

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.1105/Del/2023  
Assessment Year: 2007-08

M/s Shivalik Educational and Placement Services (P) Ltd., Block No. 2, Sanghi House, Pritam Road, Dalanwala, Dehradun, Uttarakhand 248001 <b>PAN AAJCS 1825 Q</b>	vs.	The DCIT, Central Circle-1, Faridabad
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Adv Shri Deepesh Garg, Adv.
For Revenue:	Shri H.K Choudhary, CIT(DR)

Date of Hearing :	06.09.2023
Date of Pronouncement :	06.09.2023

**ORDER**

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

This appeal has been filed against the order of CIT(A)-3, Gurgaon order dated 23.02.2023 for AY 2007-08.

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

*1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 153C/143(3) and that too without assuming jurisdiction as per law and without complying with the other mandatory conditions as laid down u/s 153C in accordance with law.*

*2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned assessment order, is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

*3. That in any case and in any view of the matter, satisfaction recorded w/s 153C is not in accordance with law and hence jurisdiction assumed is bad in law.*

*4. That in any case and in any view of the matter, disallowances made in the impugned order are beyond jurisdiction and illegal, also for the reason that such order could not have been made since no incriminating material has been found as a result of search.*

*5. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned assessment order passed by Ld. AO without there being requisite approval in terms of section 153D and in any case approval, if any, is mechanical without application of mind and is no approval in the eyes of law.*

*6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.7,00,000/- on account of bad debts claimed by the assessee company by holding it as non-genuine and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

*7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance a sum of Rs.2,43,276/- being brought forward depreciation and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

*8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A and 234B of the Income Tax Act, 1961.*

3. We have arguments of both the sides on the grounds no. 4, 6 & 7 on merits. The Id. counsel of assessee submitted that the search & seizure operation was conducted on the Piyush Group of Companies on 16.01.2008. The Assessing Officer of such person recorded reasons on 09.11.2009 and the Assessing Officer of assessee issued notice u/s. 153C of the Act on the same date i.e. 09.11.2009 for AY 2007-08. The Id. counsel further submitted that for AY 2007-08 the assessee submitted return of income on 14.11.2007 which was processed u/s. 143(1) of the Act, and the prescribe time period for issuing notice u/s. 143(2) of the Act was expired on 30.09.2008 therefore the assessment for AY 2007-08 attained finality on 30.09.2008 before the date of recording of satisfaction and issuance of notice u/s. 153C of the Act on 09.11.2009.

4. The Id. counsel drawing our attention towards assessment order dated 29.02.2009 passed u/s. 153C r.w.s. 143(3) of the Act for AY 2007-08 submitted that the Assessing Officer has made two additions viz. addition of Rs. 7 lakhs by disallowing bad debts and second addition of Rs. 2,43,276/- on account of claim of brought forward

loses on the basis of books of accounts and audited financial statements of assessee without any incriminating material found and seized during the course of search and seizure operation. The Id. counsel, therefore, submitted that in view of various judgments including judgment of Hon'ble Supreme Court in the case of DCIT vs. M/s. U K Paints (overseas) Ltd. in Civil Appeal no. 6634 of 2021 dated 25.04.2023 and in the case of PCIT vs Abhisar Buildwell P Ltd. (2023) 454 ITR 0212 (SC) the addition in the cases of completed or unabated assessments cannot be made in absence of any incriminating material therefore additions may kindly be deleted.

5. The Id. CIT(DR) supported the orders of the authorities below.

6. In view of above noted findings the assessment for AY 2007-08 was deemed to be completed on 30.09.2008 i.e. on the date when the time limit for issuing notice u/s. 143(2) of the Act was expired thus the said assessment year was the year of completed or unabated assessment. Thereafter on 09.11.2009 the Assessing Officer of searched person recorded reason and Assessing Officer of assessee issued notice u/s. 153C of the Act. The Assessing Officer framed assessment order u/s. 153C/143(3) of the Act on 29.12.2009 by making two additions as noted above only on the basis of audited books of accounts and financial statement of assessee without referring to any incriminating material found and seized during the course of search and seizure operation on Piyush Group of Companies. Therefore in absence of any incriminating material found and seized during the course of search no addition could have been made in the cases where assessment has been completed or remained unabated on the date of recorded of satisfaction and issuance of notice u/s. 153C of the Act. Thus we are inclined to hold that in view of judgements of Hon'ble Supreme Court in the cases of M/s. U.K Paints (supra) and Abhisar Buildwell (supra) the additions made by the Assessing Officer are not sustainable and thus we direct the Assessing Officer to delete the same. Accordingly,

7. Since no arguments have been made by the learned Representatives of both the sides on the other grounds of assessee therefore in absence of any submissions or arguments we do not deem it proper to adjudicate the same.

8. In the result, the appeals of the assessee is allowed in the manner as indicate above.

Order pronounced in the open court on 06.09.2023.

Sd/-  
(M.BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 06<sup>th</sup> September, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi