



**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned three separate appeals by the assessee in the case of Indo Autotech Ltd are preferred against the order of the Id. CIT(A) - 29 New Delhi pertaining to Assessment Years 2010-11, 2011-12 and 2013-14 respectively. The other four captioned separate appeals by the assessee in the case of Admach Auto India Limited are preferred against the order of the Id. CIT(A) - 29 New Delhi pertaining to Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14 respectively.

2. The common challenge in the captioned appeals of both the assesseees relates to the validity of the assessment framed u/s 153A r.w.s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. The underlying facts in the issues are common and identical in the captioned appeals. Therefore, they are being disposed of by this common order for the sake of convenience and brevity.

4. Briefly stated, the underlying common fact is that a search and seizure operation u/s 132 of the Act was carried out on Sajan Kumar Group of cases including the captioned assessees. Simultaneously, an independent search was also carried out in the case of Shri Pradeep Kumar Jindal Group of cases on the very same date i.e. 18.11.2015.

5. During the course of search operation, in the case of Shri Pradeep Kumar Jindal, certain incriminating documents were found and seized, basis which the Revenue formed a belief that Shri Pradeep Kumar Jindal was providing accommodation entries to Shri Sajan Kumar group companies and his family members.

6. During the course of assessment proceedings, the impugned appellants were asked in respect of details of accommodation entries on the basis of seized documents from Shri Pradeep Kumar Jindal. Basis the alleged entries found in the seized documents from Shri Pradeep Kumar Jindal, the impugned additions were made. The additions were made mainly on account of accommodation entries received through share/share premium and the alleged commission paid for procuring accommodation entries from Shri Pradeep Kumar Jindal as unexplained expenditure u/s 69C of the Act.

7. In ITA No. 6794/DEL/2018, there is also an addition of Rs. 52.50 lakhs which is on the basis of some documents found and seized during the course of search proceedings from the office premises of Indo Autotech Ltd.

8. Additions were challenged before the Id. CIT(A) by the appellants but without any success.

9. We have heard the rival submissions and have carefully perused the orders of the authorities below. The common facts resulting into the impugned additions have been explained hereinabove. It would be pertinent to refer to the impugned assessment order. It can be seen that the impugned assessment orders are framed u/s 153A r.w.s 143(3) of the Act.

10. As mentioned elsewhere, the basis of assessments are alleged incriminating material found from Shri Pradeep Kumar Jindal, which incriminating material/information may have belonged to the appellants and its group companies. In our considered opinion, in such a situation, the Legislature has provided section 153C in the Statute to frame the assessment. If the Assessing Officer frames the assessment

without resorting to the dedicated section provided by the legislature, the whole exercise of enacting such a provision would become futile.

11. Similar was the fate of members of the family, namely Shri Anand Kumar Jain, HUF, Individual, Shri Satish Dev Jain. In their respective cases also, under similar circumstances, assessment was framed u/s 153A r.w.s 143(3) of the Act. In their cases also, basis of the addition was a statement of Shri Pradeep Kumar Jindal recorded on oath u/s 132(4) of the Act wherein he admitted to providing accommodation entries to Shri Anand Kumar Jain, HUF and his family members and the entries found in the incriminating material.

12. The quarrel travelled upto the Hon'ble High Court of Delhi and vide order dated 12.02.2021 in ITA No. 23, 26 to 31/2021, the Hon'ble High Court, inter alia, held as under:

"10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be

construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration."

13. Facts being identical, basis of addition are also similar and the assessee considered by the Hon'ble High Court are members of same group. Therefore, respectfully following the aforementioned judgment of the Hon'ble Jurisdictional High Court of Delhi, we have no hesitation in quashing the captioned assessment orders and decide the appeals in favour of the assessee.

14. As mentioned elsewhere, in ITA No. 6794/DEL/2018, addition of Rs. 52.50 lakhs is based upon some loose sheet found at the time of search from the premises of Indo Autotech Ltd.

15. We have carefully perused the assessment order and also the order of the first appellate authority. The Assessing Officer proceeded to make the impugned addition on the basis that the seized documents contained day-to-day expenditure detail for the date 06.03.2010. When Shri Sajan Kumar Jain was confronted with the seized documents, he explained that some RTGS payment of Rs. 50 lakhs was planned for transfer to another bank of the assessee but the said transaction could not materialize and, therefore, no such entry was passed.

16. The Assessing Officer changed his view and asked the assessee to explain why Rs. 50 lakhs should not be treated as unexplained investment in shares and Rs. 2,50,000/- as commission paid.

17. It was again explained that the assessee was contemplating to transfer Rs. 50 lakhs through RTGS which transfer did not materialize and no such entries were passed and the same can be verified from the bank account of the assessee.

18. The Assessing Officer finally made the addition holding that the assessee has received accommodation entries of share application/premium in lieu of cash and made addition of Rs. 52.50 lakhs which was confirmed by the ld. CIT(A).

19. As explained hereinabove, first the Assessing Officer proceeded by treating the entries as unexplained expenditure and sought explanation from the assessee. Then the Assessing Officer took the view that the assessee has made investments and sought clarification from the assessee, and without any further ado, he made the addition as accommodation entries received by the assessee.

20. The conduct of the Assessing Officer is not only uncertain but full of jigsaw puzzles. As no concrete evidence has been brought on record to justify the addition, we have no hesitation in deleting the same. Accordingly, the captioned assessment orders are quashed following the judgment of the Hon'ble Jurisdictional High Court of Delhi [supra].

21. Since we have quashed the assessment orders, we do not find it necessary to dwell into the merits of the case.

22. In the result, the appeals of the assessee in ITA Nos. 6794 to 6796/DEL/2018 and ITA Nos. 7095 to 7098/DEL/2017 is allowed.

The order is pronounced in the open court on 06.07.2022.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

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

Dated: 06<sup>th</sup> JULY, 2022.

VL/

Copy forwarded to:

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	
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