

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE
SHRI C. M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 5528/Del/2011
(Assessment Year: 2008-09)

ACIT, Central Circle-3, New Delhi (Appellant)	Vs.	Dheeraj Kumar Jain, C-215, Vivek Vihar, Delhi (Respondent)
PAN: AADPJ4043R		

C.O. No. 17 & 18/Del/2012
(In ITA No. 5528 & 5529/Del/2011)
(Assessment Year: 2008-09 & 2009-10)

Dheeraj Kumar Jain, C-215, Vivek Vihar, Delhi (Appellant)	Vs.	ACIT, Central Circle-3, New Delhi (Respondent)
PAN: AADPJ4043R		

Assessee by :	Dr. Rakesh Gupta, Adv
Revenue by:	Sh. T. James Singson, CIT DR
Date of Hearing	18/04/2023
Date of pronouncement	24/04/2023

ORDER

PER M. BALAGANESH, A. M.:

1. This appeal in ITA No.5528/Del/2011 is filed by the Revenue and Cross Objection No. 17/Del/2012 for Assessment Year 2008-09 arises out of the order by the Ld. Commissioner of Income Tax(Appeals)-II, New Delhi in appeal No. 189/10-11 dated 20.09.2011 and CO No. 18/Del/2012 arising out of order of the Id CIT(A)-II, Delhi in Appeal No. 188/10-11 dated 20.09.2011 (hereinafter referred to as Ld. CIT(A) in short) against the order of assessment passed u/s 153C read with section 143(3) of the Income Tax

Act, 1961 (hereinafter referred to as Act) dated 29.12.2010 by the Ld. Dy. CIT, Delhi (hereinafter referred to as Id. AO).

2. As the issues involved in these appeals are identical, they are taken up together and disposed of by this common order. For the sake of convenience, let us take up the appeal of the revenue for AY 2008-09 together with CO of the assessee for AY 2008-09 first.

3. The assessee has raised the following grounds of appeal in his cross objection for AY 2008-09:-

1. *The Ld. CIT (A) is erred under the law while holding that A.O. has a valid jurisdiction u/s 153C of the Act.*
2. *That the CIT (A) has erred under the law and facts while confirming the disallowance of interest paid to Mrs. Sunita Dua & Mrs. Rachna Batra, amounting to Rs. 30,082/- & Rs. 48,132/- respectively.*
3. *That having regard to the facts and circumstances of the case Ld. CIT (A) has rightly deleted the addition of Rs.2,45,00,000/- as made by the A.O. u/s 68 of the Act and corresponding amount of interest Rs. 3,87,452/- in respect of following unsecured loan creditors :-*

<i>Name of the Loan Creditor</i>	<i>Amount of Unsecured Loan</i>	<i>Interest paid</i>
<i>D. R. Apparel Fashions Pvt. Ltd</i>	<i>10,00,000/-</i>	<i>17,096/-</i>
<i>Donodia Impex Pvt. Ltd</i>	<i>10,00,000/-</i>	<i>17,096/-</i>
<i>KCJ Buildtech Pvt. Ltd.</i>	<i>5,00,000</i>	<i>8,548/-</i>
<i>R. N. Khemka Enterprises Pvt. Ltd.</i>	<i>20,00,000/-</i>	<i>48,000/-</i>
<i>Savita Holding Pvt. Ltd.</i>	<i>5,00,000/-</i>	<i>12,000/-</i>
<i>Shivangi Garments Pvt. Ltd.</i>	<i>25,00,000/-</i>	<i>44,384/-</i>
<i>SMF Engg. India Ltd</i>	<i>50,00,000/-</i>	<i>1,17,534/-</i>
<i>Star Lifestyles Pvt. Ltd</i>	<i>35,00,000/-</i>	<i>56,712/-</i>
<i>TTJ Impex Pvt. Ltd</i>	<i>25,00,000/-</i>	<i>16,438/-</i>
<i>Sourthem Pacific Hotels Pvt. Ltd.</i>	<i>20,00,000/-</i>	<i>17,754/-</i>
<i>Nirvana Lifestyles Pvt. Ltd</i>	<i>10,00,000/-</i>	<i>6,904/-</i>
<i>Kavita Buildcon Pvt. Ltd</i>	<i>20,00,000/-</i>	<i>17,096/-</i>
<i>Jammu Hotels Pvt. Ltd</i>	<i>10,00,000/-</i>	<i>7,890/-</i>

4. The revenue has raised the following grounds of appeal:-

- "1. *That the Ld. CIT(A) erred in law and on fact of the case in deleting the addition of Rs. 2,45,00,000/- made on account of unexplained cash credit in form of unsecured loan.*

2. *That the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs.3,87,452/- made on account of bogus claim of interest.*

(a) The order of the CIT (A) is erroneous and not tenable in law and on facts.

(b). The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal."

5. We have heard the rival submissions and perused the material available on record. We find that the original return of income was filed for AY 2008-09 on 29.07.2008 declaring total income of Rs. 36,73,500/-. This return was duly processed u/s 143(1) of the Act. The assessee is one of the Directors of M/s. Mahagun (India) Pvt. Ltd. The said company was subjected to search and seizure action u/s 132 of the Act on 26.08.2008. Consequent to the search, the assessee's case was centralized with Central Circle-3, New Delhi vide administrative order dated 06.11.2009. The Id AO observed in the order that certain documents pertaining to the assessee were found and seized in the search conducted in the case of M/s. Mahagun (India) Pvt. Ltd. Accordingly, a notice u/s 153C of the Act was issued to the assessee on 08.11.2010. In response thereto the assessee stated that the return already filed by him on 18.02.2010 pursuant to the earlier search and consequently, in response to notice u/s 153A of the Act issued thereon, may be treated as a return in response to the present notice issued u/s 153A of the Act.

6. The Id AO observed that during the year, the assessee has raised unsecured loans from following entities:-

i.	D. R. Apparel Fashions Pvt. Ltd	10,00,000/-
ii.	Donodia Impex Pvt. Ltd	10,00,000/-
iii.	KCJ Buildtech Pvt. Ltd.	5,00,000
iv.	R. N. Khemka Enterprises Pvt. Ltd.	20,00,000/-
v.	Savita Holding Pvt. Ltd.	5,00,000/-
vi.	Shivangi Garments Pvt. Ltd.	25,00,000/-
vii.	SMF Engg. India Ltd	50,00,000/-
viii.	Star Lifestyles Pvt. Ltd	35,00,000/-
ix.	TTJ Impex Pvt. Ltd	25,00,000/-

x.	Sourthem Pacific Hotels Pvt. Ltd.	20,00,000/-
xi.	Nirvana Lifestyles Pvt. Ltd	10,00,000/-
xii.	Kavita Buildcon Pvt. Ltd	20,00,000/-
xiii.	Jammu Hotels Pvt. Ltd	10,00,000/-

Rs. 2,45,00,000/-

7. In respect of the aforesaid parties, the assessee was asked to give the details of loan raised, confirmed copy of account from the lenders, proof with regard to identity, creditworthiness and genuineness of the transaction along with photocopy of the bank statements of the lenders giving source of credits appearing therein. All these details were duly furnished by the assessee before the Id AO. The Id AO made common observation that the confirmation copy given by the assessee was undated and bank statement of the lenders did not provide the source of credits of the lenders. Accordingly, the Id AO observed that though the assessee had indeed given the income tax return acknowledgement of the lenders, mere filing of PAN thereon would not prove the identity of the persons. Even though the assessee had filed certified copies of the audited financial statement of the said lender companies, still the Id AO observed that the same are available in the website of the Ministry of Corporate Affairs, Govt. of India and can be downloaded by anybody. The Id AO further observed that all these entities are private limited companies and there is no reason to give loan to the assessee company without any purpose, more so when they are not related with each other. With these observations, the Id AO concluded that the assessee in the instant case had not proved the three necessary ingredients prescribed u/s 68 of the Act viz: the identity of the lenders, creditworthiness of the lenders and genuineness of the loan transactions. Accordingly, he proceeded to add the loans received during the year in the sum of Rs. 2.45 crores as unexplained cash credit u/s 68 of the Act and completed the assessment u/s 153C read with Section 143(3) of the Act on 29.12.2010. Consequently, the interest paid on the aforesaid loans totaling to Rs. 3,87,452/- was also disallowed by the Id AO. Further, the assessee had paid

interest of Rs. 30,282/- on the loan raised from Sunita Dua and interest of Rs. 48,132/- from Rachna Batra on the loan raised. These loans were raised by the assessee in the earlier years from these two parties and interest is paid during the year. The Id AO had treated the loans received from these two parties as bogus in earlier years and proceeded to disallow interest paid thereon and made disallowance of Rs. 78,214/- in the assessment framed u/s 153C read with section 143(3) of the Act on 29.12.2010.

8. Before the Id CIT(A), the assessee challenged the aforesaid addition and disallowances on merits and also challenged the validity of these additions being made in the search assessment u/s 153C of the Act on the ground that there was no incriminating material pertaining to the assessee qua the aforesaid additions/ disallowances which was found in the search conducted in the premises M/s. Mahagun (India) Pvt. Ltd.

9. The Id CIT(A) however, did not agree with the legal proposition made by the assessee and upheld the validity of assumption of jurisdiction u/s 153C of the Act and making additions/ disallowances thereon without the presence of incriminating material found during the course of search. However, on merits, the Id CIT(A) deleted the addition made u/s 68 of the Act in the sum of Rs. 2.45 crores and consequently, the interest paid thereon in the sum of Rs. 3,87,452/- was allowed. However, yet another interest payment of Rs. 78,214/- on loan borrowed in earlier years, the Id CIT(A) dismissed the ground of the assessee on the plea that the said loans were added by the Id AO and confirmed by him in earlier years as unexplained cash credit.

10. Aggrieved by this order, the revenue is in appeal on deletion of two additions by the Id CIT(A) and the assessee is in cross objection before us challenging the validity of the assessment made u/s 153C of the Act; and confirmation of disallowance of interest in the sum of Rs. 78,214/-.

11. At the outset, we find that during the year, the assessee had received unsecured loan from 13 parties totaling to Rs. 2.45 crores. Admittedly, as on

date of search the assessment for AY 2015-16 became a concluded assessment. Hence, there is a requirement of existence of incriminating material found during the course of search if the Id AO seeks to disturb the said concluded assessment during the search proceedings u/s 153C of the Act. Admittedly there is absolutely no reference at any seized material, much less any incriminating material found during the course of search qua addition made on account of unsecured loans made u/s 68 of the Act and consequently, disallowances of interest thereon. Hence, respectfully following the decision of the Hon'ble Delhi High Court (Jurisdictional High Court) in the case of Kabul Chawla reported in 380 ITR 573 and the decision of the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society reported in 397 ITR 344 (SC). We hold that assessment framed u/s 153C of the Act making additions u/s 68 of the Act and consequently, interest thereon, deserves to be deleted. Accordingly, ground No. 1 raised by the assessee in its cross objection is allowed.

12. With regard to addition made on account of unsecured loan made u/s 68 of the Act, the Id CIT(A) had observed that all the 13 parties are reflected under "active category" in the records of Ministry of Corporate Affairs, Govt. of India; that all the parties are having valid PAN, all parties are regularly assessed to income tax; that all the transactions have been made through account payee cheque; thereby proving the genuineness of the transaction; that the assessee had duly furnished the bank statements of the loan creditors which clearly prove the creditworthiness of the parties to advance loans to the assessee; and sufficient creditworthiness is available with the parties to advance loan to the assessee. The Id CIT(A) also observed that the assessee had duly repaid the entire loans to all the parties with applicable interest much before even initiation of search proceedings u/s 153C of the Act in the hands of the assessee. The Id CIT(A) had tabulated the same at page No. 5 and 6 of his order which is not hereby reproduced for the sake of brevity.

13. All these documents placed by the assessee before the Id AO are not disputed by the revenue before us. The Id AO having received all the aforesaid documents did not choose to examine the veracity of the said documents either by issuing notice u/s 133(6) of the Act or issuing summons u/s 131 of the Act to the said lender companies. In this scenario, the only logical conclusion that could be reached is that the Id AO was convinced with the documents filed on record by the assessee. All these documents placed by the assessee were given due cognizance by the Id CIT(A) while granting relief to the assessee. WE find that none of the categorical findings given on these aspects on merits were controverted by the Id DR before us. Further, we find that the Tribunal in assessee's own case for Assessment Years 2003-04 to 2007-08 in ITA No. 4710/Del/2016, 4711/Del/2011, 5526/Del/2011, CO No. 16/Del/2012 in ITA No. 5525/Del/2011, CO No. 19/Del/2012 in ITA No. 5527/Del/2011 dated 17.11.2021 had addressed the very same issue of validity of addition made on account unsecured loans as unexplained cash credit u/s 68 of the Act and consequently, disallowances interest thereof together with validity of assumption 153C of the Act vis-à-vis incriminating material thereon. For the sake of convenience the relevant portion of the order is reproduced herein below:-

"3. Since the issue relating to seized material/no incriminating documents found has been contested in all these appeals, we are taking up the issue for Assessment Year 2003-04 and fact thereof (2003-04).

4. The assessee is a Director of Mahagun India Pvt. Ltd. a flagship company of Mahagun Group of Companies. A search proceedings u/s 132 of the Act was conducted at the business premises of the Mahagun Group of Companies on 26/8/2008. The original return declaring net taxable income of Rs. 3,68,555/- was filed on 4/8/2003. At the time of search, certain documents pertaining to the assessee as envisaged by the Assessing Officer were found and seized. Accordingly, after recording the satisfaction within the meaning of Section 153C, notice u/s 153C was issued on 8/11/2010. The assessee furnished reply on 15/11/2010 stating that the return filed on 18/2/2010 in response to notice u/ 153A may be treated as having been filed in response to this notice. Return declaring net taxable income of Rs. 3,68,555/- was filed on 18/2/2010. Subsequently, notice u/s 143(2), 142(1) along with

questionnaire was issued on 22/11/2010. The Assessing Officer made addition of Rs. 1,82,560/- on account of disallowance of interest expense.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that Section 153C notice dated 8/11/2010 is out of Block Period of Assessment Year 2005-06 to 2010-11 in view of the decision of the Hon'ble Delhi High Court in case of CIT(A) vs. R. R. J Securities Ltd. 380 ITR 612. The Ld. AR further submitted that there was no incriminating material found during the search and hence the assessee's case is covered by the decision of the Hon'ble Supreme Court in case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (S.C) as well as CIT Vs. Kabul Chawla 380 ITR 573.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further submitted that the satisfaction was properly recorded and after conducting the post search enquiry, the addition was rightly made.

8. We have heard both the parties and perused the material available on record. It is pertinent to note that the material on which the Assessing Officer placed reliance on, was not at all part of the addition set out in the assessment order. Thus, the assessment order and the additions therein are not based on any material. As per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these Assessment Years as well as related to the addition made by the Assessing Officer. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. Therefore, the decision of the Hon'ble Supreme Court in case of Singhad Technical Education Society (Supra) is squarely applicable along with the decision of the Hon'ble Delhi High Court in case of Kabul Chawla (Supra). Thus, the applicability of decision of the Hon'ble Delhi High Court in case of Kabul Chawla is relevant in the present case as no incriminating material was found and there is no mention in the assessment order as well as in the order of the CIT(A) relating to the reliance of any material for making specific addition in the assessment. Thus, assessment itself becomes void ab initio. Thus, the appeal of the assessee is allowed.

9. As regards Cross Objection No. 16/Del/ 12 for Assessment Year 2005-06. the assessment is based on no incriminating material and hence is identical to that of Assessment Year 2003-04. Hence, Cross Objection No. 16/Del/2016 is allowed.

10. As regards ITA No. 4711/Del/2011 and ITA No. 5526/Del/2011 for Assessment Year 2006-07, the issue contested herein is also identical and the assessee has filed additional ground to the extent of no incriminating material found during the course of search. Therefore, ITA No. 4711/Del/2011 is allowed and ITA No. 5526/Del/2011 of the Revenue's appeal is dismissed.

11. As regards Cross Objection No. 19/Del/2012, the assessee has taken additional ground in respect of no incriminating material found during the

course of search. The Cross Objection of the assessee is allowed for Assessment Year 2007-08.

12. In result, all the appeals of the assessee along with cross objection are allowed and the appeal of the revenue is dismissed”

14. In view of the aforesaid observations and respectfully following judicial precedent relied upon herein above the grounds raised by the revenue are dismissed and ground No. 1 raised by the assessee in Cross Objection is allowed.

15. Ground No. 3 raised by the assessee in its Cross Objection are only supportive of the order of the Id CIT(A) and does not require any specific adjudication.

CO No. 18/Del/2012 (Assessment Year 2009-10)

16. Ground raised by the assessee herein are identical to the grounds raised by the assessee in its cross objection for AY 2008-09 and hence the decision rendered thereon shall apply *mutatis mutandis* for AY 2009-10 also, except with variance in figures.

17. In the result, appeal filed by the revenue for AY 2008-09 is dismissed and Cross Objections filed by the assessee for Assessment Years 2008-09 and 2009-10 are allowed.

Order pronounced in the open court on 24/04/2023.

(C. M. GARG)
JUDICIAL MEMBER

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 24/04/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi