

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 5276/Del/2017, A.Y. 2009-10

M/s. Emaar MGF Land Limited 1 st Floor, 28 ECE House, Kasturba Gandhi Marg, Connaught Place, New Delhi- 110001 PAN :AABCE4308B	Vs.	ACIT, Central Circle-2, New Delhi
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ITA No. 5661/Del/2017, A.Y. 2009-10

ACIT, Central Circle-2, New Delhi	Vs.	M/s. Emaar MGF Land Limited 1 st Floor, 28 ECE House, Kasturba Gandhi Marg, Connaught Place, New Delhi- 110001 PAN :AABCE4308B
Appellant		Respondent

Assessee by	Sh. Salil Kapoor, Adv. And Sh. Amarbir Singh Walia, CA
Revenue by	Sh. T. James Singson, CIT, DR

Date of hearing:	15.05.2023
Date of Pronouncement:	25.05.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee & Revenue against the order dated 05.07.2017 of CIT(A)-23, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 249/16-17 arising out of an appeal before it against the assessment order dated 28.12.2016 passed u/s 153A/ 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-2, New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. Apart from raising grounds on merits by application dated 27th January, 2022 the assessee has raised following additional grounds :-

"1. That on the facts and circumstances of the case and in law, the assessment completed and the additions made therein under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 ("the Act") are illegal, bad in law, void ab initio, without jurisdiction and barred by limitation.

2. That, on the facts and circumstances of the case and in law, the issuance of Section 143(2) notice is illegal and beyond the time prescribed in law. Hence, as issuance of Section 143(2) is barred by limitation, the entire assessment is illegal and made to be quashed.

3. That, on the facts and circumstances of the case and in law, the AO has erred in not appreciating that this is a case of 'completed assessment' and in the absence of any incriminating material qua each issue, the said additions are illegal and liable to be deleted.

4. That, on the facts and circumstances of the case and in law, the AO has erred in not appreciating that no

incriminating material has been found for the year under consideration which belongs to the said year, and hence the said additions are illegal and liable to be deleted.

5. That, on the facts and circumstances of the case and in law, the approval under Section 153D of the Act is mechanical and without any application of mind and thus the impugned assessment order is illegal, bad in law liable to be quashed.

6. That on the facts and circumstances of the case and in law, the addition made on account of Section 14A disallowance is illegal, bad in law and without jurisdiction. The same is illegal in the absence of any satisfaction recorded by the AO and also the same is illegal worked out/ wrong computed and highly excessive. It is not as per the mandate of law.”

4. Ld. Counsel for the assessee submitted that in the light of judgment of Hon’ble Supreme Court of India in **PCIT vs. Abhisar Buildwell P. Ltd. Civil Appeal No. 6580 of 2021 dated 24.04.2023**, the issue is settled that no addition can be made in respect of completed assessment in absence of any incriminating material and the judgment of Hon’ble Delhi High Court in **CIT v. Kabul Chawla, (2015) 61 taxmann.com 412 (Delhi)** has been sustained.

4.1. Ld. DR did not dispute the position of law after the judgment of Hon’ble Supreme Court of India in the case of **Abhisar Buildwell P. Ltd.(Supra)** however submitted that there was sufficient material during the search and submitted that there was suppression of income by claiming inaccurate expenditures.

5. In this context, it can be observed that Ld. CIT(A) was not confronted with the question of fact and law as to if the Ld. AO had fallen in error in exercising jurisdiction of making assessment order u/s 153A while there was

no incriminating evidence from the search, for the relevant year. The Bench is accordingly inclined to admit the additional grounds being question of law. Further, there is no dispute to the fact that no incriminating material was found for the year under consideration while the assessment of the assessee falls in the category of completed assessment. Apparently the additions are all in regard to disallowance is expenses which have no concern with the search. Thus, the additional ground raised deserves to be sustained. **Accordingly, the appeal of assessee is allowed and of Revenue dismissed.**

Order pronounced in the open court on 25th May, 2023.

Sd/-

(ANIL CHATURVEDI)

ACCOUNTANT MEMBER

Date:- 25th.05.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**