

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.20/DEL/2022  
Assessment Year 2012-13

Rajveer singh House No.4 Krishna Garden Ganga Nagar Meerut.	Vs.	DCIT Central Circle Ghaziabad
TAN/PAN: AIAPS2907A		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Wadhwa, Adv.		
Respondent by:	Shri T. Kipgen, CIT-DR		
Date of hearing:	24	05	2023
Date of pronouncement:	13	06	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Kanpur-4 ('CIT(A)' in short) dated 14.12.2021 arising from the assessment order dated 30.12.2019 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 153A of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The assessee has filed grounds of appeal seeking to challenge the addition of Rs.20,98,370/- to the return of income by applying net profit rate of 8% on the total turnover. The assessee thereafter filed additional grounds whereby the additions so made has been challenged on the premise that jurisdiction of the Assessing Officer in making additions under Section 153A of the Act is not available in the absence

any incriminating material.

3. We have heard the rival submissions and perused the material available on record.

4. A search was conducted in the premises of the assessee on 16.06.2017. In pursuance of the proceedings under Section 132 of the Act, notice was issued under Section 153A of the Act and the assessment was completed on the total income of Rs.1,14,14,130/- under Section 143(3) r.w. Section 153A of the Act. While making the assessment, the Assessing Officer made the addition to Rs.20,98,370/- by applying profit @ 8% of the total business receipt with reference to provisions of Section 44AD of the Act. The assessment order has maintained stoic silence and does not make reference to any incriminating material found in the course of search. The additions were made on estimated basis based on the appreciation of the existing material and documentary evidence.

5. The CIT(A) in the first appeal has confirmed the aforesaid action of the Assessing Officer towards such estimation of profits in Section 153A assessment.

6. The ld. counsel before us contends at the outset that *dehors* the incriminating material, no addition/disallowances can be made in the assessment which already stood concluded at the time of search. The legal issue of lack of jurisdiction to make additions/disallowances in 153A proceedings in the absence of any incriminating material in respect of concluded assessment is now settled in favour of the assessee by recent judgment of the Hon'ble Supreme Court in the case of *Pr.CIT vs. Abhisar Buildwell P. Ltd. (2023) 149 taxmann.com 399 (SC)*. As pointed out, the judgment on the similar lines were earlier passed by the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (2015) 61 taxmann.com 412 (Del)* and plethora of other judgments.

7. In the light of contentions made, we find palpable merit in the legal plea raised by way of additional grounds. Hence, we do not consider it necessary to go into the merits of the estimated additions in the instant case. Consequently, the additions/disallowances made under Section 153A on account of estimated profits under Section 44AD stands deleted. The order of the CIT(A) is set aside and the Assessing Officer is directed to cancel the additions.

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

**Order pronounced in the open Court on 13/06/2023**

**Sd/-**  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**

DATED: **/06/2023**  
*prabhat*

**Sd/-**  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

Assistant Registrar