

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA.Nos.3633, 3634, 3635, 3636, 3637 & 3638/Del./2019  
**Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15**

The DCIT, Central Circle-2, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida. U.P. PIN 201 301.	vs.	M/s. Apple Sponge & Power Ltd., B-16, Sector-2, Noida 201301. PAN AAFCA1965L
(Appellant)		(Respondent)

Cross Objection Nos.57, 58, 59, 60, 61 & 62/Del./2022  
Arising out of  
ITA.Nos.3633, 3634, 3635, 3636, 3637 & 3638/Del./2019  
**Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15**

M/s. Apple Sponge & Power Ltd., B-16, Sector-2, Noida 201301. PAN AAFCA1965L	vs.	The DCIT, Central Circle- 2, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida. U.P.PIN 201 301.
(Cross Objector)		(Respondent)

For Revenue :	Shri Ishtiyaque Ahmed, CIT-DR
For Assessee :	Shri Amit Goel, C.A. And Shri Pranav Yadav, C.A.

Date of Hearing :	29.09.2022
Date of Pronouncement :	.11.2022

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

The above appeals by Revenue are been directed against the Order of the Ld. CIT(A)-IV, Kanpur, dated 07.01.2019 relating to the A.Ys. 2009-10 to 2014-2015. The assessee has filed the cross objections in support of the order of the Ld. CIT(A). Since common issues are involved in all these appeals, the appeals were heard together and are being disposed of by this consolidated order for the sake of convenience. Both the parties are agreed that the decision taken in ITA.No.3633/Del./2019 for the A.Y. 2009-10 shall be applicable to other appeals. Therefore, we take up the appeal for the A.Y. 2009-10.

ITA.No.3633/Del./2019 - A.Y. 2009-10 :

2. Briefly stated facts of the case are that a search and seizure operation was carried out under section 132(1) of the Act in M/s. Apple Group of Companies (AGC) on 11.11.2014, wherein certain incriminating documents were found and seized belonging to the assessee. Thereafter, notices under section 153C were issued for the A.Ys. 2009-2010. In response to the notice, the assessee filed its return

of income showing income of Rs(-)2,86,62,477/-.

Subsequently, the A.O. issued notices under sections 143(2) and 142(1) of the I.T. Act, 1961 and completed assessment by making addition of Rs.5,06,80,000/- on account of unverified share capital for the A.Y. 2009-10.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) contending, inter alia, that the notice issued by the A.O. under section 153C is without jurisdiction and barred by limitation and the consequent additions made are not sustainable in the eye of law as no incriminating material was found and seized as a result of search and have bearing on the determination of total income of the assessee company. The Ld. CIT(A) examined the matter in issue, call for the remand report from the A.O. and the rejoinders filed by the assessee to the said remand report and held that since no incriminating material was found and seized as a result of search pertaining to assessee company, quashed the entire assessment made by the A.O. under section 153C r.w.s. 143(3) of the I.T. Act, 1961, by respectfully following

the Judgment of Hon'ble Supreme Court in the case of PCIT-3, Pune vs., Sinhgad Technical Education Society [2017] 397 ITR 344 (SC).

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal and has raised the following grounds :

1. *“Whether on facts is 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 notice 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.*
2. *The Ld. CIT(A) relied upon the submission made by the Appellant ignoring the Department findings*

*during the search u/s 132(1) of the Act and information contained in the seized documents.*

- 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 on the facts of the present case as the same pertained to prior period to 01.04.2005 whereas after 01.04.2005 153C notice can be issued when AO is satisfied that seized material has a bearing on the assessment of income of other person.*
- 4. That the Ld. CIT(A) did not appreciate the facts and material on record.*
- 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.*
- 6. That the appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.”*

4. During the course of hearing, the Ld. D.R. relied on the order of the A.O. and reiterated the contentions made by the A.O. in the assessment order and prayed that the order of the A.O. be confirmed.

5. On the other hand, the Learned Counsel for the Assessee vehemently opposed the contentions of the Ld. D.R, assessment order of the and A.O. and strongly relied on the order of the Ld. CIT(A) and prayed that the order of the Ld. CIT(A) be confirmed as the order of the Ld. CIT(A) is in conformity with the observations of the Hon'ble Supreme Court in the case of PCIT-3, Pune vs., Sinhgad Technical Education Society (supra) which holds the field. The Learned Counsel for the Assessee also filed written synopsis before us contending, inter alia, that the notice issued under section 153C is without jurisdiction and barred by limitation as the A.O. of the searched person has recorded satisfaction on 02.12.2016 falls in previous year 2016-17 relevant to A.Y. 2017-18. Therefore, the immediately preceding six assessment years are 2011-12 to A.Y. 2016-

17. Thus, the A.Y. 2009-10 to A.Y. 2010-11 are clearly out of block of six years and in support of his contention he relied on the decision of Hon'ble Delhi High Court in the case of CIT vs., RRJ Securities Ltd., [2015] 62 taxmann.com 391 (Del.) and subsequent decision of Hon'ble Delhi High Court in the case of ARN Infrastructure India Ltd., vs., ACIT [2017] 81 taxmann.com 260 (Del.). The Learned Counsel for the Assessee further submitted that the additions made by the A.O. are beyond the scope of provisions of Section 153C r.w.s. 153A of the I.T. Act, 1961 for all the assessment years i.e., 2009-10 to 2014-15 since the additions are not based upon any seized material or incriminating material found during the course of search and in support of his contention he relied on the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 573 (Del.) and submitted that even the Coordinate Benches of Delhi Tribunal has rendered numerous decisions by following the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT vs., Kabul Chawla (supra). He accordingly prayed that the order of the Ld. CIT(A) be

confirmed and additions made by the A.O. be deleted in all the assessment years under appeals.

6. We have heard the rival submissions of both the parties, perused the orders of the authorities below and the material available on record. We find that the sum and substance of the issue involved in this appeal is validity of issuance of notice by the A.O. under section 153C of the I.T. Act, 1961 and the consequential additions made by the A.O. are in accordance with law or not ? From the careful perusal of the order of the Ld. CIT(A), we noticed that the provisions under section 153C makes it abundantly clear that the some imperative condition need to be satisfied by the AO, prior to the issue of notice under section 153C of the I.T. Act, 1961. In order to satisfy the pre-conditions, the A.O. before issuance of notice under section 153C has to satisfy (i) the Existence of undisclosed/unexplained asset or incriminating seized documents against the assessee, as a result of search (ii) recording of satisfaction by the A.O. of the person searched that the undisclosed assets or incriminating document found as a result of search should

"belongs to" the assessee, for relevant assessment year and (iii) proper satisfaction is to be recorded by the AO for the relevant assessment year for issuance of notice under section 153C of the I.T. Act, 1961. From the above, it is clear that all the above three conditions are to be satisfied cumulatively and simultaneously as per provisions of section 153C of the Act and non satisfaction of any of the pre-conditions mentioned hereinabove, would result in notice issued under section 153C of the Act legally unsustainable or invalid. Considering the totality of the facts and circumstances of the case, we find that the A.O. in the instant case has failed to demonstrate that seized document belongs to the assessee company and no seized documents were found as a result of search and have bearing on the determination of total income of the assessee company. Therefore, we find that the above imperative three jurisdictional conditions for issuance of notice under section 153C of the Act are not satisfied. In support of our above observation, we rely on the Judgment of Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical

Education Society (supra) wherein the Hon'ble Supreme Court has held that the nexus between issue of notice under section 153C and the incriminating material found as a result of search must exist. Since in the instant case no incriminating material was found and seized during the course of search which belonging to the assessee company, the Judgment of Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (supra), is squarely applicable to the facts of the present case. Further, the Hon'ble Jurisdictional Delhi High Court also in the case of CIT vs., Kabul Chawla (supra) has held as under :

*“Completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment”*

6.1. Since the Ld. CIT(A) has discussed the matter in issue in detail in his order and finally concluded that notice under section 153C issued by the A.O. need to be treated as ab-initio, invalid and legally not sustainable and, therefore, the assessment framed on the basis of legally unsustainable notice quashed and annulled assessment made by the A.O. We find that the order of Ld. CIT(A) is in conformity with the Judgment of Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (supra). We, therefore, in absence of any contrary decision brought to our notice by the Ld. D.R. confirm the order of the Ld. CIT(A) and direct the A.O. to delete the additions. Accordingly, we dismiss the grounds raised by the Revenue.

7. In the result, ITA.No.3633/Del./2019 of the Revenue is dismissed.

ITA.Nos.3634, 3635, 3636, 3637 & 3638/Del./2019

**A.Ys. 2010-11, 2011-12, 2012-13, 2013-14, 2014-15**

8. In all these assessment years, identical facts are involved. The A.O. issued notices under section 153C of the

I.T. Act, 1961 for the A.Ys. 2010-11 to 2014-15 under appeals. In response to the notices, the assessee filed its return of income showing income of Rs.NIL, Rs.2,42,67,316/-, Rs.(-) 2,52,83,139/-, Rs.(-) 23,89,86,306 and Rs.(-)37,35,497/- for the A.Ys. 2010-11 to 2014-15. Subsequently, the A.O. issued notices under sections 143(2) and 142(1) of the I.T. Act, 1961 and completed assessment by making addition of Rs.1,41,25,00/- and Rs.15,00,000/- for the A.Y. 2010-11, Rs.1,73,00,000/- and Rs.34,05,00,000/- for the A.Y. 2011-12 on account of unverified unsecured loans and unverified share capital respectively. Rs.5,00,00,000/- on account of unverified share capital for A.Y. 2012-13, Rs. 15,08,07,299/- and Rs.23,97,00,200/- for A.Y. 2013-14 and Rs.3,55,62,850/- and Rs.4,08,00,000/- for A.Y. 2014-15 on account of unverified unsecured loan and unverified share premium/capital respectively. Aggrieved by the order of the A.O. the assessee carried in appeal before the Ld. CIT(A) who vide common order dated 07.01.2019 quashed the assessment made by the A.O. by following the Judgment of

Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (supra). Since, we have dismissed the Revenue's appeal for the A.Y. 2009-10 hereinabove and identical facts and grounds are involved in the remaining appeals for the A.Ys. 2010-11 to 2014-15 we dismiss the appeals of the Revenue for the A.Ys. 2010-11 to 2014-15.

9. In the result, ITA.Nos.3634, 3635, 3636, 3637 & 3638/Del./2019 of the Revenue are dismissed.

10. Since we have dismissed the appeals filed by the Revenue for the A.Ys. 2009-10 to 2014-15 and confirmed the order of the Ld. CIT(A) on the matter in issue, the cross objections filed by the assessee are allowed.

11. In the result, cross-objections filed by the assessee for the A.Ys. 2009-10 to 2014-15 are allowed.

12. To sum-up, appeals of the Revenue are dismissed and Cross Objections of the Assessee are allowed.

Order pronounced in the open court on 24.11.2022.

Sd/-

[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER  
Delhi, Dated 24<sup>th</sup> November, 2022

VBP/dk

Copy to

Sd/-

[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "A" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,  
Delhi.