

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.2236/DEL/2015  
[Assessment Year: 2007-08]**

Sh. Harjeet Singh Arora, A-10, Antriksh Apartments, Sector-14, Extension, Rohini, Delhi-110085	Vs	DCIT, Central Circle-06 erstwhile DCIT, Central Circle-11, New Delhi
<b>PAN-AISPS5251P</b>		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. P. Praveen Sidharth, CIT-DR

<b>Date of Hearing</b>	<b>12.10.2022</b>
<b>Date of Pronouncement</b>	<b>20.10.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

In this case, this appeal was earlier dismissed for non-prosecution by the ITAT and the same was subsequently recalled by order in Miscellaneous Application No.220/Del/2019. Pursuant to this recall, this appeal has been heard.

2. This appeal by the assessee is directed against the order of the Ld. CIT(A)-24, New Delhi, dated 16.02.2015 pertaining to Assessment Year 2007-08.

3. Grounds of appeal reads as under:-

*“1. The Ld/- CIT(A) has erred in law and facts in confirming the action of the Id/- AO in assuming jurisdiction to assess the assessee and has also erred in confirming the additions*

*which are outside the scope of assessment under section 153A of the Act, consequent upon the search which is bad in law.*

*2. The Ld/- CIT(A) has erred in law and facts in confirming the action of Ld/- AO in making an addition of Rs. 2,97,582 on account of alleged deemed dividend under section 2(22)(e) of the Act received by assessee disregarding the submissions made by the assessee, which is highly arbitrary, unjustified, uncalled for and bad in law.”*

4. Brief facts of the case are that the assessment in this case was completed u/s 153A of the Act. In this assessment, the Assessing Officer made one addition of Rs.1,20,000/- on account of deemed rental income and another addition of Rs.3,50,659/- on account of deemed dividend.

5. In appeal, the Ld. CIT(A) noted the facts and submissions as under:-

*“A search operation was carried at the premises of the assessee on 28.03.2011. In consequence to the notice u/s 153A of the Income Tax Act, 1961 dated 15.10.2012, the assessee filed return of income on 11.12.2012 declaring an income of Rs.4,76,462/- (P.B. 1-3). Thereafter, the Ld. Assessing Officer completed the assessment u/s 153A on 28.03.2013 at an assessed income of Rs. 11,36,759/- after making additions of Rs. 4,70,659/- detailed as under:-*

Particulars	Amount (Rs.)
Returned Income	6,66,100/-
Add: Alleged deemed rental income Add:	1,20,000/-
Alleged deemed dividend	3,50,659/-
Assessed Income (Rs.)	11,36,759/-

*During the course of assessment proceedings, the Ld/- A.O called for the details of properties held by the assessee. In response thereof, the assessee filed details of various properties held during the year under reference before the Ld/- A.O. The Ld/- A.O, thereafter, proceeded to make additions u/s 23(1) on account of deemed rental*

*income in respect of the following 3 properties tabulated as follows:-*

S. No.	Particulars of property	Amount (Rs.) added u/s 23(1)
1	Shop No. G-25, Best Plaza, Plot No. H-8, Pitampura, Netaji Subhash Place, Delhi-34	48,000/-
2	1/3rd share in Shop No. 5, Ground Floor, Best Plaza, Plot No. H-8, Pitampura, Netaji Subhash Place, Delhi-34	24,000/-
3	Shop No. G-9, Plot No. H-8, Pitampura, Netaji Subhash Place, Delhi-34'	48,000/-
Total (Rs.)		120,000/-

*As regards the additions made u/s 2(22)(e) amounting to Rs. 3,50,659/-, the assessee submitted before the Ld/- A.O vide letter dated 22.01.2013 that the provisions of section 2(22)(e) are not applicable for the year under reference for the reason that the loan advancing company did not have adequate reserves and surplus on the date of advancing the loan. The Ld/- A.O however rejected the said submission and made additions u/s 2(22)(e) taking into consideration the accumulated profits as at the beginning of the assessment year, i.e. on 31.03.2006 instead of the date of advancing the loan.”*

5.1. The Ld. CIT(A) adjudicated the issue as under:-

*“4.1 Ground No.1*

*4.1.1 In this ground the appellant is agitating against addition of Rs. 3,50,659/- being deemed dividend. The AO has added Rs. 53,077/- as deemed dividend due to the loan transaction between Best Realtors India Pvt. Ltd. and the assessee. AO has also added Rs. 2,97,582/- as deemed dividend on account of loan transaction between Best Projects India Pvt. Ltd. and the assessee. AO has noted that the assessee is the holder of more than 10% of the shares of the said two companies and hence provisions of section 2(22)(e) are applicable. During the appeal proceedings the AR has submitted that the AO has taken the profits of Best Realtors India Pvt. Ltd. at Rs. 53,077/- whereas the company had incurred a loss of Rs. 56,629/-. This is evident from page 8 of the paper book, which is the P&L account of the appellant company. He therefore, submitted that the said addition is liable to be deleted.*

4.1.2 Further, he has submitted that the AO has not considered miscellaneous expenditure of Rs. 1,82,427/- which are shown as assets of the company which needed to be deducted from the profits. He therefore, submitted that if set off is given for the miscellaneous expenditure of Rs. 1,842,427/-, what would be assessable as deemed dividend would be only Rs. 1,15,155/-.

4.1.3 I have considered die submissions of the AR. Since the AO has wrongly taken the profit figure as Rs. 53,077/- instead of loss figure of Rs. 56,629/- in the case of Best Realtors India Pvt. Ltd. the addition of Rs. 53,077/- cannot be sustained. The same is hereby deleted. However, I do not agree AR's submissions that miscellaneous expenditure of Rs. 1,82,427/- (shown in the asset side of the balance side) is required to be reduced from the accumulated profits. The miscellaneous expenditure is not deductible both under the company Law as well as under the income tax Act being pre-incorporation expenditure. Therefore, the submissions of the AR are not acceptable. Therefore addition of Rs.2,97,582 The ground on the issue is partly allowed.

#### 4.2 Ground No.2

4.2.1. In this ground the appellant is agitating against addition of Rs.1,20,000/- towards deemed rental income. The facts of the case and the augments of the AR are similar to those in the appellant's own case for A.Y. 2006-07. Vide my order dated today for A.Y. 2006-07 (A.No. 293/ 13-14) I have confirmed 50% of the addition^ made under this head. Facts being similar, following my said order I hereby confirm addition of Rs. 60,000/- towards rental income and delete the balance addition. The ground is therefore partly allowed.

#### 4.3 Ground No. 3

4.3.1 The AR has also argued against making above additions in an assessment completed u/s 153A. I am of the view that it is only because of the search that the above facts have come to light. Therefore, die addition of the above nature are liable to be made even in an assessment made u/s 153 A. The ground is therefore rejected."

6. Against this order, the assessee is in appeal before us.
7. We have heard the Ld. DR and perused the records. None appeared on behalf of the assessee despite notices issued which have returned un-served. Upon careful consideration, we note that there is no

mention of seized material by referring to which the addition u/s 153A in this case has been done. This is mandatory requirement as per the decision of the Hon'ble jurisdictional High Court in the case of CIT vs Kabul Chawla (2016) 380 ITR 573(Del.). In the present case, we note the Ld. CIT(A) has brushed aside the issue. Hence, in the interest of justice, we remit the issue to the file of the Assessing Officer to link the addition with the seized material in terms of the decision of Hon'ble jurisdictional High Court to substantiate the addition on this count and thereafter decide as per law and the case law cited. Needless to say the assessee be given adequate opportunity of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> October, 2022.

**Sd/-**  
**[N.K.CHOUDHRY]**  
**JUDICIAL MEMBER**

**Delhi;** Dated: 20.10.2022.

*Shekhar,*

Copy forwarded to:

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

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi