

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.965/Kol/2019
Assessment Year: 2013-14**

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| DCIT, KOLKATA | CIRCLE-2(3), | Vs. | Smt. Promila Chandhoke B-96, Mansarover Garden, New Delhi- 110 015. PAN: AAHPC 8795 K |
| (Appellant) | | (Respondent) | |

**ITA No.966/Kol/2019
Assessment Year: 2013-14**

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| DCIT, KOLKATA | CIRCLE-2(3), | Vs. | Shri Harshdeep Chandhoke B-96, Mansarover Garden, New Delhi- 110 015. PAN: AERPC 3660 D |
| (Appellant) | | (Respondent) | |

**ITA No.967/Kol/2019
Assessment Year: 2013-14**

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| DCIT, KOLKATA | CIRCLE-2(3), | Vs. | Ninder & Sons (HUF) B-96, Mansarover Garden, New Delhi- 110015. PAN: AADHN 7436 C |
| (Appellant) | | (Respondent) | |

Present for:

Appellant by : Shri Sallong Yaden, Addl. CIT
Respondent by : Shri I.P. Bansal & Shri Vivek Bansal, Advocate

Date of Hearing : 08.02.2022
Date of Pronouncement : 27.04.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These three appeals are arising out of the order of Ld. CIT(A)-17, New Delhi vide order even dated 31.12.2018 in respective Appeal

No. 150-159-145/2016-17/CIT(A)-17 against the assessment order passed by ITO, Ward-49(2), New Delhi u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 29.03.2016.

2. All the three appeals are being disposed of by the consolidated order since common issue is involved. Though the assessee belongs to New Delhi, the appeals have been filed in the Kolkata Zone jurisdiction of ITAT because of centralization of all the three cases with the Central Circle-2(3), Kolkata vide order u/s 127(2) of the Act dated 04.05.2018 owing to a search conducted in the Kwality Group on 22.08.2017 which included the assessee also.

3. Grounds of appeal taken by the department in ITA 965/Kol/2019 are reproduced as under which are common in all the three appeals except for the quantum involved:

"i. The Ld. CIT(A), New Delhi erred both on facts as well as in law in giving relief to the assessee by deleting the addition of Rs. 2,27,64,257/- to the business income of the assessee, which was nothing but the income of the assessee earned through the activity of providing accommodation entries to the beneficiary, namely, Kwality Limited without examining the facts of the case and the evidence relied upon by the AO, while making such addition.

ii. The Ld. CIT(A) failed to call/remand report on the evidences provided by the assessee before Ld. CIT(A) and to allow the AO to corroborate with the evidence gathered during search in Kwality Group.

iii. That the department craves leave to add, alter or modify any grounds of appeal in the course of Appellate proceedings."

4. Brief facts has culled out from the records by taking ITA 965/Kol/2019 as the lead case, are that the assessee is dealing in whole sale supply of milk in bulk quantity. The business module of the assessee is that she purchases containers of milk from various suppliers operating in the same trade. The milk container purchases

are sold to various vendors either on the basis of complete container as such or part of the container as per the business requirements. The role of assessee is limited to the management and adjustment of demand and supply and to ensure that milk collected from various agencies is sold in the same day and stock is not spoiled. The assessee has its head office in West Delhi but it is carrying out its operations through various business centre located at different villages of Haryana. The assessee filed her return of income declaring a total income of Rs. 11,63,440/- on 01.10.2013. In the course of assessment, the Ld. AO conducted certain enquiries at the business addresses of the assessee and held that assessee is not engaged in any business activity of milk/dairy business. The Ld. AO also held that transactions of sale and purchase were not genuine business transactions which have been made for ulterior motive of the assessee. By holding this and in absence of any other basis, the Ld. AO assessed the income generated by the assessee through these sham transactions by estimating net profit @1% of the total receipts. The details of total receipts and net profit estimation at which the total income of all the three assessees assessed by the Ld. AO in their respective assessment orders is tabulated as under:

| SL No. | Assessee | Turnover/Receipts (Rs.) | N.P. @1% estimated by the AO (Rs.) |
|--------|-----------------------------|----------------------------|--|
| 1 | Smt. Promila Chandoke | Rs.238,92,10,782/- | Rs.2,38,92,107/- |
| 2 | Shri Harshdeep Chandhoke | Rs.199,33,09,799/- | Rs.1,99,33,100/- |
| 3 | Ninder and Sons (HUF) | Rs.211,47,14,494/- | Rs.2,11,47,145/- |

5. Aggrieved by the addition, the assessee preferred an appeal before the Ld. CIT(A), who deleted the addition. Department being aggrieved, is in appeal before the Tribunal.

6. Shri I.P. Bansal & Shri Vivek Bansal, Adv. appeared for the assessee and for the department Shri Sallong Yaden, ACIT, Sr. DR.

7. Before us, the ld. counsel of the assessee submitted that these appeals before the Hon'ble Tribunal have arisen from assessment order passed u/s 143(3) of the Act, dated 29.03.2016. It was further submitted through an email dated 04.02.2022 that subsequent to the said assessment order, there was a search and seizure operation on the assessee on 22.08.2017 as part of Kwality Group wherein another assessment order for the same year i.e. 2013-14 was passed u/s 144 r.w.s. 153A of the Act dated 28.12.2019 which is pending before the Ld. CIT(A). Owing to this subsequent development of search and seizure conducted on the assessee and the income re-assessed u/s 153A of the Act for the impugned year, the ld. counsel pressed and submitted that the present appeals by the department against the assessment order passed u/s 143(3) of the Act have become infructuous. The ld. counsel submitted a copy of assessment order dated 28.12.2019 passed u/s 144 r.w.s. 153A of the Act in the case of Smt. Promila Chandhoke to substantiate his contention. On this submission for the instant appeals becoming infructuous, we do not subscribe to it owing to clarification contained in CBDT Circular No. 7/2003 dated 05.09.2003 containing explanatory notes on provisions relating to direct taxes vide para 65.5-*"...It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate."* Appeal of assessee was pending before Ld.CIT(A) on the date of search & present appeal before us is against the order of Ld.CIT(A).

8. On perusal of the assessment order passed u/s 144 r.w.s. 153A consequent to search and seizure operation as submitted by the ld. counsel of the assessee in the course of hearing, it is observed from para 8(d) that the Ld. AO (DCIT, Central Circle-2(3), Kolkata has taken note of all the findings recorded by the Ld. AO (ITO, Ward-49(2), New Delhi) in the assessment made u/s 143(3) as under:

“d) No business activity noticed in the business premise of the assessee:

On perusal of the audited documents furnished by the assessee, it is seen that the business premise as reported by the assessee was at B-96, Mansarover Garden, New Delhi. During the course of search operations conducted by the Investigation Wing, it is seen that the said premise was actually a residential building. Moreover, on perusal of the assessment records for the A.Y 2013-14 in the instant case, it is noticed that the instant case was selected for scrutiny assessment through CASS and accordingly, the order under section 143(3) of the Act was passed by the erstwhile A.O, i.e. ITO, Ward-49(2), New Delhi on 29.03.2016, wherein the erstwhile A.O has made a proper spot verification to understand the true scenario of business activities performed by the instant assessee at B-96, Ground Floor, Mansarover Garden, New Delhi. The erstwhile A.O had deputed his departmental Inspector attached to his office to serve the notice under section 142(1) alongwith summons under section 131 of the Act and also to verify the physical identity of the instant assessee.”

9. We note that the date of search and seizure operation in the case of Kwality Group including the present assessee is 22.08.2017. The date of impugned appellate order passed by the Ld. CIT(A) against the assessment order made u/s 143(3) is 31.12.2018 which is subsequent to the date of conduct of search and seizure operations and was pending at the time of conduct of search. The subsequent development of search & seizure operations in the case of assessee herself ought to have been factored in by the Ld. CIT(A) while disposing of the appeal before him by examining and verifying any incriminating material, if any, found and seized during the course of search and having any bearing on the impugned additions

under challenge before him since the impugned assessment year 2013-14 is the year which is covered within the six years as provided in section 153A of the Act.

10. Before us, the ld. counsel has brought the fact of subsequent development of search & seizure operation in the case of the assessee, whereby an assessment order u/s 144 r.w.s 153A was passed on 28.12.2019 and appeal against which is pending before the ld. CIT(A).

11. Considering the subsequent event of search & seizure in case of assessee herself and the impugned assessment year being covered within the six years provided in section 153A of the Act, we find it fit to remit the instant case back to the file of Ld. CIT(A) so as to take a meritorious view by keeping together the findings of the AOs in both the assessments i.e. u/s 143(3) and u/s 144 r.w.s. 153A of the Act and dispose them off in accordance with the applicable law and observations made in para 9 above. Needless to say that assessee be given reasonable opportunity of being heard and make any further submission, if desired.

12. Since the matter is restored to the file of Ld. CIT(A) for fresh adjudication in terms of our observations and herein above, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense / explanation of the assessee. Accordingly, in terms of above, the appeal of the assessee is allowed for statistical purpose.

13. Since identical issue is involved in the other two appeals vide ITA No. 966 & 967/Kol/2019, the same are also disposed off in terms of our finding and directions given above in ITA 965/Kol/2019. Accordingly, these two appeals are also allowed for statistical purpose.

14. In the result, all the three appeals of the revenue are allowed for statistical purpose.

Order pronounced in the open court on 27.04.2022.

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Kolkata, Dated: 27.04.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: DCIT, Central Circle-2(3), Kolkata.
2. The Respondent: Smt. Promila Chandoke, Shri Harshdeep Chandhoke & Ninder and Sons (HUF).
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata