IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMR KEDIA, ACCOUNTANT MEMBER

ITA No.3599/DEL/2017 [A.Y. 2009-10]
&
ITA No.3600/DEL/2017 [A.Y. 2010-11]

ACIT, Cen. Circle-8, New Delhi.	Vs	SAS Servizio Pvt. Ltd., a-222, New Friends Colony, New Delhi-110065. PAN-AAACR4452L
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Kapil Goel, Adv.	
Department represented by	Shri H.K. Choughary, CIT(DR)	
Date of hearing	17.07.2023	
Date of pronouncement	19.07.2023	

O R D E R

PER KUL BHARAT, JM:

The captioned appeals, preferred by the Revenue, are directed against separate orders dated 28.03.2017 passed by the learned Commissioner of Income-tax (Appeals)-24, New Delhi, pertaining to the assessment years 2009-10 and 2010-11. Both these appeals were heard together and are being disposed of by a consolidated order for the sake of convenience. The Revenue has raised following grounds of appeal:

ITA No. 3599/Del/2017 (A.Y. 2009-10):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 4,03,39,356/- w.r.t. to companies other than Wang Investment.

3. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition merely on the basis that the lender's name was not appearing on the document, when the document clearly show that three groups were acting as a consortium and the assessee was paying interest to the companies of these groups.

4. The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal."

ITA No. 3600/Del/2017 (A.Y. 2010-11):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 5,04,13,822/- w.r.t. to companies other than Wang Investment.

3. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition merely on the basis that the lender's name was not appearing on the document, when the document clearly show that three groups were acting as a consortium and the assessee was paying interest to the companies of these groups.

4. The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal."

2. At the outset learned counsel for the assessee submitted before us that for the assessment years in question, in assessee's own case, against the impugned orders of learned CIT(Appeals), the assessee had also filed appeals before the ITAT being ITA Nos. 3005 and 3006 /Del/2017 (A.Y. 2009-10 & 2010-11), wherein the ITAT

Delhi Bench 'G' vide consolidated order dated 20.02.2018 has quashed the assessments made u/s 153A of the Act and therefore the present appeals preferred by the Revenue do not survive and have been rendered infructuous. He prayed that the Revenue's appeals may be dismissed accordingly.

3. The learned DR was fair enough to admit the aforesaid factual position. He, however, submitted that the Revenue has not given up its stand.

4. We have heard learned representatives of the parties and perused the material available on record. We find that in assessee's appeals for the assessment years in question the ITAT Delhi Bench 'G' in ITA Nos. 3005 and 3006 /Del/2017 (A.Y. 2009-10 & 2010-11), vide consolidated order dated 20.02.2018 has quashed the assessments made u/s 153A of the Act, inter alia, by observing as under:

> *"5. From the material available on record which is fairly conceded by the learned Departmental Representative during the course of hearing that no material was gathered from the premises of the assessee, the basis of making assessment under section 153A are 2 e-mails, which were found to be in the computer hard disk recovered from the possession of the CFO of U.K. Paints. On this undisputed factual matrix, we are required to examine whether the Assessing Officer was justified in making assessment under section 153A of the Act. Dehore I.T.A. Nos. 3005, 3006 & 3007(Del) of 2017 22 the fact that no incriminating material was recovered from the possession of the assessee. So far as the judgement of the Hon'ble Delhi High Court relied upon by the learned counsel for the assessee in the case of Pr. CIT Vs. Mera Baba Reality Associates Pvt. Ltd. (supra) is concerned, the issue before the Hon'ble High Court was with regard to legality of the proceedings made by invoking the provisions of section 263 of the Act.*

Therefore, in our considered view, this judgement is not applicable on the facts of the present case. Another judgement relied upon by the learned counsel for the assessee in the case of Pr. CIT Vs. Subhash Khattar (supra) the facts in that case were that a search took place on 17th August, 2011 in the corporate office of AEZ Group at 301– 303, Bakshi House, Nehru Place, New Delhi, during which a hard disk was found and seized and a print out of a file named "D.P. Correction Sheet.xls." were taken. This sheet contained details of sales status of Indirapuram Habitant Centre and at serial No. 32 of the said sheet the name of the assessee appeared. According to the Revenue the assessee had invested a sum of Rs.20 crores. Therefore, on 10th February, 2012 a search operation was undertaken under section 132 of the Act in the case of the assessee. This search did not result in the discover of any discriminating material on the assessee. Subsequently, the Assessing Officer issued a notice under section 153A of the Act and the assessment was framed under section 153A of the Act. This action was challenged before the appellate authorities. The Hon'ble court after considering the facts and the laws held that the entire case was against the assessee on what was found during the search of the premises of the AEZ Group. It is thus apparent on the facts of the case that the notice to the assessee under section 153A of the Act was misconceived since the so-called I.T.A. Nos. 3005, 3006 & 3007(Del) of 2017 23 incriminating material was not found during the search of the assessee premises. The Revenue should have proceeded against the assessee on the basis of the documents discovered under any other provision of law, but certainly not under section 153A of the Act. This goes to the root of the matter. The facts in the present case are identical. Further, we do not find any merit into the contention of the learned Departmental Representative that the search was conducted simultaneously on the assessee and M/s. U.K. Paints, it should be presumed that the material was recovered from the possession of the assessee since the assessee belonged to same group. No such presumption is available under the provisions of the Act. Moreover, the Revenue has not placed any material suggesting that the assessee is a subsidiary or closely held sister concern of M/s. U.K. Paints. A separate and distinct transaction would not ipso facto make the assessee an entity which is not separate from M/s. U.K. Paints. We, therefore, respectfully following the ratio laid down by the Hon'ble High Court in the case of Pr. CIT Vs. Subhash Khattar (supra) hold that the assessment made under section 153A of the Act is bad in law. The same, therefore, is quashed on this ground. We are not expressing our view on the merits of the case. The other grounds have become infructuous."

5. In that view of the matter, since the impugned assessments framed u/s 153A of the Act have been quashed by the Tribunal, the present appeals preferred by the Revenue have been rendered infructuous and stand dismissed accordingly.

6. Revenue's appeals being ITA Nos. 3599/Del/2017 and ITA Nos. 3600/Del/2017 stand dismissed.

Order pronounced in open court on 19th July, 2023.

Sd/-	**Sd/-**
(PRADIP KUMR KEDIA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI