

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2622/Del./2016
(ASSESSMENT YEAR : 2004-05)**

**ITA No.2624/Del./2016
(ASSESSMENT YEAR : 2007-08)**

DCIT, Central Circle 15,
New Delhi.

vs. Mirage Home Limited,
(formerly known as M/s. Astra Resorts
Pvt. Ltd.),
B – 10, Shivalik, Malviya Nagar,
New Delhi.

(PAN : AADCM1678C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vikas Jain, Advocate
REVENUE BY : Shri T. Kipgen, CIT DR

Date of Hearing : 11.05.2023
Date of Order : 16.05.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the respective order of
1d. CTI (Appeals)-XXVI, New Delhi for the concerned assessment years.

2. The grounds of appeal taken by the Revenue in both the assessment
years read as under :-

“ASSESSMENT YEAR 2004-05

1. That the Ld. CIT(A) has erred in law and on facts In holding that Since no incriminating document was found during the course of search for this year, assessment u/s 153A of the Act could not have been completed?
2. That the Ld. CIT(A) has erred in law and on facts in holding that the AO could not have proceeded to frame assessment u/s 153A in absence of incriminating material without appreciating the fact the provisions of the section 153A of the I.T. Act provides for assessment and reassessment of total income of assessee does not confine assessment or reassessment to incriminating documents only.
3. That the Ld. CIT(A) has erred in law and on facts in wrongly appreciating the provision of section 153A of the LT. Act which clearly provide for assessment and reassessment of total income and does not restrict the scrutiny assessment only to the documents found and seized during search.
4. That the Ld. CIT(A) has erred in law and on facts in admitting the additional evidence filed before him without confronting the same to the AO?
5. That the Ld. CIT(A) has erred in law and on facts in deleting the addition or Rs.4,69,926/- made by the AO on account of disallowance out of travel expenses by the assessee.
6. That the Ld. CIT(A) has erred in law and on facts in deleting the addition or Rs.1,81,797/- made by the AO on account of disallowance out of insurance, professional charges and donation.
7. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.4,30,918/- made by the AO on account of over head allocation for 8-20. Pamposh.
8. That the Ld. CIT(A) has erred in law and on facts in deleting the addition or Rs.46,37,500/- made by the AO on account of short term capital gain and deleting the addition of Rs.2,87,415/- out of expenses claimed for b-20. Pampose.
- 9.. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.32,60,914/- made by the AO on account of expenses disallowed in respect or K-15, Hauz Khas.
10. That the Ld. CIT(A) has erred 111 law and on facts in deleting the addition of Rs.1,34,99,873/- made by the AO on account of unexplained advances u/s 68.”

ASSESSMENT YEAR 2007-08

“1. That the Ld. CIT(A) has erred in law and on facts in holding that since no incriminating document was found during the course of search for this year, assessment u/s 153A of the Act could not have been completed?

2. That the Ld. CIT(A) has erred in law and on facts in holding that the AO could not have proceeded to frame assessment u/s 153A in absence of incriminating material without appreciating the fact the provisions of the section 153A of the I.T. Act provides for assessment and reassessment of total income of assessee does not confine assessment or reassessment to incriminating documents only.

3. That the Ld. CIT(A) has erred in law and on facts in wrongly appreciating the provision of section 153A of the I.T. Act which clearly provides for assessment and reassessment of total income and does not restrict the scrutiny assessment only to the documents found and seized during search.

4. That the Ld. CIT(A) has erred in law and on facts in admitting the additional evidence filed before him without confronting the same to the AO?

5. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.6,26,000/- made by the AO on account of unexplained cash credit.

6. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.56,00,000/- made by the AO on account of rent for non-genuine business purpose.

7. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,10,420/- made by the AO on account of foreign travel expenses.

8. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,60,00,000/- made by the AO on account of unexplained liabilities.

9. That the Ld. CIT(A) has erred in law and on facts in reducing the addition of Rs.10,00,000/- made by the AO on account of sales of Malwa upto Rs.5,00,000/-.

10. That the Ld. CIT(A) has erred in law and on facts in deleting the addition or Rs.2,75,00,000/- made by the AO on account of addition made on u/s 69B.”

3. In this case, pursuant to search conducted on the premises of assessee on 20.10.2008, assessment was framed under section 153A of the Income-tax Act, 1961 (for short 'the Act'). The AO computed the income for AY 2004-05 as under :-

“COMPUTATION OF INCOME

Profits and gains from business and profession

As per return	Rs. 10,58,464
Add :	
1. Tours and travel as discussed above	Rs. 4,69,626
2. Internet Expenses	Rs. 18,340
3. Insurance Expenses	Rs. 72,957
4. Professional Charges	Rs. 87,000
5. Donation	Rs. 3,500
6. Over Head Allocation for B-20, Pamposh as discussed	Rs. 4,30,918
7. Short Term Capital Gain	Rs. 46,37,500
8. Expenses claimed for B-20 Pamposh as discussed	Rs. 2,87,415
9. Loss disallowed as discussed	Rs. 2,88,396
10. Expenses disallowed in respect of K-15, Hauz Khas	Rs. 32,60,914
11. U/s 68 as discussed	<u>Rs.1,34,99,873</u>
Total Income	<u>Rs.2,41,14,903</u>
Or	<u>Rs. 2,41,14,900”</u>

Similarly, for AY 2007-08, the AO made the following computation :-

“COMPUTATION OF INCOME

Income from business and profession

As per return	Rs. 6,33,086
Add : As per para 2 discussed above	Rs. 6,26,000
As per para 3.1 discussed above	Rs. 56,00,000
As per para 4.4 discussed above	Rs. 5,10,419
As per para 5 discussed above	Rs. 2,67,419
As per para 6 discussed above	Rs.2,60,00,000
As per para 7 discussed above	Rs. 10,00,000
As per para 8 discussed above	<u>Rs.2,75,00,000</u>
Taxable Income	<u>Rs.6,21,37,421</u>
Rounded of	<u>Rs.6,21,37,420”</u>

4. Against the above orders, assessee appealed before the Id. CIT (A).
Ld. CIT (A) in both the assessment years gave a finding that assessments were not framed with reference to any incriminating material found during search and he referred to case laws and finally concluded that in view of the analysis of legal view on the issues, the AO could not have proceeded to frame assessment u/s 153A of the Act in respect of year under consideration as no incriminating documents/assets have been found during the search operation pertaining to the assessment years. Hence, he allowed the grounds in favour of the assessee.

5. Against this order, Revenue is in appeals before us. We have heard both the parties and perused the records.

6. A reading of the grounds itself shows that there is no dispute that assessment is not based upon any incriminating material found during search. Ld. DR for the Revenue could not controvert the finding of the Id. CIT (A) that assessment was not framed on any incriminating material found during search.

7. Ld. Counsel of the assessee submitted that it was settled by Hon'ble Delhi High Court in the case of Kabul Chawla (2015) 61 taxmann.com 412 (Delhi) that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. He submitted that this issue has now been concluded by the Hon'ble Apex Court in the case of Pr. CIT vs. Abhisar Buildwell P. Ltd. & ors. in Civil Appeal No.6580 of 2021 vide order dated 24.04.2023.

8. We note that in this case, a reading of the assessment order shows that the additions were not based upon any incriminating material or assets found during search. Ld. CIT (A) has also given such finding. It is also not the case that these are abated assessment years. In such situation, the decision of Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra) squarely applies. The same was duly affirmed by

Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell P.

Ltd. (supra) and Hon'ble Supreme Court has held as under :-

“13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”

9. From the above, it is now settled that in the case of unabated assessment years, the addition has to be based upon incriminating material and since Id. CIT (A) has given a categorical finding that additions in these years are not based upon incriminating material found during the search and this fact has not been rebutted by the Id. DR for the Revenue and in the grounds of appeal by the Revenue, we hold that assessments in both the years are not valid inasmuch as they are not based upon any incriminating material found during search.

10. Since we have held that assessment are invalid on account of jurisdiction itself the adjudication on merits of the additions is only academic interest, hence we are not engaging into the case.

11. Our above order applies *mutatis mutandis* to both the assessment years.

12. In the result, these appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 16th day of May, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 16th day of May, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.