

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

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.637/Del/2016  
Assessment Year: 2005-06

|   |            |  |
|---|------------|--|
| Paramount Probuild Pvt. Ltd.,<br>208, Sikka Mansion, LSC,<br>Savita Vihar,<br>New Delhi | <b>Vs.</b> | DCIT, Central Circle-18,<br>New Delhi. |
| <b>PAN :AADCP5228P</b>  |            |  |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>                    |

ITA No.1391/Del/2016  
Assessment Year: 2005-06

|   |            |  |
|---|------------|--|
| ACIT, Central Circle-27,<br>New Delhi<br>PIN: 1100 55 | <b>Vs.</b> | Paramount Probuild Pvt.Ltd.,<br>208, Sikka Mansion, LSC,<br>Savita Vihar,<br>New Delhi |
| <b>PAN :AADCP5228P</b>                                |            |  |
| <b>(Appellant)</b>                                    |            | <b>(Respondent)</b>  |

|                       |   |
|-----------------------|---|
| Assessee by           | Dr. Rakesh Gupta & Sh.<br>Somil Agarwal, Adv. |
| Department by         | Ms. Shivani Singh, CIT DR                     |
| Date of hearing       | 21.04.2022                                    |
| Date of pronouncement | 19.05.2022                                    |

**ORDER**

**PER YOGESH KUMAR U.S., JUDICIAL MEMBER:**

These appeals have been filed by the Assessee and the Revenue against the order dated 31/12/2015 passed by CIT(A)-25, order u/s 250 of the I.T. Act, 1961 (for short "the Act") for Assessment Year 2005-06.

Grounds of Assessee's appeal:

**ITA No.637/Del/2016**  
**Assessment Year: 2005-06**

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction to assess the appellant u/s. 153A 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 confirming the action of Ld. AO in framing the impugned Assessment Order u/s. 143(3)/153A without issuing and serving the jurisdictional notice u/s. 143(2) of the Act.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition to the extent of Rs.40,00,000 out of total share capital of Rs.2,89,50,000/-.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition to the extent of Rs.40,00,000/- being the amount of share capital by treating it as alleged unexplained cash credit u/s. 68 is bad in law and against the facts and circumstances of the case, more so when there was no incriminating material was found during the course of search and more so when the impugned year was the first year of the assessee company.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition to the extent of Rs.40,00,000/- made by Ld. AO without observing the principles of natural justice.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income-Tax Act, 1961.*
7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

Grounds of Revenue's appeal:-

**ITA No.1391/Del/2016**  
**Assessment Year: 2005-06**

1. *That on the facts and 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 25 persons amounting to Rs.2,38,50,000 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 circumstances of the case, the CIT(A) erred in holding that the onus of the assessee is discharged without appreciating the judgment 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 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 Court 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 order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*
5. *That the grounds of appeal are without prejudice to each other.*
6. *The appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before at the time of hearing of the appeal.*

3. Brief facts of the case are that, the assessee Company is engaging with business of Civil Construction, maintenance and running of the dwelling units, flats, house and commercial complex. A search and seizure operation u/s 132 of the Act, was carried out on 11/03/2011 in M/s Paramount, Gulshan & Ajnara group of cases. The case of the assessee was also covered u/s 132(1) of the Act. The assessee company belongs to Paramount Group of Companies. Paramount group is engaged in residential and commercial projects in Uttar Pradesh.

4. A notice u/s 153A was issued to the assessee on 06/03/2012 in response to the same, a return declaring total income of Rs.2,67,220/- was filed on 20/12/2012. During the course of assessment proceedings, it was found by the A.O that, the assessee has failed to establish the genuineness of transaction of share application money/share capital and also fail to providing creditworthiness of the alleged subscribers to the share capital. The share capital of Rs. 2,89,50,000/- received by the assessee Company has been treated as income of the assessee on account of unexplained cash credit u/s 68 of the Act, accordingly, passed assessment order on 28/03/2013. As against the assessment order dated 28/03/2013, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) has sustained the addition only to the extent of Rs. 40,00,000/- u/s 68 of the Act and the balance addition of Rs. 2,49,50,000/- has been deleted.

As against sustaining the addition of Rs. 40,00,000/- u/s 68 of the Act, the assessee has preferred the appeal in ITA No. 637/Del/2016 and as against the deletion of Rs. 2,49,50,000/-, the Revenue has preferred an appeal in ITA No. 1391/Del/2016 on respective grounds mentioned above.

5. The main contention of the Ld. Counsel for the assessee is that, the search and seizure operation u/s 132(1) of the Act has been carried out on 11/03/2011 in the Paramount Group (of which the assessee company is a part) along with Gulshan Group and Ajnara Group. There is no incriminating material found in the said search against the assessee. The assessment order has been passed on 28/03/2013 and the addition has been made only regarding receipt of share capital and not relied upon any evidence, material or even any indication found during search and seizure operation regarding bogus share capital by the assessee. Therefore, contended that, the case of the assessee is squarely covered under the Judgment of Jurisdictional High Court reported in CIT Vs Kabul Chawla reported at (2016) 380 ITR 573.

6. Per contra, Ld. DR relied on the assessment order and vehemently justified the order of the A.O.

7. We have heard both the parties and perused the material available on record. It is seen that, while making addition u/s 68 of the Act, the Ld. A.O has not referred any incriminating material/document found at the time of search which relate to the impugned addition. The said fact has been also accepted by Ld.CIT(A) at Para No. 8.9 of the order of CIT(A) read as under:

*“8.9 Perusal of the Assessment Order shows that a Search & Seizure operation u/s 132(1) of the Income Tax Act, 1961 had been carried out on 11/03/11 in the Paramount Group (of which the Assessee Company is a part) along with Gulshan Group and Ajnara Group. Once a Search had been conducted, it was to be expected that some incriminating material could have been found or at least some indication towards the evasion could have been found. However, perusal of Para 4 on Page 1 of the Assessment Order dated 28.03.13 shows that it was only during the assessment proceedings, the mater relating to receipt of Share Capital was taken up. The Assessing Officer has not relied upon any evidence, material or even any indication found in the Search & Seizure operation regarding bogus Share Capital by the assessee.”*

8. The above said fact of not finding any incriminating material during the search which relate to the impugned addition has not been disputed by the Ld. DR and has not placed any material to contradict the above said facts.

9. By looking into the above facts and circumstances, we are of the opinion that the ratio laid down by the Jurisdictional High Court in the case of CIT Vs Kabul Chawla reported in (2016) 380 ITR 573 is squarely applicable, wherein it is held that when there is no incriminating material was unearthed during the course of search in respect of an issue, then no

addition in respect of such an issue can be made in the assessment u/s 153A & 153C of the Act. The relevant portion of the said judgment are as under:-

**“Summary of the legal position”**

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.*

10. The similar view has been taken in the case of Mount Echo Build Well Pvt. Ltd. in ITA No. 1397/Del/2016 and CO No. 175/Del/2016 for Assessment Year 2006-07 vide order dated 09/12/2021. In the light of the above decision of the Jurisdictional High Court and the decision of the Tribunal which are binding precedent, we allow the appeal filed by the assessee and delete the addition made by the A.O which was sustained by CIT(A). Accordingly, we allow the Assessee's Grounds of appeal.

11. In view of the allowing the Grounds of appeal of the assessee, the Grounds of Appeal of the Revenue has become infructuous.

12. In the result, Appeal of the Assessee in ITA No. 637/Del/2016 is allowed and appeal of the Revenue in ITA No. 1391/Del/2016 is dismissed for having become infructuous.

***Order pronounced in the open court on 19th May, 2022.***

***Sd/-***  
**( DR. BRR KUMAR )**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(YOGESH KUMAR U.S.,)**  
**JUDICIAL MEMBER**

Dated: 19<sup>th</sup> May, 2022.  
Mohan Lal/R.N

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi