

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

BEFORE SHRI NARENDRAKUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 4459/DEL/2019 [A.Y. 2011-12]
ITA No. 4460/DEL/2019 [A.Y. 2014-15]

The Dy. C.I.T
Central Circle - 2
Noida

Vs.

M/s Apple Metal Industries Pvt Ltd
B-16, Sector - 2, Noida
Uttar Pradesh

PAN : AAACD 7670 E

(Applicant)

(Respondent)

Assessee By : Shri Amit Goel, CA
Shri Nippun Mittal, CA

Department By : Shri Ishtiyaque Ahmed, CIT- DR

Date of Hearing : 23.05.2022
Date of Pronouncement : 25.05.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

These two separate appeals by the Revenue are preferred against the common order of the Id. CIT(A)-IV, Kanpur dated 25.02.2019 pertaining to Assessment Years 2011-12 and 2014-15.

2. The grievance of the revenue read as under:

"1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that material seized during the search operations constituted "incriminating material" for the purpose of the issue of notice u/s 153C in the context of assessee.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that while recording the satisfaction for issue of 153C the test for 'incriminating material' has to be only in nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society, which was distinguishable as the same pertained to period prior to 01.04.2005 whereas after amendment w.e.f. 01.04.2005, 153C notice can be issued even in case where AO is satisfied that seized material has a bearing on the assessment of income of other person.

4. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) failed to allude to the relevant facts & circumstances and misread the provisions of section 153C to arrive at the conclusion. The order of the CIT(A), therefore, suffers from perversity in view of the ratio of decision in case of Vijay Kumar Talwar 330ITR 1(SC), Sudarshan Silk Sarees 300ITR 205(SC).

5. The order of the Ld CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored."

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

4. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was conducted on 11.11.2014 on the premises of the assessee comprising Apple group of cases. Accordingly, statutory notices were issued and served upon the assessee.

5. Assessment for Assessment Year 2011-12 was completed after making addition on account of unverified share application money amounting to Rs. 8,70,71,936/- and in Assessment Year 2014-15, addition on account of unverified share capital amounting to Rs. 30,00,600/- was made.

6. Additions were challenged before the Id. CIT(A) claiming that the additions are devoid of any reference to incriminating material found during the course of search and, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 343 squarely apply.

7. After considering the facts and submissions, the Id. CIT(A) was convinced that no incriminating material has been referred to by the Assessing Officer while making the impugned addition. Therefore, the decision of the Hon'ble Supreme Court in the case of Singhad Technical Education Society [supra] squarely apply and cancelled the assessment.

8. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

9. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

10. We have carefully perused the orders of the authorities below. The impugned assessment order clearly shows that the impugned additions are devoid of any incriminating material found at the time of search. We are of the considered opinion that on the given facts of the case, the ratio laid down by the Hon'ble Supreme Court in the case of Singhad Technical Education 397 ITR 343 squarely apply wherein the Hon'ble Supreme Court has held that the nexus between issue of notice u/s 153C of the Act and incriminating material found as a result of search must exist.

11. Considering the facts of the case in light of the ratio laid down by the Hon'ble Supreme Court, we decline to interfere with the findings of the ld. CIT(A).

12. In the result, the appeals of the Revenue in ITA Nos. 4459 & 4460/DEL/2019 are dismissed.

The order is pronounced in the open court on 25.05.2022 in the presence of both the rival representatives.

Sd/-

**[N.K. CHOUDHRY]
JUDICIAL MEMBER**

Sd/-

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

Dated: 25th May, 2022.

VL/

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	