

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA JUDICIAL MEMBER**

ITA No.3431/Del/2018
Assessment Year: 2009-10

Amrit Banaspati Company Ltd. A-95, Sector-65, Noida PAN No.AABCA6485H (APPELLANT)	Vs	DCIT Central Circle, Ghaziabad (RESPONDENT)
--	-----------	--

ITA No.4922/Del/2018
Assessment Year: 2009-10

DCIT Central Circle, Ghaziabad (APPELLANT)	Vs	Amrit Banaspati Company Ltd. A-95, Sector-65, Noida PAN No.AABCA6485H (RESPONDENT)
---	-----------	---

Appellant by	Sh. Rohit Jain, Advocate Ms. Soumya Jain, CA
Respondent by	Ms. Sugam Thomas Josh, CIT DR

Date of hearing:	05/09/2023
Date of Pronouncement:	11/09/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.3431/Del/2018 and 4922/Del/2018 are appeals by the assessee and the revenue preferred against the order of the CIT(A), Meerut dated 06.04.2018 pertaining to A.Y.2009-10.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The first ground of the assessee challenges the validity of the assessment order framed u/s. 143(3) r.w.s. 153A of the Act. Since this challenge goes to the root of the matter we decided to adjudicate it first.

4. A search and seizure operation u/s. 132 of the Act was conducted on 04.05.2011 on the premises of the assessee comprising Amrit Group of cases.

5. The assessee filed its original return of income u/s. 139 (1) of the Act on 26.09.2009 which means that the notice u/s. 143 (2) of the Act should have been served on or before 30.09.2010. Since no notice was issued / served u/s. 143 (2) of the Act it can be safely concluded that the return was accepted as such making thereby the assessment as unabated assessment.

6. A perusal of the assessment order shows that additions/ disallowances have been made on account of :-

- A. Depreciation on edible oil brands
- B. Royalty paid on brand "Gagan"
- C. Addition on account under valuation of closing stock
- D. Addition on account of low gross profit
- E. Addition on account of capital subsidy

7. All the aforementioned disallowances/ additions are devoid of any reference to any incriminating material found at the time of search. It is a settled proposition of law that in case of unabated assessment u/s.153A it can be framed only in respect of items found from the incriminating material found and seized at the time of search. This proposition is well settled by the decision of Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344, Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573, Hon'ble Supreme Court in the case of Abhisar Buildwell 454 ITR 212.

8. In the light of above judicial decisions mentioned here in above the assessment order dated 30.03.2014 framed u/s. 153A r.w.s. 143 (3) of the Act is bad in law and deserve to be quashed.

9. Since we have quashed the assessment order we do not it necessary to dwell into the merits of the case.

10. In the result, the appeal of the assessee is allowed and that of the revenue is dismissed.

Order pronounced in the open court on 11.09.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated:11.09.2023

Neha

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi