the Act on 29.09.2010 at income of Rs. 2,27,14,462/-.
- The original assessment was completed by Addl.CIT, Range-4, New Delhi vide order dt. 28.03.2013 u/s 143(3) of the Act at income of Rs.2,42,42,564/- by making addition of Rs.95,043/- u/s 36(1)(va) of the Act being employer's contribution towards welfare funds/PF, Rs. 13,02,145/- being lesser realization of preference share capital claimed in P&L account and treated by the AO as capital in a nature, and Rs.1,30,914/- being depreciation on electrical installation claimed at higher rate.
- Thus, the assessments for these three years therefore stood "completed" within the meaning of the 2nd Proviso to S. 153A(1) of the Act.
- It was submitted that during the original assessment proceedings the AO had specifically asked the assessee vide questionnaire dt. 23.05.2012 to file complete details of Rs. 6,75,00,000/- received as security premium on issue of 13,50,000/- non-cumulative redeemable preference shares of Rs. 10/- each, total share proceeds being Rs.8,00,00,000/- (67500000+13500000), and the appellant had filed the desired details vide letter dt. 8.10.2012, copy of which has been filed now also that the appellant had also submitted copy of the questionnaire and

the reply filed during original assessment proceedings regarding receipt of share application money along with copy of assessment order passed u/s 143(3) dt. 28.03.2013 to the AO during current assessment proceedings.

- On perusal of the assessment order it is observed that the only additions made in the order u/s 153A of the Act under consideration are Rs.7,96,98,605/- on account of the above security premium on issue of 13,50,000/- non-cumulative redeemable preference shares of Rs. 10/- each received from 04 persons beside the disallowance of Rs.95,043/- u/s 36(1)(va) of the Act being employer's contribution towards welfare funds/PF.
- But there is no reference to any seized material found during the search in the Mauria group cases on 07.08.2013, least any incriminating material relevant to the said share application money made by the appellant particularly from the five parties enquired by the AO.
- The order passed u/s 153A there is no reference of any seized material, least incriminating documents, and the additions made in the order u/s 153A of the Act were already disclosed in the original return of income and considered in the first assessment order dt. 28.03.2013, and the assessment is not based on any seized material, least incriminating documents.

5. Heard the arguments of both the parties and perused the material available on record.

6. In CIT (C)- III vs. Kabul Chawla (Delhi) [2015] 61 taxmann.com 412 (Delhi), 234 Taxman 300 the Hon'ble jurisdictional High Court of Delhi have held that an assessment has to be made under this section only on the basis of seized material and in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made, and that completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment, and concluded that since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

7. Since, the decision of the Id. CIT(A) is based on the order of the Hon'ble Jurisdictional High Court that no addition can be made in the assessment u/s 153A in the an abated assessment sans incriminating material found and seized during the search, we decline to interfere with the order of the Id. CIT(A).

8. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 25/11/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 25/11/2021**

**Subodh Kumar, Sr. PS\***

Copy forwarded to:

1. Appellant

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**