

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1343/Mum/2021
(Assessment Year :2010-11)**

M/s. Hadoti Mining & Exports Pvt. Ltd., Marathon Innova 'A' Wing, 7 th Floor Off. G.K. Marg, Lower Parel, Mumbai- 400 013	Vs.	Dy. Commissioner of Income Tax Central Circle(1) Mumbai
PAN/GIR No.AAACH4048L		
(Appellant)	..	(Respondent)

Assessee by	Shri Reepal Tralshwala
Revenue by	Shri Rajiv Singh
Date of Hearing	26/07/2022
Date of Pronouncement	26/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1343/Mum/2021 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal No.CIT(A)-47/35/2015-16 dated 28/05/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. Deputy Commissioner of Income Tax, Central Circle – 1(1), Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the preliminary objection that addition has been made in the assessment without reference to any incriminating material in respect of addition made u/s.50C of the Act.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of investments. The assessee filed its return of income for the A.Y.2010-11 on 29/09/2010. This return was duly processed u/s.143(1) of the Act on 24/02/2011. The time limit for issuance of notice u/s.143(2) of the Act for selecting this case for scrutiny expired on 30/09/2011. Later, a search operation u/s.132(1) of the Act was conducted in the case of ASI Group and its associated concerns on 13/08/2013. The main company of this group is Associated Stone Industries (Kotah) Ltd., which is engaged in mining and trading of Kotah stones. Since assessee is also part of this group, a search was conducted in its premises also and accordingly, proceedings u/s.153A of the Act were initiated for the year under consideration. As on the date of search i.e. on 13/08/2013, the assessment for A.Y.2010-11 becomes concluded / unabated assessment. We find that only issue contested by the assessee before us on merits is in respect of addition made u/s.50C of the Act. We find on perusal of the entire assessment order and the order of the Id. CIT(A) in respect of addition made u/s.50C of the Act, there is absolutely no reference to any incriminating material found during the course of search relatable to that addition. The law is very well settled that in respect of concluded assessments, no addition could be made in Section 153 assessment unless there is any incriminating material found during the course of search for making such addition. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645. Since the original

assessment in the instant case was completed u/s.143(1) of the Act, a question would arise whether the same could be construed as an assessment completed as on the date of search. We find this has been duly answered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla reported in 234 Taxman 300. Respectfully following the aforesaid decisions, we hold that for making the addition u/s.50C of the Act, there is no incriminating material found during the course of search and A.Y.2010-11 being a concluded assessment, no addition could be made thereon. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on 26/07/2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai