

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'H' : NEW DELHI)**  
**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1517/Del/2020, A.Y. 2011-12

DCIT, Central Circle-8 New Delhi	Vs.	M/s. Vatika Ltd., 4 <sup>th</sup> Floor, Vatika Triangle, M.G. Road, Sushant Lok-I, Gurgaon, Haryana-122002 PAN : AABCV5647G
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. C.S.Aggarwal, Sr. Adv., Shri Ravi Pratap Mall, Adv. And Sh. D.B. Gupta, CA
Revenue by	Sh. Kailash Dan Ratnoo, CIT( DR)

Date of hearing:	19.12.2022
Date of Pronouncement:	07.02.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the revenue against order dated 25.02.2020 passed in appeal no. CIT(A), Delhi-24/10440/2018-19 for assessment year 2011-12, by the Commissioner of Income Tax (Appeals)-24, New Delhi

(hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 30.12.2018 u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by ACIT, Central Circle-08, New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. **The facts of the case** are that the appellant M/s Vatika Limited is a company incorporated on 02.07.1998. As for the assessment year 2011-12, the appellant filed a return of income u/s 139(1) on 29.09.2011 declaring total income at Rs.29,10,97,142/-. Subsequently a revised return of income was filed on 30.11.2011 declaring total income at Rs. 19,34,16,486/-. However, there was a search conducted on the appellant on 16.01.2013 u/s 132 of the Act and action u/s 153A against the appellant was consequently initiated. Thus, the assessment u/s 153A was completed on 30.03.2015 at an income of Rs.41,07,52,967/- against the returned income of Rs. 19,34,16,486/-. Against the income assessed u/s 153A on 30.03.2015, the appellant filed an appeal before the C.I.T. (Appeals) which was decided on 27.03.2017 and the C.I.T. (A) enhanced the income assessed to Rs.52,02,50,970/ -. Against this first appellate order, the appellant filed an appeal before the Tribunal which is still pending.

2.1 There was another search action against the appellant u/s 132 on 17.10.2016. In response to notice issued u/s 153A the appellant filed a return of income declaring income at Rs.19,34,16,486/- on 27.03.2018. In the order of assessment passed u/s 153A read with section 143(3) of the Act on 30.12.2018, the Assessing Officer framed order of assessment at an income of Rs. 156,52,50,970/- and was pleased to make an addition of Rs. 104,50,00,000/- as unexplained cash transactions. Assessment shows that the Assessing officer considered to make the addition on the basis of search operation conducted against India Bulls Group by the Investigation Wing, Mumbai on 12.07.2016. It has been further observed by the Assessing Officer that during the search

proceedings on India Bulls Group, a Laptop was found in the office chamber of Shri Ashok Sharma, C.F.O. of India Bulls Group where cash transactions of amounts received as well as paid in the name of Vatika were noted and that M/s India Bulls Group has filed a settlement petition with the Settlement Commission where they have offered for taxation income on the basis of these transactions on peak basis.

2.1.1 During the course of assessment proceedings, the appellant was served with a notice u/s I42( 1) dated 4.12.2018 to show cause as to why the total of these transactions i.e. Rs 163,11,26,062/- may not be added to appellants income for the assessment year 2011 -12.

2.1.2 In reply to the aforesaid notice the appellant objected to the said proposal of the Assessing Officer and submitted that: (i) Vatika Limited has neither made any payment in cash to any company under India Bulls Group nor has received any such amount in cash from any company of the said group, (ii) Merely because India Bulls Group has categorized the cash transactions in the name of Vatika as cash loans and has offered the peak cred its to these transactions does not evidence that any amount has either been received or paid by Vatika Limited to the said company in cash. (iii) No incriminating document was found evidencing the aforesaid cash receipt or payment by the department during the search held on 17/10/2016 on the appellant company, (iv) No material or statement recorded of any person gathered by the department from India Bulls Group has been provided to the appellant for its rebuttal, (v) Appellant has not been provided any opportunity to cross examine the person on the basis of whose statement it has been alleged that appellant company has received or paid any amount in cash to India Bulls Group.

(vi) To the knowledge and understanding of the appellant there is no company existing in the name of India Bulls Group.

2.2 Ld. AO however, was not satisfied and made addition. In such circumstances, the appellant went in appeal against the addition made of Rs.104,50,00,000/- to the income already assessed.

3. Ld. CIT(A) had deleted the and the Revenue has approached the Tribunal raising following **grounds** :-

*“1. The Ld. CIT(A), having plenary powers under the Income tax Act, erred in law and on facts in deleting the addition of Rs. 104.50 crore on the ground that copy of the seized material and the statements and opportunity of cross-examination were not provided to the assessee.*

*2. The Ld. CIT(A), having plenary powers under the Income tax Act, erred in law and on facts in deleting the addition of Rs. 1.04.50 crore on the ground that the complete name of the assessee, i.e. Vatika Ltd., was not appearing in the seized documents and ignoring the fact that the name 'Vatika' showed sufficient nexus and, if further fact-finding was called for, it was incumbent upon him to get that done.*

*3. The Ld. CIT(A), having plenary powers under the Income tax Act, erred in law and on facts in holding that the amount mentioned in the seized documents was only Rs.10,855.43 ignoring the incontrovertible evidence that it was actually Rs.104.50 crore*

*4. The Ld. CIT(A) has erred in law and on facts in holding that addition which was not based on incriminating material found during the search could not be made in assessment u/s 153A of the I.T. Act and, consequently, deleting addition of Rs.104 crore, without going into merits of the same.”*

5. **Heard and perused the record.**

6. **Assessee's Submissions;** On behalf of the assessee it is contended

that the addition have been made by the Ld. AO without there being any material found as a result of search conducted on the assessee and some material of alleged survey made on M/s. Vatika Prop. Build Pvt. Ltd. has been relied. It was submitted that merely on the basis of an information allegedly received by the Ld. AO from the office of JCIT (OSC) Central Circle 6(4), Mumbai, the additions have been made. Ld. Sr. Counsel submitted that the search operations conducted on M/s. India Bulls Group have no relevance and connection with the assessee .

6.1 It was submitted that by mere reference to M/s. Vatika in any of the documents or information retrieved in the search made on the India Bulls Group the information and documents cannot be attributed and connected to the assessee firm and accordingly it was specifically submitted that there are as many as 97 companies registered with the office of Registrar of the companies having M/s. Vatika Ltd. in its title.

6.2 It was submitted that, no incriminating material being found in the search, the assessment could not have been made u/s 153A. Reliance was placed on **following judgements;**

1. CIT (Central) – III vs. Kabul Chawla, 2015(9) TMI 80 (Delhi High Court)
2. Pr. CIT (Central)-3 vs. M/s. Jaypee Financial Services Ltd. 2021 (8) TMI 200 dated 20-07-2021 (Delhi High Court)
3. Pr. CIT-04, Delhi vs. M/s. Jaypee Capital Services Ltd., 2021 (8) TMI 229 dated : 03-08-2021
4. Pr. Commissioner of Income Tax-04, Delhi vs. M/s. Bhadani financiers Pvt. Ltd., M/s. Pragati Tradecom Pvt. Ltd., M/s. Swastik Exports & Imports Pvt. Ltd. , 2021 (9) TMI 902 dated 09.09.2021 (Delhi High Court)

5. Pr. Commissioner of Income Tax, Delhi vs. 52 Best Infrastructure (India) Pvt. Ltd. , 2017 (8) TMI 250 dated 1.08.2017 (Delhi High Court)
6. The Pr. Commissioner of Income Tax- Central-3 vs. Baba Global Ltd., 2017 (2) TMI 346, Dated : 14.12.2016 (Delhi High Court)
7. Pr. CIT (Central)-3 vs. Dharampal Premchand Ltd., 2017(8) TMI 958, Dated: 21-08-2017 (Delhi High Court)
8. CIT (central)-1 vs. Jakson Engineers Ltd. , 2015(12) TMI 1523, Dated 07.12.2015
9. Smt. Jami Nirmala vs. The Principal CIT, Bhubaneswar and Others, 2021(8) TMI 594, Dated: 10-08-2021 (Orissa High Court)
- 10.Pr. CIT vs. Gahoi Dal & Oil Mills, 2019(7) TMI 1050, Dated : 12-07-2019 (Madhya Pradesh High Court)
- 11.Pr. CIT vs. LKG Builders Pvt. Ltd.

6.3 It was submitted that if information of search upon India Bulls Group was relied against the assessee being third party, then assessment should have been u/s 153C of the Act. Ld. Sr. Counsel submitted that even the material which was retrieved from the employee of M/s. India Bulls Group were not supplied to the appellant.

6.4 It has been submitted on behalf of the assessee that the grounds as raised before the Tribunal on the lack of exercise of plenary powers of the ld. CIT(A), are not sustainable. Ld. Sr. Counsel submitted that in fact Ld. CIT(A) made all efforts and even called for remand report and having failed to have material for sustaining the finding deleted the addition.

6.5 It was submitted that the burden was in the revenue establish that the assessee has made investment of the alleged sum, for the purpose of section 69 of the Act. It was emphasized that if India Bulls Group has offered the disputed amount as their income in an application u/s 245C(1) of the Act, its implication

is that the credits appearing in their books of accounts remain unexplained and no assessee.

6.6 Relying judgment of Hon'ble Delhi High Court in **Pr. CIT (Central)-3 vs. M/s. Jaypee Financial Services Ltd.** [ **ITA 42/2021 & CM No.6138/2021 dated 20.07.2021** it was submitted that Hon'ble High Court has held that where assessment has been made u/s 153A of the Act and no proceedings were pending, no addition can be made unless the same is found as result of search on the assessee.

6.7 Concluding the arguments it was submitted that a frivolous appeal has been filed and the revenue should be burdened with cost. Judgement of Hon'ble Delhi High Court *CIT .v. Kamdhenu Steel and Alloys Ltd.* (2014) **361 ITR 220** (Delhi)(HC) were also relied.

7. **Revenue's Submissions;** On the other hand, Ld. DR submitted that Ld. CIT(A) has failed to use his plenary powers and deleted the additions made by Ld. AO on frivolous grounds. Referring to Hon'ble Delhi High Court judgement in **CIT-II vs. Jansampark Advertising & Marketing Pvt. Ltd., 375 ITR 373** it was submitted that being appellate authority Ld. CIT(A) had co-terminus powers of assessing finding authority. If Assessing Officer had failed to discharge his functions properly the obligation was on CIT(A) to conduct proper inquiry of facts.

7.1 Ld. DR submitted that Ld. CIT(A) has taken into consideration the digital file retrieve from the laptop of CFO of India Bulls Group and which have been reproduced and tabulated. The same was sufficient information to the assessee of the seized material and without appreciating it Ld. CIT(A) held that there was lapse on the part of AO in non-sharing of information while not realizing that he could have very well discharged the onus of sharing the information received.

7.2 Ld. DR submitted that the tabulated information would show that the amounts involved were not in hundreds or thousands and it is the common phenomena to use numbers in tens for transacting unaccounted money.

7.3 It was submitted that Ld. CIT(A) has failed to take into consideration publicly available information to consider that there was no ambiguity with regard to identity of Vatika in reference to the information seized and the name present assessee. In this context while making submissions certain facts of allegedly following in public domain were narrated in written submissions as follows :-

*“A) In F.Y. 2009-10 Albasta infrastructure Limited, a 100% subsidiary of M/s Indiabulls Real Estate Limited subscribed to 40,00,000 debentures of face value Rs. 10,000 each at 0.0001% interest issued by M/s Vincent Developers Pvt. Ltd. (later known as Vatika Propbuild Pvt. Ltd.), which amounted to interest cost of just Rs.4,000/- per annum. Such interest was negligible compared to then prevailing market rates of interest. In 2014-15 the debentures were redeemed by M/s Vatika Propbuild Pvt. Ltd. and reissued by another company M/s Deneb Developers Pvt. Ltd.*

*B) Also, publicly available information about M/s Vatika Propbuild Pvt. Ltd. shows that there was no significant business activity in the company till it received investment of Rs.400 Cr. from Indiabulls group company.*

*C) Both M/s Vatika Propbuild Pvt. Ltd. and M/s Deneb Developers Pvt. Ltd. had same registered address. Also that address happened to be the same on which this assessee i.e. M/s Vatika Ltd. is registered.*

*D) One Sh. Brij Kishore Singh who was regular employee of this assessee i.e. Vatika Ltd. happened to be director of M/s Vatika Propbuild Pvt. Ltd.*

*E) One Sh. Manu Raj Singh who was director on the board of this assessee i.e. Vatika Ltd. happened to be director of M/s Deneb Developers Pvt. Ltd.*

*F) Sh. Gautam Bhalla and Sh. Anil Bhalla who are key persons of Vatika group happened to be directors of M/s Vatika Propbuild Pvt. Ltd. and also M/s Lincoln Developers Pvt. Ltd. in which M/s Vatika Propbuild Pvt. Ltd amalgamated.*

*The above information which has been in public domain. The Indiabulls group company , thus transferred Rs.400 Cr. for Five years for a very negligible interest amount to companies of Vatika group. This assessee is the flagship company of the group. The companies in which virtually interest free amounts were received from Indiabulls group have common address as well as their key persons are common. Not to mention that fact that during July,2016 while search action was carried out on Indiabulls group, Vatika Group companies concerned with the financial transaction as referred above were surveyed and statements u/s 131 were recorded.*

*The assessee conveniently chose to disown its group companies having financial transaction with Indiabulls group companies and Ld. CIT(A) erroneously omitted to look to the rationale of almost interest free amount of Rs. 400 Cr.*

*received in Vatika group companies. The CIT(A) would have rationally joined the dots and seen the information received from Mumbai investigation Wing showcasing peak amount of Rs. 104.50 Cr. Cash being paid by Vatika to Indiabulls group.”*

8. **Findings;** Appreciating the matter on record and the submissions. it can be observed that the grounds no 1 to 3 raised on behalf of the revenue are primarily focusing on the issue that if there was some shortcoming on the part of the ld. AO then Ld. CIT(A) having plenary powers under Act, failed to exercise the same. This issue is somewhat directly related to issue on merits being ground no 4. Therefore, the all issues are being taken up together for determination.

9. On the basis of admitted facts it can be concluded that there is no dispute to the fact that no incriminating material was discovered or recovered in search proceedings upon the assessee. Survey on M/s Vatika Propbuild Pvt. Ltd. has no relevance as there is no material on record to show how the appellant is connected with this M/s Vatika Propbuild Pvt. Ltd. Public domain information is nothing unless brought on record as evidence and confronted to assessee.

10. It can be noted that Ld. AO has primarily relied the digital information retrieved by the Investigation Wing, Mumbai and allegedly seized from the office Chamber of Mr. Ashok Sharma, the C.F.O. of Indiabulls Group at the time of search on the Indiabulls Group on 12.07.2016 and 14.07.2016. On the basis of this the Ld. AO show caused the assessee with following :-

*“2. Further, as per information available on record, it has been noticed that you had made various cash payments to Indiabulls Group during the F.Y. 2010-11 totalling to Rs 1 08,55,42,562/-. During the same period, you have received cash payments of*

*amounting to Rs 54 55,83.500/-. The Indiabulls Group has filed an application before the Hon'ble ITSC on 03.10 2017 u/s 245C(1) of the Income Tax Act, 1961. In the application, the Indiabulls Group has admitted that it was accepting unaccounted funds in cash from various parties. The Indiabulls Group has categorised the cash transactions in the name of Vatika as cash loans and has offered the peak credit of these transactions as its unaccounted income. You are hereby required to show cause as to why the total of these cash transactions i.e. Rs 1,63,11,26,062/- (1085542562+545583500) may not be added to your total income for the relevant A.Y. 2011-12.”*

10.1 In aforesaid context at outset relevant will be to mention that in the case of **RRJ Securities Pvt. Ltd. (380 ITR 612)**, Hon'ble Delhi High Court has held that data in hard disk found at the premises of a chartered accountant on basis of which accounts are prepared and return are filed cannot be considered as incriminating material.

10.2 Further, the settled proposition of law is that when an adverse view is to be drawn on the basis of statement of a third party, the person affected should be afforded an opportunity to rebut such statement and cross examination if asked for. The hon'ble Supreme court in case of **C. Vasantlal & Co. (45 ITR 206)** has held that *“it was open to the income-tax officer to collect materials to facilitate assessment by private inquiries. But if he desires to use the material so collected, assessee must be informed of the material and must be given an adequate opportunity to explain it.”*

10.3 Lastly, Hon'ble Gujarat High Court in the case of **Maruti Fabrics (2014) 47 Taxmann.com 298** and ITAT, Mumbai in the case of **Anantnadh Constructions & Farms (P) Ltd. vs DCIT, 166 ITD 83** and Jaipur bench in

**ACIT Vs Smt. Renu Sehgal (ITAT Jaipur) Appeal Number : ITA No. 837/JP/2018 Date of Judgement/Order, 19/08/2019** have recognized the principle that the addition to the income made by the Assessing Officer only on the disclosure made before the Settlement Commission is not valid in law. If that is the law in case of person before the Settlement Commission, the case of third person is certainly on better footing and admissions of one assessee before Settlement Commission cannot by default constitute incriminating material against third party. There has to be independent corroboration from the search on the third party.

10.4 In **CIT vs. Kabul Chawla reported in 380 ITR 573** Hon'ble Delhi High Court while taking in account summary of the legal position and delivering a conspectus of Section 153A(1) of the Act, read with the provisos thereto, has held *"Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

11. When aforesaid settled principles of law are taken considered there leaves no doubt in the mind of this Bench that there is no error in the findings of Ld. CIT(A). Ld. CIT(A) has rightly concluded following in para 5.11.28 reproduced as below :-

*"5.11.28 Considering the facts that:*

- (1) The copy of seized material was not provided to the appellant*
- (2) The copy of statement on oath was not provided to the appellant and opportunity of cross examination was not allowed*

(3) *The complete name of the appellant i.e. M/s. Vatika Ltd. is not appearing on the seized papers*

(4) *The total amount mentioned on the seized papers is only Rs. 10,855.43 and no justification with supporting evidence has been furnished by the Assessing Officer to hold it to be Rs. 104,50,00,000/-*

(5) *A copy of the application filed before the Hon'ble ITSC on 03.10.2017 u/s 245C(1) of the Income Tax Act, 1961 in Indiabulls Group was neither available with the Assessing officer nor a copy was provided to the assessee. The material was seized from third party and not from premises of the appellant.*

(6) *In view of order u/s 153A r.w.s. 143(3) dated 30.03.2015, the assessment of the appellant stood completed on the date of search and no incriminating material with regard to this addition was found. No addition could be made in view of decision of Hon'ble Delhi High Court in the case of PCIT Vs Subhash Khattar (ITA No. 60/2017) dated 25.07.2017.*

***addition of Rs.104,50,00,000/- made by the Assessing Officer is hereby deleted."***

12. Pertinent to observe is that Ld. AO while not accepting the response of the assessee had observed in para no. 5.2 as follows :-

