

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA Nos. 6107 & 6108/Del/2019
[Assessment Years: 2006-07 & 2007-08

Brainware Computers Pvt. Ltd., Vs Income-tax Officer,
B-4/71A, Lawrence Road, Ward-5(2), New Delhi.
New Delhi-110035
PAN: AAACB0607K

APPELLANT

RESPONDENT

Assessee represented by: Sh. Rajeev Saxena, Ld. Adv. &
Ms. Sumangla Saxena, Ld. ADV

Department represented by: Sh. Ishtiyaque Ahmed, Ld. CIT(DR)
& Sh. Kanav Bali, Ld. Sr. DR

Date of hearing 29.09.2022

Date of pronouncement 19.10.2022

ORDER

PER N.K.CHOUDHRY, JM:

These appeals have been preferred by the Assessee against the common order dated 22.07.2017, impugned herein, passed by the Id. Commissioner of Income tax (Appeals)-35, New Delhi (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment years 2006-07 & 2007-08.

2. We are deciding ITA no. 6107/Del/2019 (A.Y. 2006-07) as a lead case. In this case search & seizure operation was carried out u/s 132 of the Act in the PNC group on 25.08.2011, wherein a copy of cheque no. 000018 dated 30.10.2009 for Rs. 25,00,000/- issued by M/s Malik Network & Computers P. Ltd. in favour of the Assessee, drawn on Bank of India, MGF Plaza Branch, Gurgaon, was found. Consequently, a satisfaction note dated 13.03.2014 was prepared and on the basis of such satisfaction note, proceedings u/s 153C of the Act were initiated against the Assessee, which ultimately resulted into making of addition of Rs. 94,09,400/- u/s 68 of the Act on account of receiving share capital and share premium amounting to Rs. 8,55,400/- and Rs. 85,54,000/- respectively, during the year under consideration.

3. The Assessee being aggrieved challenged the said addition as well as issuing of notice and initiation of proceedings u/s 153C of the Act. The Id. Commissioner dismissed the appeal of the Assessee and affirmed the order of the AO. The Assessee being aggrieved preferred the instant appeal and during the course of hearing of appeal filed revised/concise grounds of appeal, which read as under:

“1. That the Ld. CIT(A)-35. New Delhi has erred both in law and on facts in upholding the order of assessment dated 31.03.2015 passed by the Ld. ITO. Ward5(2), New Delhi u/s 143(3)/1 53C of the Income Tax Act. 1961 determining the total income of the appellant at Rs. 94.07.570/- by making an addition of Rs. 94.09,400/- u/s 68 of the Act.

2. That Ld.CIT(A) has erred in law as well as on facts in upholding the order of assessment, failing to appreciate that the proceedings for the instant assessment year do not form part of the block assessment and are out of the purview of section 153C of the IT Act, 1961 .

3. *That the Ld. CIT(A) has erred both in law and on facts in upholding the order of assessment without appreciating that no addition in assessment u/s 153C can be made in absence of any incriminating material/document found during the course of search which were handed over to the assessing officer of the Assessee.*
4. The grounds raised seems to be legal in nature and adjudication of the same does not require any fresh material and/or fresh facts, therefore, in view of the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd.(NTPC Ltd.) Vs. Commissioner of Income Tax, 229 ITR 383, we are inclined to admit the same for adjudication.
5. As ground no. 3 goes to the root of the case, hence we deem it appropriate to decide the same before dwelling into other grounds.
6. Undisputedly, a copy of cheque no. 000018 dated 30.10.2009 for the amount of Rs. 25,00,000/- (supra), was found during the search and seizure operation u/s 132 of the Act in the case of PNC Group on 25.08.2011. As no addition was made on the basis of such cheque but the AO proceeded further and made the addition of Rs. 94,09,400/- u/s 68 of the Act, which does not emanate from the seized material and therefore, as per dictum of the Jurisdictional high Court in the case of CIT vs. Kabul Chawla (2016) 380 ITR 0573 wherein it has been held that if on the date of search, the assessment proceedings already stood completed and no incriminating material unearthed during the search, then no addition can be made to the income already assessed. The said dictum of the Hon'ble High Court stands affirmed by the Hon'ble Apex Court in the case of [Pr. Joint CIT vs. Meeta Gutgutia](#) [2018] Taxmann.com 411 (Supreme Court) in SLP (C) Dairy No. 18121/2018 dated 2nd July, 2018, by dismissing the SLP filed against the

judgment of Delhi High Court in the case of [Pr. Joint CIT vs. Meeta Gutgutia](#) [2017] 395 ITR 526 (Delhi High Court) wherein the same dictum was laid down by the Hon'ble Court as in [CIT vs. Kabul Chawla](#) (supra). Consequently, we are inclined to accept ground no. 3 raised by the Assessee to the effect that no addition in the assessment u/s 153C of the Act can be made, in absence of any incriminating material/document found during the course of search. Consequently, the order impugned is liable to set aside by allowing the appeal of the Assessee. As we are inclined to set aside the order impugned by allowing the appeal of the Assessee, hence not dwelling into the other grounds raised by the Assessee as the same would become futile exercise. Consequently, the appeal of the Assessee stands allowed.

ITA no. 6108/Del/2019 (A.Y. 2007-08):

7. In this case also proceedings u/s 153C read with Section 153A of the Act were initiated on the basis of satisfaction note prepared in pursuance to the search and seizure operation dated 25.08.2011. In the satisfaction note there is reference of seized documents i.e. page 124 of Annexure 'A', which belongs to M/s Brainware Computers Pvt. Ltd. However, the AO without mentioning the details of such document (supra), made the addition of Rs. 88,00,000/- u/s 68 of the Act on account of share capital and share premium amounting to Rs. 8,00,000/- and Rs. 80,00,000/- respectively, during the year under consideration having been received by the Assessee. It is not denied by the Id. DR that the said addition also does not emanate from the documents seized during the course of search and seizure operation referred to above. Consequently, in view of the decision in ITA no. 6107/Del/2019, the addition in hand is also liable to be deleted, by allowing instant appeal of the Assessee.

8. In the result, both the appeals, being ITA nos. 6107 & 6108/Del/2019 stands allowed.

Order pronounced in open court on 19/X/22.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI