

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI AAKASH DEEP JAIN, VICE PRESIDENT AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 1397/DEL/2016 [A.Y 2006-07]

The A.C.I.T.
Central Circle - 27
New Delhi

Vs.

M/s Mount Echo Buildwell Pvt Ltd
H-123, Sector - 63
Noida, U.P.

PAN: AAECM 6235 C

**CO No. 175/DEL/2016
[A/o ITA No. 1397/DEL/2016 [A.Y 2006-07]]**

M/s Mount Echo Buildwell Pvt Ltd
H-123, Sector - 63
Noida, U.P.

Vs.

The A.C.I.T.
Central Circle - 27
New Delhi

PAN: AAECM 6235 C

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Agarwal, Adv

Department By : Ms. Sarita Kumari, Sr. DR

Date of Hearing : 09.12.2021

Date of Pronouncement : 09.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the Revenue and cross objection by the assessee are preferred against the order of the Commissioner of Income Tax [Appeals] - 25, Delhi dated 31.12.2015 pertaining to Assessment Year 2006-07.

2. The grievances of the Revenue read as under:

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition u/s 68 made on account of unexplained share capital received from 24 persons amounting to Rs. 1,97,00,000/- without appreciating the fact that neither the creditworthiness of these creditors nor the genuineness of transactions were established as submitted by the AO in Assessment Order and Remand Report.
2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the onus of the assessee is discharged without appreciating the judgement of the jurisdictional High Court given in case of CIT v. Nova Promoters (2012) 342 ITR 169 (Delhi) wherein the Hon'ble Court has held that by merely filing confirmations, ITRs etc. the identity, creditworthiness and genuineness of transaction are not established and the evidences adduced by the assessee has to be

examined not superficially but in depth and having regard to the test of human probabilities and normal course of human conduct.

3. That on the facts and in circumstances of the case, the Ld. CIT(A) erred in holding that the no proper enquiry was conducted without appreciating the fact that powers of the first appellate authority are co-terminus, with those of the AO, and he has not only the jurisdiction but also duty to conduct relevant inquiries wherever required as held by the Hon'ble Courts including the jurisdictional High Court in case of Commissioner of Income-tax-II v. Jansampark Advertising & Marketing (P.) Ltd [2015] 56 taxmann.com 286 (Delhi).
 4. That the Ld. CIT(A) failed to appreciate that during the remand proceedings notices/summons were issued to all 24 share applicants but in case of 17 persons these notices/summons came back unserved and despite that the above 17 persons filed their replies/confirmations which established the fact that the above transactions were not genuine.
 5. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
3. The grievances of the assessee read as under:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order framed by Ld. AO on the ground that no notice u/s 143(2) was issued after the return filed in response to notice u/s 153 A of the Act.

2 That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the additions made by Ld. AO in the impugned order, more so when there was no incriminating material found as a result of search."

4. Since the issues raised in the cross objections go to the root of the matter, we heard the representatives on the cross objections raised by the assessee.

5. Briefly stated, the facts of the case are that search and seizure operation was conducted at the premises of M/s Paramount Gulshan & Ajnara group of cases on 11.03.2011. The assessee belongs to Paramount group of companies. Therefore, statutory notice under section 153A of the Act was issued and served upon the assessee, in response to which

the assessee filed return of income declaring total income at Rs. 1,11,010/-.

6. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee company has issued share capital worth Rs.2.02 crores to 24 persons. Enquiries were made in light of section 68 of the Act and not satisfied with the submissions of the assessee and drawing support from various judicial decisions, the AO made addition of Rs.2.02 crores.

7. When the matter was agitated before the Id. CIT(A), the Id. CIT(A) was convinced that the assessee has successfully discharge the onus cast upon it by provisions of Section 68 of the Act and deleted the addition.

8. A perusal of the assessment order shows that while making addition under section 68 of the Act, the Assessing Officer has not referred to any incriminating material/document found at the time of search which relates to the impugned addition.

9. This fact has also been accepted by the Id. CIT(A) who, at para 8.9 of his order, has observed “The Assessing Officer has not relied upon any evidence, material or even any indication found in search and seizure operation regarding bogus share capital by the assessee”.

10. On these facts ratio laid down by the Hon'ble High Court of Delhi in the case of Kabul Chawla 281 CTR 0045 [Del] which was followed in the case of Meeta Gutgutia 82 Taxmann.com 287 squarely apply wherein the Hon'ble Jurisdictional High Court has held that where no incriminating material was unearthed to show that there was violation by the assessee to disclose income/additions made by the Assessing Officer was not justified. The relevant findings of the Hon'ble High Court of Delhi in the case of Kabul Chawla read as under:

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. 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."

11. In light of the decision of the Jurisdictional High Court [supra] we allow the cross objection of the assessee and appeal of the revenue automatically becomes otiose.

12. In the result, the appeal of the Revenue in ITA No. 1397/DEL/2017 is dismissed whereas the cross objection of the assessee in CO No.175 /DEL/2016 is allowed.

The order is pronounced in the open court on 09.12.2021 in the presence of both the rival representatives.

Sd/-

**[AAKASH DEEP JAIN]
VICE PRESIDENT**

sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th December, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	