

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

**ITA No.3294, 3295 & 4692/Del/2016
Assessment Year: 2005-06,2006-07 & 2008-09**

Vineet Kashyap 223, Sukhdev Vihar New Delhi PAN No.AGDPK0402H (APPELLANT)	Vs.	ACIT Central Circle-15 New Delhi (RESPONDENT)
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Appellant by	Sh. Rohit Jain, Advocate Sh. Deepesh Jain, CA Sh. Shaurya Jain, CA
Respondent by	Sh. H.K. Choudhary, CIT (DR)

Date of hearing:	24/03/2022
Date of Pronouncement:	24/03/2022

ORDER

PER N.K. BILLAIYA, AM:

ITA No.3294/Del/2016, 3295/Del/2016 and 4692/Del/2016 are three separate appeals by the assessee preferred against three separate orders of the CIT(A)-26, New Delhi dated 28.03.2016 and 12.07.2016 pertaining to A.Y.2005-06, 2006-07 and 2008-09 respectively.

2. Since common issues are involved in all three appeals they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. For the sake of our convenience we are addressing to the grounds of appeal for A.Y. 2005-06 :-

1. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal) - XXVI has failed to appreciate that the notice issued u/s 153A is illegal, bad in law and without jurisdiction and the assessment order u/s 254/153A is also illegal, bad in law and without jurisdiction.
2. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal)- XXVI has failed to appreciate that the notice issued u/s 143(2) and the assessment order made u/s 153A r.w.s 254/143(3) is illegal, bad in law, barred by time limitation and without jurisdiction.
3. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal)- XXVI has failed to appreciate that the addition made by the Ld AO are not based on any incriminating material found during the course of search. Hence assessment order passed u/s 153A/254/143(3) and the addition/ disallowance made are illegal, bad in law and without jurisdiction.
4. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal) - XXVI has failed to appreciate that the assessing officer have erred in framing the assessment u/s 153A r.w.s 254/143(3) when the assessment already completed u/s 143(1) before commencement of the search, which does not stands abated as per proviso to section 153A(1) of the Income Tax Act 1961.

5. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal)- XXVI has failed to appreciate that no reasonable and proper opportunity of hearing has been allowed, thus the principles of natural justice have been grossly violated.
 6. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal)-XXVI has erred in sustaining the addition made by the AO of Rs. 15,74,00,000/- in respect of the alleged investment in cash in M/S Akme Projects Ltd, without appreciating the evidence and submissions filed during appellate proceeding .
 7. That on the facts and circumstances of the case and the provision of law the Ld. CIT (Appeal)-XXVI has failed to appreciate the fact that the appellant has already surrendered Rs. 17,00,00,000/- on the basis of the seized documents in assessment year 2008-09 and this further addition of Rs. 15,47,00,000/- on the basis of same documents in the current year will lead to double taxation.
 8. That the Ld. AO has erred in law in charging of interest u/s 234B of the Act.
 9. That the appellant craves to add, amend, alter and/or modify the Grounds of Appeal of the said appeal.
4. Vide letter dated 05.09.2019 the assessee has also raised following additional ground of appeal :-

That on the facts and circumstances of the case and provision of the law the Ld. CIT Appeal has failed to appreciate that no addition can be made u/s 153A of the act on the basis of the seized documents found from the premises of the third party in the hands of the assessee and rather addition on the basis of the such documents can only be made u/s 153C of the act.

5. Representatives of both the sides were heard at length. Case records carefully perused.

6. Briefly stated the facts of the case are that a search and seizure operation u/s.132 of the Act was conducted on 19.02.2008 in the case of M/s. B.L. Kashyap and Sons Group of cases. A search also included the premises of the assessee. A search was also conducted at the residence of Sunil Khemka on 18.02.2008. During the course of search at the residence of Sunil Khemka some incriminating documents were seized from the possession of Sunil Khemka. These documents contained handwritten diaries, spiral note books and ordinary note books maintained by Sunil Khemka in his own handwriting regarding day to day events of investments, profitability and progress of various projects undertaken by M/s. Akme Projects Ltd at Bangalore. Following documents seized from the premises of Sunil Khemka were taken for consideration by the AO in the impugned assessment proceedings:-

Sh. Vineet Kashyap
A.Y. 2005-06

5.1 STATUS OF AKME PROJECTS LTD. AS ON 4TH DECEMBER, 2004

(Rs. in crores)

INVESTMENT IN PROJECTS	CHQ	CSH	TOTAL
1 Harmony-Phase I	4.99	3.00	7.99
2 Everglade(45.7125 acres avg. Rs.27.10 per acre)	3.80	8.59	12.39
3 I.T. Park, G. Noida	0.62	2.80	3.42
4 Ballet (2 nd Housing at Bangalore)	0.56	0.50	1.06
5 Gold (Retail)	1.18	0.50	1.68
6 Indus Software (I.T. Park, Bangalore)	0.25	0.35	0.60
TOTAL	11.40	15.74	27.14

ADVANCES

a) Advance to Garden City Resort (Krishna)	0.30	-	0.30
b) Advance to BLK & Sons Ltd.	1.46	-	1.46
TOTAL	1.76	-	1.76

LIQUID ASSTES

a) Investment in shares	0.16	-	0.16
b) Cash & Bank balances	1.04	-	1.04
TOTAL	1.20	-	1.20

OTHER FIXED ASSTES/SECURITY DEPOSIT

0.20 - 0.20

GRAND TOTAL **14.56** **15.74** **30.30**

SOURCES

1 Share Capital	0.05	-	0.05
2 Deposit from Customers	1.23	-	1.23
3 Mr. Anil Nanda	14.00	-	14.00
4 Mr. V. Kashyap	(0.72)	15.74	16.02

GRAND TOTAL **14.56** **15.74** **30.30**

Sh. Vineet Kashyap
A.Y. 2005-06

5.2

STATUS OF AKME PROJECTS LTD. AS ON 30TH JUNE, 2005

(Rs. In crores)

INVESTMENT IN PROJECTS	CHQ	CSH	TOTAL
1 Harmony-Phase I & II	38.52	3.00	41.52
2 Everglade (52.2875 acres??)	3.99	9.53	13.52
3 I.T. Park, G. Noida	0.62	2.80	3.42
4 Ballet	10.28	2.15	12.43
5 Gold (Retail)	0.80	0.50	1.30
6 Indus Software (I.T. Park, Bangalore)	0.25	0.35	0.60
TOTAL	54.46	18.33	72.79
ADVANCES			
1 Garden City Resort (Krishna)	3.28	-	3.28
2 Abyudhya Edn. Trust (Krishna)	1.20	-	1.20
3 BLK & Sons Ltd. (Mob. Advance)	5.96	-	5.96
4 Other advances	0.51	-	0.51
TOTAL	10.95	-	10.95
LIQUID ASSESTS			
a) Investment in shares	0.10	-	0.10
b) Cash & Bank balances	7.96	-	7.96
TOTAL	8.06	-	8.06
OTHER FIXED ASSETS/SECURITY DEPOSIT	0.67	-	0.67
GRAND TOTAL	74.14	18.33	92.47
SOURCES			
<u>External</u>			
1 Deposit from customers	40.15	-	40.15
2 sundry creditors	11.40	-	11.40
3 Loan-Kar. Bank & ICICI Bank	6.09	-	6.09
4 Earnest money (BLK)	4.00	-	4.00
TOTAL	61.64	-	61.64

7. Basis the aforementioned documents on 18.06.2008 the statement on oath of the assessee was recorded by the AO who raised the following question and the assessee answered as under

:-

Q. No. 2: Please refer to your statement dtd. 19.2.08 recorded during the course of search u/s 132 of I.T. Act, 1961 whereby an amount of Rs. 55 crore was offered voluntarily for taxation as additional undisclosed income. A. also refer to your statement dtd. 17.03.2008, submissions filed dt. 19.3.2008 and statement dtd. 15.4.2008 giving details of the disclosure. In the disclosure you have mentioned figure of Rs. 17 crores including figure of Rs. 16.28 crores reflected in Annex. A-9, page. 68. Party LR-10

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This figure of Rs. 16.28 crores is reflected Annex as on 30 June, 2005 however, in your details of disclosure submitted vide your Statement dtd. 15.04.2008, this figure of Rs. 17 crores including figure of Rs. 16.28 crores is offered for taxation for ^{financial} year 2007-08. Pl explain.

Ans: In this regard I have to state that a diary being Annex 9 and para no. 68 was seized from Mr. Sunil Khemka titled as "Status of Akme Projects Ltd, as on 30th June 2005". The summarized cash figure expenditure of these documents is Rs. 16.28 crores mentioned against name as Mr. V. Kashyap. This figure of Rs. 16.28 crores is an imaginary, hypothetical, fictitious, and unreal figure and does not represent any real cash cost outflow/expenditure. This fictitious figure was noted by Mr. Khemka, a representative of Sh. Nanda, on my instructions only to pressurised Mr. Nanda to sit and settle down severe disputes between me on behalf of Mrs Shruuti Choudhary and Mr. Nanda relating to the projects and the

Company, M/s. Akme Projects Ltd. These figures are bogus/imaginary figures, with no evidence of the Cash outflow or expenditure.

Finally disputes were settled vide agreement dt. 04/04/2007. Claims of expenditure of Rs. 15.24 crs was withdrawn which were unreal and fictitious claims. Shares held by Mrs. Shruhi Choudhary in Akme were transferred to Mr. Navde's Group Company for Rs. 25 lacs. Controlling interest in Akme was left to Mr. Nav.

Some flats/construction aid under construction area was given by Akme to Mrs. Shruhi/her nominee

M/s. BLK Realty/Chrysalis Realty for consideration settled Rs. 18,08,32,794/- against transfer price mentioned in the agreement at 4.5 crs. An amount of Rs. 17 crs has been invested in

Akme Projects on behalf of Mrs. Shruhi Choudhary in April 07 out of my income of FY 07-08,

which is out of books and stands surrendered u/s 132(4) for A.Y. 08-09. This 17 crs sum

partly adjusted to the extent of Rs. 13,58,32,794/- against consideration of Rs. 12,08,32,794/- @ 4.5.

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Sum paid through Cheques. The excess of Rs. 3,41,62,206/- is refundable by Akme to me. These facts are in the knowledge of Mr. Nand Lal and his team.

8. Basis the above mentioned answer vide letter dated 15.04.2008 the assessee furnished the details of said surrender.

The relevant part of the details read as under :-

Mr. Vineet Kashyap

Particulars	116300	From Residence 223 Sukhdev Vihar, New Delhi
Cash in hand	51050750	
Investment in Akme Projects	<u>170000000</u> <u>221167050</u>	As per seized Annexure No.9 as a whole and Particular and including Page No.68 of the party No. LR 10, reflecting hypothetical figure of Rs.16.28 crores as cash and Agreement dated 04/04/07 read with other seized materials

9. Basis the aforementioned bifurcation and details of surrender in the computation of total income for A.Y. 2008-09 the assessee returned income u/s. 132 (4) of the Act totaling Rs.22,11,67,050/-which is evident from the pages 149 to 152 of the paper book.

10. A perusal of the assessment order for A.Y.2005-06 and 2006-07 show that in A.Y.2005-06 the AO has made addition of Rs.15.74 crores and in A.Y. 2006-07 addition of Rs. 0.54 crores have been made totaling to Rs. 16.28 crores.

11. Considering the aforementioned factual matrix we are of the considered opinion that since the entire income surrendered during the course of the search proceedings have been offered and taxed in A.Y.2008-09 which have been on the basis of the documents mentioned elsewhere found and seized from the premises of Sunil Khemka, once again the addition on the basis of the same document in A.Y.2005-06 and 2006-07 amounts to double addition which is not acceptable. Similar view was taken by this Tribunal in the case of K. K. Modi in ITA No.2892/Del/2017 which has been affirmed by the Hon'ble High Court of Delhi in ITA No.52/2021.

12. Considering the facts of the case in totality in the light of the aforementioned discussion we direct the AO to delete the impugned additions from the A.Y.2005-06 and 2006-07. Since we have directed the AO to delete the additions from A.Y. 2005-06 and 2006-07, appeal for A.Y.2008-09 becomes otiose.

13. Since we have deleted the additions on merits of the case, with the consent of all the representatives the jurisdictional issues raised in the grounds of appeal are left open.

14. In the result, all these three appeals filed by the assessee are allowed.

15. The order is pronounced in the open court on 24.03.2022 in the presence of both the rival representatives.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

NEHA

Date:- 24.03.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24.03.2022
Date on which the typed draft is placed before the dictating Member	24.03.2022
Date on which the typed draft is placed before the Other member	24.03.2022
Date on which the approved draft comes to the Sr.PS/PS	24.03.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	24.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	24.03.2022
Date on which the final order is uploaded on the website of ITAT	24.03.2022
Date on which the file goes to the Bench Clerk	25.03.2022
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	