*"5.2 A bare perusal of the reply of the assessee reveals that the assessee has blatantly refused/denied to having made any cash transaction with the Indiabulls Group. The assessee has been harping on the issue of provision of various details and statements as received without attempting to explain the transactions as mentioned in the show cause notice dated 04/12/2018. It appears that the assessee is brushing aside its onus to explain the impugned transactions and in fact has no explanation of the same.*

*Further, it was noticed that the Indiabulls Group has filed application before the Hon'ble Income Tax Settlement Commission on 03.10.2017 u/s 245C(1) of the Income Tax Act, 1961. In the application the Indiabulls Group categorically admitted that the impugned funds were obtained by them for their business needs and the peak of such receipts amounting to Rs. 104.50 crores was offered to tax as their undisclosed income.*

*On perusal of the above table, it can be seen that the peak credit in the hands of Indiabulls Group comes on 24.01.2011 i.e. F.Y. 2010-11 at an amount of Rs.104.50 lacs. Invariably the said amount has already been offered to tax by Indiabulls Group as their undisclosed business income. The assessee has also failed to explain as to how and in what manner the impugned funds were generated by it out of its business to enable it to provide the same to the Indiabulls Group. No evidence of any nature has been furnished to explain the source of such income by the assessee. In view thereof, since the peak amount of such funds have already been offered to tax by Indiabulls Group, similarly, an amount of Rs. 104.50 crores being the peak of such transactions is added to the assessable income of the assessee for the F.Y. 2010-11 relevant to the A.Y. 2011-12 as its undisclosed business income.*

***(Addition: Rs.1,04,50,00,000/-)***

*Satisfaction is hereby recorded by the undersigned that the assessee has undisclosed business income to the tune of Rs.1,04,50,00,000/- as per provisions of section 271(1)(c) of the Act. Accordingly, penalty proceedings u/s 271(1)(c) of the FT. Act, 1961 are initiated separately by issue of statutory notice.”*

13. The Bench is of considered opinion that Ld. AO has fallen in error in casting a burden upon the assessee for explanation of the admissions made by Indiabulls Group. The burden on the assessee would have been justified had the transactions initiated at the end of the assessee. However, there was no material on record to show that the admissions of Indiabull groups had anything in the form of evidence that funds had come from the end of assessee.

14. There is force in the contention of the ld. Sr. Counsel for the assessee that revenue cannot take a plea of lack of exercise of plenary powers by the ld. CIT(A) rather what transpires from the order of Ld. AO and ld. CIT(A) is that where Ld. AO had nearly approached the issue on the basis of presumptions. Ld. CIT(A) has taken into consideration the facts before it to make aforesaid conclusions. The ld. CIT(A) had

forwarded the detailed written submissions of the assessee to ld. AO for comments and after receiving the remand report had disposed of the matter. Ld. CIT(A) had specifically authorized, the Ld. AO u/s 250(4) of the Act, to conduct necessary inquiries. It appears, Ld. AO made no efforts rather while in remand report dated 13.12.2019, concluded the report with the words *“during remand proceedings as directed e-mail were again sent to DCIT, CC-6(4), Mumbai vide email dated 07.11.2019, 14.11.2019, 22.11.2019 and 02.12.2019 but no reply has been received so far. Further, request has been made telephonically by the undersigned but no information has been received so far.”*

15. The matter of fact remains that Ld. AO himself did not have with him any seized material and what he had was merely information. The electronic evidences allegedly recovered from the CFO of Indiabulls Group had never reached the hands of the ld. AO. The co-terminus power of Ld. CIT(A) to put to the assessee can only stand to the material available on record. Had there been some material on record, he would have supplied the same to the assessee to counter the prejudice claimed by the assessee of not being provided the material relied against the assessee. But there was no material to do that. Consequently, there is no force in the grounds raised, **The appeal of revenue is dismissed.**

**Order pronounced in the open court on 07<sup>th</sup> February, 2023.**

-Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER  
Date:07.02.2023

-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI