

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "E": NEW DELHI ]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 3539/Del/2017  
(Assessment Year: 2011-12)

DCIT, Central Circle : 19, New Delhi.	Vs.	M/s. Mapsa Tapes Pvt. Ltd., 4 <sup>th</sup> Floor, PP Towers, Plot No. C-I, C-2, C-3, Netaji Subhash Place, Pitampura, Delhi-110 034. <b>PAN: AAACM6345H</b>
(Appellant)		(Respondent)

Assessee by :	Shri C. S. Aggarwal, Sr. Advocate; & Shri R. P. Mall, Advocate;
Department by :	Ms. Sarita Kumari, [CIT] – DR;
Date of Hearing :	22/11/2021
Date of pronouncement :	07/12/2021

**ORDER**

**PER AMIT SHUKLA, J. M.**

1. The present appeal has been filed by the revenue against the order of Id. CIT (Appeals)-28, New Delhi dated 10.03.2017 for Assessment Year 2011-12.
- 1.1 In the memo of appeal following grounds have been raised by the revenue:

*“1. That the Ld. CIT(A) erred in law and on facts in questioning order passed by the Assessing Officer and is held to be null and void, without properly appreciating the facts and circumstances of the case.*

*2. Assessment year in respect of proceeding u/s.153C of the Act to be same 6 years in the case of other person, for which the proceedings u/s.153A is initiated in the case of the connected searched person.*

*3. That the Ld. CIT (A) erred in law and on facts in deleting the addition of Rs.14,57,50,000/- made on account of bogus share capital, without properly appreciating the facts and circumstances of the case,*

*4. That the ld. CIT(A ) erred in law and on facts in deleting the addition of Rs.8,74,500/- made on account of unaccounted commission paid, without properly appreciating the facts and circumstances of the case.*

*3. (a) The order of the Ld CITA(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter on amend any/all of grounds of appeal before or during the course of the hearing of the appeal. “*

2. Briefly stated facts are that, in this case, search and seizure action u/s 132 of the Act was carried out on 20.01.2014 in the case of M/s apsa Logistics Pvt. Ltd., M/s Mapsa Infra Pvt. Ltd. and in case of Late Shri Pyare Lal Gupta, Mrs. Veena Gupta

at D-28, Model Town-2, Delhi. During the course of search operation at the above said premises, certain documents/hard disk were found and seized.

2.1 Despite the fact that in the case of the assessee, no search was conducted u/s 132 of the Act, a notice u/s 153A of the Act dated 28.08.2015 was served on the assessee. The aforesaid notice issued u/s 153A of the Act was objected by the assessee vide its objections dated 26.10.2015 wherein it was contended that since no search was conducted in the case of the assessee as such, notice issued u/s 153A of the Act was without jurisdiction and hence the proceedings initiated vide notice dated 08.09.2015 issued u/s 153A of the Act should be dropped.

2.2 Thereafter, in continuation of the proceedings initiated u/s 153A of the Act, the assessee was served with a notice issued under section 153C of the Act on 23.02.2016. In response thereto, return declaring an income of Rs 91,59,660 was filed by the assessee on 25.02.2016. Assessment was completed u/s 153C/143(3) of the Act on 31.03.2016 assessing total income of Rs 15,57,84,160 while making the following additions:

- i. Bogus share capital Rs 14,57,50,000
- ii. Unaccounted commission paid Rs 8,74,500

2.2 The Assessee challenged the addition as well as assessment order to be illegal and without jurisdiction before the Ld CIT(A). It was submitted that the AO had no jurisdiction to make

assessment u/s 153C of the Act primarily on the following grounds:

- i. Assessment order dated 31.3.2016 under section 153C/143(3) of the Act was passed without dropping the proceedings initiated vide notice dated 8.9.2015 under section 153A of the Act and disposing off the objection filed by the assessee to initiation of assessment proceedings.
  - ii. In absence of any satisfaction note recorded in the case of searched person namely M/s. Mapsa Logistics Pvt. Ltd. And M/s .Mapsa Infra Pvt. Ltd., the assumption of jurisdiction to initiate proceedings under section 153C of the Act against the assessee was illegal, invalid and untenable.
- i. The satisfaction note of the AO in the case of the searched person namely M/s. Mapsa Logistics Pvt. Ltd. and M/s. Mapsa Infra Pvt. Ltd. did not refer to any material found from the searched person which was allegedly belonging to the assessee. As a result of search which was not conducted at the assessee's premises, no books of accounts or documents or assets had been found and/or seized pertaining to the assessee and which was incriminating.
  - ii. As a result of search conducted under section 132(1) of the Act in the case of the searched person, no incriminating material whatsoever was found and all the documents on the basis of which satisfaction was recorded were not incriminating against the assessee. Hence, no addition could have been made by the AO on the basis of such documents in the assessment, as has been held by the judgment of

jurisdictional Delhi High Court in the case of CIT vs. Kabul Chawla reported in 234 Taxman 300.

2.3 Also, the assessee challenged the addition of Rs 15,57,84,160 on merits on account of Bogus share capital and Unaccounted commission made by the AO on the following grounds:

- i. All the shareholders had duly confirmed the factum of the investment made in the assessee company as such addition made of the share capital received by the appellant from corporate entities.
- ii. All the shareholders were corporate entities, duly assessed to tax and, had subscribed to share-capital by account payee cheques and supported by necessary evidence including their permanent account numbers, confirmations, addresses, etc.
- iii. All shareholders were not only identifiable companies but also had requisite credit worthiness. Notices sent by the AO to all these shareholders u/s 133(6) of the Act were duly served, which proved the existence of these shareholders.
- iv. The AO did not discharge onus cast upon him under law by bringing any evidence or material to rebut the evidences furnished by the assessee.
- v. The AO had grossly erred in relying on the alleged material found from the premises of Shri. S.K. Jain statement of Shri. S.K. Jain and Shri. Arun Khemka in complete violation of the principles of the natural justice without appreciating that no investment was

ever made either by Shri. S.K. Jain or Shri. Arun Khemka in the share capital of the assessee company.

- vi. The AO while making an arbitrary addition of Rs.8,74,500/- on account of alleged commission paid for providing accommodation entry, did not bring any material to establish that the assessee had incurred such expenditure.

3. During the course of appellate proceedings, the Ld. CIT(A) called for factual report from the AO on 14.12.2016, which was responded by the AO vide his letters dated 01.02.2017 and 23.02.2017 wherein the AO sought to primarily rely upon the findings in the assessment order. The AO reiterated his contention that the documents referred in the note of satisfaction were incriminating and stated that the statement of Mr Mahesh Gupta, allegedly a director of the assessee company, had been recorded which clearly stated that share capital received by the assessee company were unexplained.

4. In response to the report of the AO, the assessee submitted its rejoinder before the Ld. CIT(A) to the following effect:

a) That the documents referred in AO reports are not incriminating and had been duly recorded in the books of account of the assessee. Hence, no addition could have been made by the AO on the basis of such documents in his assessment order, as had been held by the jurisdictional Delhi High Court in the case of CIT vs. Kabul Chawla reported in 234 Taxman 300.

b) That such documents were not part of the satisfaction note recorded by the AO of the searched person and could not be

made the basis to assume jurisdiction u/s 153C of the Act.

c) That all such documents were part of the satisfaction note recorded by the AO and since these were not incriminating documents, no addition could be made on the basis thereon in light of binding decisions of jurisdictional Delhi High Court in the case of SSP Aviation Ltd vs DCIT 346 ITR 177 and CIT vs RRJ Securities Ltd 380 ITR 612.

3. After considering the detailed submissions of the assessee as well as the remand reports of the AO, the Ld. CIT(A) quashed the assessment order passed u/s 153C of the Act. The relevant extracts from the order dated 10.03.2017 of the Ld. CIT(A) are reproduced below:

*“4.3 I have carefully considered the fact of the case, finding of the assessing officer and the submission of the Ld. AR. In this case no action under section 132 of the Act was carried out, hence proceeding under section 153A was rightly dropped by the AO. However, from the perusal of the satisfaction note it is apparent that there is no description or reference of any incriminating documents related to the assessee found or seized during the course of the search from the premises of the group concerns. Further even after making the specific query the AO has failed to identify any incriminating document related or belonging to the assessee which was forwarded by the AO of the searched person. Further from the perusal of documents above it is apparent that all the transactions as specified above have duly been recorded in the books of accounts of the appellant company. Moreover perusal of the order of assessment would show that*

no adverse inference has been drawn on the basis of any of the seized documents. The only addition made by the AO is on account of alleged unexplained share capital which is not even remotely based on any of the aforesaid seized documents. Hence in absence of any such specific incriminating material, assumption of jurisdiction under section 153C of the Act is not tenable. If the AO had reasons to doubt the genuineness of share capital, then proceeding should have been initiated under appropriate provision of the Income Tax Act.

4.4 **In the case under consideration it is an undisputed fact that no incriminating documents has been seized**, thus in light of the judgements of Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla reported in 380 ITR 573 and CIT vs RRJ Securities Ltd 380 ITR 612, SSP Aviation Ltd vs DCIT 346 ITR 177 and CIT vs RRJ Securities Ltd 380 ITR 612**, it is apparent that no addition on account of bogus share capital or unaccounted commission paid could be made in the hand of the assessee in absence of any incriminating document seized during the course of search .....(emphasis supplied in bold and underline).

.....

4.7 Hence it is now a settled issue that an addition in the order passed under section 153C of the Act, can be made by the Assessing Officer only on the basis of incriminating material found during the course of search even if the AO got jurisdiction for initiating proceedings u/s 153C r.w. section

153A against the assessee in view of documents etc belonging to the assessee found during the course of search in the premises of third party. Considering above and in absence of rebuttal of this material fact that no incriminating material was found during the course of search relating to the assessee for the assessment year under consideration to justify the additions made in the year by the Assessing Officer and since the assessment based on the original return of income filed under sec. 139 of the Act was not pending as on the date of search, I following the above cited decisions by the learned AR discussed above, hold that the assessment framed under sec. read with sec. 143(3) of the Income-tax Act, 1961 for the assessment year under consideration is not valid and the same is held as null and void. Accordingly, the addition of Rs 14,57,50,000/- made by the AO on account of bogus share capital and Rs 8,74,500 on account of unaccounted commission paid is deleted.

4.8 Considering my decision on the legal issue in favour of the assessee, the other grounds on merit of the addition demand no specific adjudication. Thus, the legal ground raised by the assessee is allowed and rest of the grounds are dismissed as academic. In result the appeal is allowed for statistical purpose.

6. Before us, the Ld. DR relied upon the order of the AO and submitted that view of the CIT(A) have not been accepted by the Department.

7. On the other hand, Ld. Counsel for assessee, Shri CS Aggarwal, Senior Advocate reiterated the submissions made before the authorities below. Additionally he also relied on the judgment of the jurisdictional High Court in the case of Principal Commissioner of Income Tax, (Central) – 2 vs. Index Securities Pvt. Ltd. reported in [2017] 86 taxmann.com 84. In the aforesaid case, the Hon'ble High Court relying on the judgment of the Apex Court in the case of CIT v. Sinhgad Technical Education Society reported in [2017] 397 ITR 344 has held that to justify the assumption of jurisdiction under Section 153C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. The relevant para of the aforesaid judgment is as under:

*“31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in Sinhgad Technical Education Society (supra) settles the issue and holds this to be an essential requirement. The decisions of this Court in RRJ Securities and ARN Infrastructure India Ltd. v. Asstt. CIT [2017] 394 ITR 569/81 taxmann.com 260 (Delhi) also hold that in order to justify the assumption of jurisdiction under Section 153C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.”*

8. It was also brought to our notice that SLP filed by the revenue against the aforesaid judgment of the Hon'ble High Court has also been dismissed by the Apex Court on 29.10.2021.

9. We have heard the arguments of both the parties and perused the material available on record. It is seen that in this case, ld CIT(A) has held that there is no description or reference of any incriminating documents related to the assessee found or seized during the course of the search from the premises of the group concerns and all the transactions as specified in the documents on the basis of which satisfaction note had been recorded have duly been recorded in the books of accounts of the appellant company.

10. Accordingly, by an order dated 4.10.2021, the Ld. DR was directed to furnish a paper book sought to be relied by the Revenue consisting of documents which formed the basis for recording satisfaction by the AO. Ld DR was directed to identify the documents which are incriminating and found or seized at the time of search and pertained to assessee. The case was accordingly adjourned to 22.11.2021 for final arguments on the matter.

11. On the next & final hearing on 22.11.2021, the Ld DR placed on record before us the paper book. Upon perusal thereof, it has been observed that all these documents are forming part of assessment records before the AO and have already been considered during the appellate proceedings before the Ld. CIT(A). During the hearing on 22.11.2021, the Ld DR sought to place reliance on the following 2 documents enclosed in the Revenue's paper book:

- i. Statement of Sh. Arun Kumar Khemka u/s 132(4) dated 20.01.2014 (pg 23-28)

Reference was made by Ld. DR to the following questions on pages 25 & 26 of the Revenue's paper book:

*“Q.10. How are you linked to Sharp Group of companies as well as Mapsa Group of companies?”*

*A.10. I am not aware of any Sharp Group of companies. However, Mapsa Group of companies controlled by Shri Mahesh Gupta is my client. I have provided bogus unsecured loan and bogus share capital/ premium entry through paper companies controlled by me to Mapsa Group in lieu of a certain percentage of commission. In case of bogus unsecured loan commission income is derived out of the TDS deducted as well as the interest earned on the TDS.*

*The client used to give me cash in lieu of which I would provide bogus unsecured loan vide cheques issued through bank accounts of paper companies controlled by me. In the case of bogus share capital & share premium entry the client would give me cash in return of which I would give them cheques.*

*Q.11. You are being shown Annexure A which consists a list of thirty paper companies controlled by you from different office premises which were used for the purpose of providing bogus share capital entry as well as bogus unsecured loan. Please confirm the same.*

*A.11. I have gone through annexure A and I confirm that all the companies mentioned in the list are controlled by me and were used to give bogus share capital entry as well as bogus unsecured*

*loan to Mapsa Group. The address of company no. 9 is incorrect though the company is mine.”*

- ii. Statement of Sh. Mahesh Gupta u/s 132(4) dated 11.03.2014 (pg 1-5)

Reference was made by Ld. DR to the following question on page 4 of the Revenue's paper book:

*Q. No.16 In the statement recorded under section 132(4) of the Income-tax Act, 1961, Sh. Arun Khemka stated that he is into the business of providing accommodation entries and Sh. Mahesh Gupta is one of his clients. Mr. Khemka stated that he has provided accommodation entries in the form of share capital to Mapsa Group of companies in the form of share capital. He has also added that he had received cash from you which was subsequently introduced as share capital in the books of Mapsa Group of companies. Again, Mr. S.K. Jain who is known as entry operator for giving accommodation entries was searched by the Income-tax Department, Delhi and in the course of investigation; it was found that the companies which have invested in Mapsa Group of companies are into the business of providing accommodation entries. In view of this facts, why it should not be considered that you have routed your unaccounted income in the form of share capital in the books of Mapsa Group of companies through the companies managed and controlled by Sh. S.K. Jain and Sh. Arun Khemka?*

*Ans.16 I do not know whether Arun Khemka is an entry operator or not. I also do not understand why he is giving false statement of*

*providing us accommodation entries. We have received legitimate valid investments from Sh. Arun Khemka and others for purpose as already explained above in detail. Likewise, for Mr. S.K. Jain and Others have also made genuine investment in our company for the same purposes. We do not have any sources of cash to have paid to them for investments in our company.*

12. In relation to the aforesaid documents sought to be relied upon by the Ld. DR, without prejudice to the assessee's submissions that no incriminating material whatsoever was found against the assessee during the course of search of third person, following points are worth noting:

- a) Under the statutory provision contained u/s 153C of the Act, satisfaction has to be recorded vis a vis any money, bullion, jewellery or other valuable article or thing; or any books of account or documents, seized or requisitioned.
- b) Statements of Sh. Arun Kumar Khemka or Sh. Mahesh Gupta relied upon by the Ld. DR refer to investment in "Mapsa Group of companies" rather than the assessee company. There is nothing either under the Companies Act or under any other law which recognizes "Mapsa Group of companies" or establishes any relationship of the assessee company therewith.
- c) Sh. Arun Kumar Khemka has later retracted his aforesaid statement dated 20.01.2014 and cannot be relied upon.
- d) No investment was ever made by Mr S.K. Jain or Mr Arun Kumar Khemka in the form of share capital/ premium of the

assessee company. The only sum of money received by the assessee company from Mr Arun Kumar Khemka/ any of his companies was in the form of unsecured loan, which was duly returned by the assessee company through normal banking channels after payment of TDS on interest accrued on such loan from time to time.

e) From the statement of Mr Mahesh Gupta dated 11.03.2014 placed at pages 1-5 of the Revenue's paper book, it is clearly evident that:

- He was not a director of the assessee company during the year under appeal and was not competent to make any statement on behalf of the assessee company. Page 1 of the statement clearly notes that the statement of Mr Mahesh Gupta was recorded on oath on behalf of M/s Mapsa Infra Pvt Ltd, M/s Mapsa Logistics Pvt Ltd, Mapsa Jewels Corpn and not the assessee company.
- Notwithstanding the above, Mr Mahesh Gupta has nowhere conceded in his statement that Mr. Arun Khemka or Mr. S.K. Jain have provided accommodation entries in the form of share capital/ premium/ unsecured loan in Mapsa Group of companies, leave aside the assessee company. On the contrary, Mr Mahesh Gupta in his statement has denied of even being aware that Mr Arun Khemka is an entry operator.

13. We have considered the rival submissions of the Ld DR as well as learned counsel of the assessee, Shri CS Aggarwal, Senior

Advocate both on facts and in law. The relevant facts of the case are already stated in the earlier part of this order and therefore are not produced again for the sake of brevity. In spite of a direction to identify the documents which are incriminating, the Ld DR has not been able to identify any of such documents. Instead, the Ld DR only relied on those documents which were relied upon by the AO in the note of satisfaction & have also been extracted by the Ld CIT(A) in his order in para 4.2. In fact, the Ld. Senior counsel of the assessee contented that the assessee had already commented on such documents, which had been dealt with by the Ld CIT (A) in his order. He submitted that the Revenue has utterly failed to establish that any document or books of account belong to or even pertaining to the assessee which are incriminating have either been found or seized. The statement of Mr Mahesh Gupta cannot be relied upon as he is not a director in the assessee company. Besides, Mr Mahesh Gupta has nowhere stated that any amount of share capital that has been received by the assessee company is bogus or unexplained.

14. After carefully considering the entirety of facts and principles of law enshrined by various courts including jurisdictional Delhi High Court in the case of Kabul Chawla and Index Securities Pvt. Ltd(supra) and Apex Court in the case of CIT v. Sinhgad Technical Education Society (supra), we are inclined to agree with the view of the Ld. CIT(A) that since the assessment based on the original return of income filed under sec. 139 of the Act was not pending as on the date of search as such, the additions made by the Assessing Officer in the absence

of any incriminating material found during the course of search belonging to the assessee for the assessment year under consideration is legally unsustainable.

15. No infirmity has been pointed out in the order of Ld. CIT(A) nor any incriminating material has been placed on record by the Ld DR, except the statements of Sh. Arun Kumar Khemka and Mr Mahesh Gupta. As stated above, these statements were already on record before the AO and no adverse inference can be drawn from these statements for various reasons already mentioned in para 12 of this order. The Revenue has not been able to rebut the findings recorded by the ld CIT(A). Hence, we uphold the order of the Ld. CIT(A) on various legal issues raised by the assessee. The Revenue has not even challenged the finding of the Ld CIT(A) in para 4.4 of his appellate order fact that “no incriminating documents has been seized”. We find absolutely no justification for the AO to initiate proceedings against the assessee and as such the finding of the Ld CIT(A) cannot be held to be erroneous either on facts or in law. Thus, for the reasons stated above and as has been upheld by the Ld CIT(A) in his order which we fully agree, we do not find any merit in the appeal by the Revenue, which is hence dismissed.

16. It will not be out of place to mention here that without prejudice to the legal grounds, we are inclined to hold that even on merits the assessee had discharged onus cast upon him under the law by furnishing evidence to the effect that all the shareholders in the assessee company were corporate entities, duly assessed to tax and, had subscribed to share-capital by

account payee cheques and supported by necessary evidence including their permanent account numbers, confirmations, addresses, etc. All shareholders were not only identifiable companies but also had requisite credit worthiness. It is also worth noting that notices sent by the AO to all these shareholders u/s 133(6) of the Act were duly served, which proved the existence of these shareholders. This shows that assessee has prima facie discharged its burden and onus was on the AO/revenue to rebut the evidences furnished by the assessee which the revenue has failed to do, as such, even on merits addition made by the AO cannot be sustained.

17. Therefore, there is no merit in the appeal filed by the Revenue and hence the same is accordingly dismissed.

Order pronounced in the open court on : 07/12/2021.

**Sd/-**  
**( DR. B.R.R. KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

Dated : 07/12/2021.

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

## 5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	7.12.2021
Date on which the typed draft is placed before the dictating member	7.12.2021
Date on which the typed draft is placed before the other member	7.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	7.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	7.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	7.12.2021
Date on which the final order is uploaded on the website of ITAT	7.12.2021
date on which the file goes to the Bench Clerk	7.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	