

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.342 & 343/DEL/2019  
[Assessment Years:2010-11 & 2012-13]**

M/s R.D. Finlease Pvt. Ltd. 20,21-22, Sector-16, Noida, Uttar Pradesh-201301	Vs	Dy. Commissioner of Income Tax, Central Circle, Noida
<b>PAN-AAACR6938B</b>		
Assessee		Revenue

Assessee by	Sh. Sandeep Jain, CA
Revenue by	Sh. Binod Kumar, CIT-DR

<b>Date of Hearing</b>	<b>13.06.2023</b>
<b>Date of Pronouncement</b>	<b>16.06.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

These appeals by the assessee are directed against the respective orders of the Ld. CIT(A)-IV, Kanpur, dated 12.07.2018 & 19.11.2018 pertaining to Assessment Years 2010-11 & 2012-13.

2. Grounds of appeal are common and they read as under:-

*“1. On the facts and circumstances of the case, the order passed by the learned CIT (A) is bad, both in the eye of law and on the facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition despite assessee fulfilling the burden cast on him u/s 68 of Income Tax Act.*

*3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition by ignoring the submission and evidences submitted during appellate proceedings.”*

3. Brief facts of the case are that a search and seizure action 132 of the Income Tax Act was conducted on 30.09.2015 on the premises of the assessee comprising Airwill Group of cases. A notice u/s 153A of the Act was issued to the assessee. The AO made addition on account of unexplained unsecured loans, where no incriminating materials were mentioned. The AO made addition on the basis of his enquiry.

4. Against the above order, the assessee appealed before the ld. CIT(A).

5. The assessee first raised a plea that since no incriminating material is found, there is no justification for addition. The Ld. CIT(A) did not accept the submissions canvassed by the assessee. He held as under:-

*“5.2. Undersigned has carefully considered the submission and the case laws cited by the appellant. However, considering the express provisions of section 153A of the Act, undersigned would like to differ with the submission of the appellant, because section 153A of the Act clearly provides the power to AO to assess/reassess the cases of person searched u/s 132(1) of the Act for immediately six preceding years. Section 153A of the Act does not provide existence of incriminating material as essential requirement. In the opinion of the undersigned, the action us 132/132A of the Act would automatically trigger the provisions of section 153A of the Act for computation of total income of the appellant. This provision does not restrict the Assessing Officer to take action in those cases where assessment has already been completed. Since, the AO has rightly exercised his powers to assess/reassess the case U/s 153A of the Act.”*

6. Against the above order, the ld. Counsel for the assessee at the threshold challenged that in absence of any incriminating material; the addition u/s 153A cannot be sustained. For this proposition, he relied upon the latest decision of Hon'ble Supreme Court in the case of PCIT

Central-3 vs Abhisar Buildwell Pvt. Ltd. (2023) SCC Online SC 481 and Hon'ble Delhi High Court decision in the case of CIT vs Kabul Chawla 61 taxmann.com 412 (Del.)

7. We have heard both the parties and perused the records. We note that the additions are not based upon any incriminating material found in search. Ld. DR also could not dispute this proposition. Hence, on the touchstone of above said case laws, addition in this case *dehors* incriminating seized material is not sustainable. Hence, we set-aside the order of the Ld. CIT(A) and decide the issue in favour of the assessee. Other grounds taken by the assessee are now only of academic interest, we are not engaging into the same.

8. In the result, these appeals by the assessee are allowed.

Order pronounced in the open court on 16<sup>th</sup> June, 2023.

**Sd/-**  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** 16.06.2023.

*Sheshar,*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi