

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.4794 & 4796/Del/2018
Assessment Year: 2011-12 & 2012-13

BMA Infotech P. Ltd. C-161, Sector-50, Noida-201301 (APPELLANT)	Vs	DCIT Central Circle Noida (RESPONDENT)
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Appellant by	Sh. K. C. Singhal, Advocate
Respondent by	Sh. Kumar Hrishikesh, CIT DR

Date of hearing:	24/02/2022
Date of Pronouncement:	24/02/2022

ORDER

PER N. K. BILLAIYA, AM:

ITA No.4794 and 4796/Del/2018 are appeals by the assessee preferred against common order of the CIT(A)-4, Kanpur dated 15.05.2018 pertaining to A.Y. 2011-12 and 2012-13.

2. Since common grievance is involved in both the appeals they are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance read as under :-

1. That assumption of jurisdiction u/s 153C was illegal being contrary to the provisions of S. 153C and judicial opinions since there was no satisfaction to the effect that items or material mentioned in section 153C belonged to the appellant. Admittedly, laptop found from the premises of searched person did not belong to the appellant. Further, there is no finding that any other material found in the search belonged to the appellant.
2. Without prejudice to above ground, the alleged satisfaction note refers to post search investigation which is not permissible in law since such satisfaction has to be restricted only to the material found in search and not otherwise. Notwithstanding, it does not refer to any material belonging to the appellant.
3. That assumption of jurisdiction u/s 153C was also illegal being contrary to the provisions of S. 153C and judicial opinions as no incriminating material was ever found in the course of search in the case of Abhay Maheshwari. Thus, the impugned addition of Rs.26.80 Lakhs u/s 68 is bad in law.
4. That assumption of jurisdiction u/s 153C was also illegal since no satisfaction was recorded by the AO in terms of amendment made by Finance (No 2) Act 2014.
5. That on merits, the CIT(A) failed to adjudicate the issue relating to balance addition of Rs.26.80 lakhs even though relevant evidences along with application under Rule 46A was filed before him. The CIT(A) ought to have considered and allowed application under Rule 46A.

The appellant craves to add, or amend the ground of appeals if required and necessary.

It is therefore prayed that the impugned order of assessment be quashed and/or necessary relief be allowed to the appellant which the Hon'ble Tribunal may deem fit.

4. Representatives of both the sides were heard at length. Case record carefully perused.

5. Briefly stated the facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on 27.11.2014 in the case of Maconnns, Meenu and Yadav Singh Group Noida covering its business premises and residences of Director, their family members and other business associates concern and other key persons.

6. During the course of search operation at the residence of Abhay Maheshwari, a laptop was found and seized. From the scanning of seized data it was found that M/s. Golf Link Hospitality Private Limited has obtained unsecured loan, share

application money and share capital from various doubtful entities, the assessee M/s. BMA Infotech Pvt. Ltd. is one of them.

7. Notice u/s. 153C of the Act was issued on 20.04.2015 and the AO started the assessment proceedings.

8. During the course of the scrutiny assessment proceedings the AO found that the assessee has raised money through share application amounting to Rs.1,22,80,000/-. The assessee was asked to furnish details, creditworthiness as well as genuineness of the transaction. On receiving no plausible reply the AO made addition u/s. 68 of the Act.

9. The assessee challenged the assessment before the CIT(A) on the legal ground that provisions of section 153 C of the Act do not apply on the facts of the case, the appeal of the assessee on this ground was dismissed by the CIT(A). It was also contended before the CIT(A) that no incriminating material was found during the course of the search and, therefore, in the light of the ratio laid down by the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society* 397 ITR 344 the assessment is bad in law. This plea of the assessee was also dismissed by the CIT(A).

10. A perusal of the record show that following satisfaction note was recorded for initiation of proceedings u/s.153C of the Act in respect of the assessee :-

"Satisfaction note for initiation of proceedings u/s 153C of I.T. Act 1961, M/s. BMA Infotech Pvt. Ltd. PAN- AACCB9712H

Perusal of seized documents and post search investigation by the Investigation Wing, Noida, it was revealed that M/s BMA Infotech Pvt. Ltd. PAN- AACCB9712H has given share application money and unsecured loan to M/s Golfink Hospitality Pvt. Ltd. group company of Yadav Singh and the same was not confirmed by M/s BMA Infotech Pvt. Ltd. It appears to be an accommodation entry.

Chart showing details of share application money taken or accepted by M/s Golfink Hospitality Pvt. Ltd and outstanding as on balance sheet date is reproduced as under in which name of assessee is appearing:

Sl. No.	Name of companies from whom amounts have been taken as share application money	Share Application Money (in lacs)		
		2009-10	2010-11	2011-12
1	M/s BMA Infotech P Ltd C-161 Sector-50, Noida		35	
2	M/s Munny Entertainment Pvt. Ltd. 686, Sector-06, Panchkula. Haryana-134109		50	50
3	M/s Sunland Holdings Private Limited, Block No. 2, 7th Floor. Apex Mall, Lai Kothi, Tonk Road. Jaipur, Rajasthan-302015	16.65		
4	M/s S. B Resorts International Pvt. Ltd. 689, Sector-6, Panchkula, Haryana-134109		47	47
5	M/s YPT Entertainment House Pvt. Ltd. 1696/3B, Ghee Wali Gali, Patila, Punjab.		45	45
6	M/s Harayali Travelers P. Ltd., F-1052, Gaur Green City, Indirapuram, Ghaziabad		20	
7	M/s Millenium Impex P. Ltd., 98, DSIDC Complex Okhla Industrial Area, Phase-1, Delhi-110020.	10	10	
8	M/s I Tech InsurenceBrokers Pvt. Ltd. 1119, Khichripur Delhi - 91		20	
9	M/s Parsidh Fincap Ltd. 3603, 1st Floor, Chamber No. 12, Darya Ganj, Delhi-06		20	
10	M/s Sunny Entertainment Pvt. Ltd. 686, Sector-6, Panchkula, Haryana-134109		20	20
11	M/s Arrow Distribution Ap Pvt Ltd D-50, Davanand Block, Delhi.		15	
12	M/s Niranjani Buildcon Private Limited		15	
13	M/s St. Transe Sounds Private Limited		15	
14	M/s Namu Resort Pvt. Ltd.		5	
15	M/s Raipur Drugs Project		5	
16	M/s Jeewan Trust, 31/67, Lohar Gali, Agra-282003.	2	2	

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17	Geeta Machonja	1		
18	Vidya Devi	11		
19	RG Maheswari	1		
20	RG Maheswari (HUF)	1		
21	Ruchi Maheswari	1		
22	Pradeep Kumar			
23	Deepak Gupta			
	Total	43.65	324	162

Chart showing details of unsecured loans taken or accepted by M/s Golfink Hospitality Pvt Ltd during the F.Y. 2009-10 to 2011-12 and outstanding as on balance sheet dates is reproduced as under in which name of assessee is appearing:

S.No.	Name of companies from whom amounts have been taken unsecured loan	Loan in lacs		
		2009-10	2010-11	2011-12
1	M/s Minar Hotels P. Ltd., 6, GF, Todermal Lane, Bengali Market, Delhi-110092.			500
2	M/s BMA Infotech P Ltd. C-161, Sector-50, Noida		25	32
3	M/s Capfin India Ltd. C-12 Raj Street CHBS Pitam Pura, Delhi-110034	41.4	52.5	23.7
4	M/s MDS Investment P. Ltd., H-17, Part-2, South Extension, Delhi-110002.			40
5	M/s Harayali Travelers P. Ltd., F-1052, Gaur Green City, Indrapuram, Ghaziabad	10.15	15.48	
6	M/s Millenium Impex P. Ltd., 98, DS1DC Complex Okhla Industrial Area, Phase-I, Delhi-110020.		10.5	
7	M/s Stuti Holidays Resorts	10	10	
8	M/s Cheenu Press Prakashan, 3603, 1st Floor, City Business Centre, Darya Ganj, Delhi-110002.	5	5	
9	M/s Pranshu Traders P. Ltd., 311, Jagdamba Tower, 13 Preet Vihar, Delhi-110092.		5	
10	M/s Worldwide Insurance Brokers Ltd. A-5, Basement, Gulmohar Park, New Delhi	5		
11	M/s Countrywide Holdings Pvt. Ltd., D-277, 1st Floor, Delhi-110092.		28	
12	Devendra Kumar Gangal	38	40	
13	Pradeep Kumar		5	
14	Deepak Gupta			20
	Total	109.62	196.78	629.38

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Before the Investigation wing, Noida, balances shown against the name of assessee could be not be confirmed, hence Investigation wing gave a finding that balances appearing before this assessee, may be accommodation entries. M/s BMA Infotech P Ltd. has provided both the share capital and the unsecured loans to the company, and their name is appearing in both the lists of share capital and unsecured loans. Hence their role requires to be investigated. The cases of this group are interconnected and required deep investigation to arrived at a logical conclusion: As such, for taking a logical conclusion in these group of cases, every single seized/impounded document and entry appearing in the seized/impounded documents requires a deep scrutiny and its impact on the other cases of the group. Considering the above facts, as discussed above, I am satisfied that it is a fit case for initiation of proceedings under section 153C of the Income Tax Act for proper deep investigation in this case and to plug the leaked revenue.

11. The above mentioned satisfaction note has to be considered in the light of the provision of section 153 C of the Act as it stood at the relevant assessment year and the same read as under :-

“75. Substituted for “Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assests seized or other person” by the Finance Act, 2015 w.e.f. 1.06.2015.”

12. A bare perusal of the aforementioned provision show that nothing belonging to the assessee was found at the time of search at the premises of Abhay Maheshwari. The laptop was

found from the premises of Abhay Maheshwari and as per the provisions of section 132 (4A) (i) and 292 C of the Act the presumption is that the document and assets found in the course of search from premises of a person it may be presumed that such item belong to the person whose premises are searched. It can be seen from the satisfaction note there is no reference to any laptop found at the time of search and as mentioned here in above whatever was found at the time of search belonged to Abhay Maheshwari.

13. The Hon'ble High court of Gujarat in the case of Anilkumar Gopikishan Aggarwal 418 ITR 25 has held that section 53C as amended w.e.f. 01.06.2015 would not be applicable to cases where search is initiated prior to the date. In the present case since the search was conducted on 27.11.2014 the un-amended provision as mentioned elsewhere would apply.

14. A bare perusal of the assessment order would show that there is no reference to any incriminating material for the addition made by the AO, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Singhad Technical Education Society (supra) squarely apply.

15. Considering the legal issues from all possible angle. In our considered opinion the assessment order is bad in law and

is liable to be quashed. We, therefore, quash both Assessment Orders and allow the appeals.

16. Decision announced in the open court in the presence of both the parties on 24.02.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-24.02.2022

Copy forwarded to:

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

ASSISTANT 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	24.02.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	