

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.5024/Del/2018  
Assessment Year: 2009-10

Dr. Shyam Sunder Doda 23-B, Pusa Road, New Delhi 110005 <b>PAN ADBPD 5910 C</b>	vs.	The ACIT, Circle 37(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Ms. Nivedita, Adv.
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	16.03.2023
Date of Pronouncement :	29.05.2023

**ORDER**

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

This appeal has been filed against the order of CIT(A)-20 New Delhi dated 08.05.2018 for AY 2009-10.

2. The grounds raised by the assessee are as follows:

*1. That the Ld. CIT(A) is erred under the law while confirming the impugned order passed by the Ld. A.O. is not only bad in law but also against the facts of the case.*

*2. That having regard to the facts and circumstances of the case, that the Ld. CIT(A) is erred under the law while confirming that the A.O. had assumed jurisdiction after having mandatory approval from the competent authority as required us 151(1) of the Act as stood at the relevant time.*

*3. That the assessment made by the A.O. us 143(3)/147 and confirmed by the CIT (A) is illegal, erroneous and bad in law keeping in view the facts & circumstances of the case.*

*4. That the CIT(A) is erred under the law while confirming the addition of Rs. 16,24,000/- as made by the A.O. which is otherwise, arbitrary and uncalled for.*

3. The learned counsel of the assessee submitted the assessee does not want to press ground no. 1 to 3 hence same are dismissed as not pressed. Apropos remaining effective sole ground no. 4 the learned counsel drawing our attention towards reassessment order dated 25.11.2016 passed u/s. 147/143(3) of the I.T Act 1961 (for short the 'Act') submitted that in paras 4 to 8 the assessing officer has mentioned facts about the search & seizure operation u/s. 132 of the Act carried out on 27.06.2013 in the Santosh Group of Institutions and Dr. P. Mahanilgam and statements of Dr. P. Mahanilgam, Shri J. Kamla Kanan, Finance Controller of the Group and Shri S. Chakravarthi, General Manager (Administration) and addition made by him has been based only on these statements and document found and seized during the search operation.

4. Further, drawing our attention towards copy of the reasons recorded, which has also been reproduced by the Id. CIT(A) at page 16 of first appellate order the learned counsel submitted that there is no mentioning of any such statements of alleged three persons in the reasons and there is only mentioning of certain documents/books of accounts. The learned counsel submitted that the said documents/books of accounts and these statements were never confronted to the assessee by way of any show cause notice, order sheet entry or through any other manner by the Assessing Officer therefore addition based on such un-confronted statement and documents cannot be held as validly sustainable therefore the same may kindly be deleted. The learned counsel has also placed reliance on the order of this bench dated 16.03.2023 in ITA 1620/Del/2020 in the case of Shaleen Prasad vs. ITO, for AY 2007-08 to alleged that the addition made on the basis of information, material collected on the back of the assessee on the statements recorded on the back of the assessee without confronting the same to the assessee cannot be held as validly sustainable therefore the same may kindly be deleted.

5. Replying to the above, the Id. Senior DR strongly supported the orders of the authorities below.

6. First of all, I note that on being asked by the bench the Id. Senior DR did not controvert a very peculiar factual position that the search & seizure operation u/s. 132 of the Act carried out on 27.06.2013 in the Santosh Group of Institutions and Dr. P. Mahanilgam and statements of Dr. P. Mahanilgam, Shri J. Kamla Kanan, Finance Controller of the Group and Shri S. Chakravarthi, General Manager (Administration) and addition made by him has been based only on these statements and document found and seized during the search operation. However, the Id. Senior DR has contended that these documents/books of account and statements of all three persons were but from the assessment as well as first appellate order and material available on record I declined to accept above contention of Id. Senior DR that the said documents/books of accounts found & seized and statements recorded during the search & seizure operation on Santosh Group, which were collected and recorded on the back of the assessee, were even confronted to the assessee either by the Investigation Wing or by the

Assessing Officer or by the Id. CIT(A). Per contra, we are in agreement with the contention of the Id. counsel of the assessee that the assessee came to know about said three statements only on receipt of reassessment order and during assessment proceedings these were not confronted to the assessee and therefore the assessee was deprived from his valuable right of confronting and controverting the same.

7. In the case of Shaleen Prasad vs. ITO (supra), under identical facts and circumstances it was held that when the Senior DR has not controverted the factual position that the Assessing Officer made addition on basis of documents found & seized and statements of three persons recorded during the course of search & seizure operation u/s. 132 of the Act, on the third entity i.e. Santosh Group, which were found & seized and recorded on the back of the assessee and never confronted to the assessee then such addition has to be held as unsustainable & invalid and deserve to be deleted. Therefore in view foregoing, I reach a logical conclusion that the Assessing Officer was not correct and justified in making addition in the hands of assessee on the basis of document/books of accounts found & seized and statement of three persons including Dr. P. Mahanilgam without confronting to the same of the assessee and therefore, I direct the Assessing Officer to delete the same. Accordingly ground no. 4 of assessee is allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.05.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 29<sup>th</sup> May, 2023.

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi