

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

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2892/Del/2015
(ASSESSMENT YEAR 2010-11)**

Asst.CIT Central Circle-07 New Delhi	Vs.	M/s Satya Realtors Pvt. Ltd. R/o A-1, CC Colony Opp. Rana Pratap Bagh New Delhi PAN-AAJCS 1332F
(Appellant)		(Respondent)

**C.O. No.106/Del/2016
Arising out of ITA No.2892/Del/2015**

(ASSESSMENT YEAR 2010-11)

M/s Satya Realtors Pvt. Ltd. R/o A-1, CC Colony Opp. Rana Pratap Bagh New Delhi PAN-AAJCS 1332F	Vs.	Asst.CIT Central Circle-07 New Delhi
(Appellant)		(Respondent)

Assessee by	Mr. S.B. Gupta, CA & Sh. Mormukut, Adv.
Department by	Sh. P. N. Barnwal, CIT-DR

Date of Hearing	05/10/2023
Date of Pronouncement	10/10/2023

ORDER**PER YOGESH KUMAR U.S., JM**

The instant appeal filed by the Revenue and the Cross Objection filed by the Assessee are against the order of Learned Commissioner of Income Tax (Appeals)-24, New Delhi [“Ld. CIT(A”, for short], dated 27/02/2015 for the Assessment Year 2010-11.

2. The grounds of Appeal of the Revenue are as under:-

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

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s PepsiCo India Holdings Pvt. Ltd. (Supra).

3. On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case.”

Grounds of Cross Objection of the Assessee are as under:-

1. That in the absence of challenge by the revenue in its appeal before the hon'ble Appellate Tribunal to the finding of the Id. Commissioner (Appeal), on the basis of remand report furnished by the Assessing Officer during the course of appeal proceedings, that the Assessing Officer of the searched person had not recorded satisfaction note to the effect that the seized documents did not belong to his assessee, i.e., the person searched upon, but belonged to another person, i.e., the instant assessee, and, therefore, the appeal filed by the revenue is liable to be dismissed.

2. That the disallowance of business loss of Rs. 28,762/- claimed by the assessee in its Return of Income is illegal unjustified and ought to be deleted.

3. That, on the facts and circumstances of the case, the addition of Rs. 20,59,10,700/- u/s 69 in respect of unexplained investment on account of difference between alleged fair market value of the property situate at 8287 (25/56), Ward No. XVI, Plot No. 25, Block-56, Karol Bagh, Delhi and the purchase consideration declared by the assessee is illegal and unjustified and therefore, ought to be deleted.

4. That, the addition u/s 69 of Rs. 20,59,10,700/- in respect of the property duly recorded by the assessee in its books of accounts is illegal because the mischief created by section 69 is attracted only if an asset is not recorded in the books of accounts.

5. That the addition of Rs. 20,59,10,700/- u/s 69 is illegal because the Assessing Officer made the addition without having any incriminating document in his possession pointing out to the payment by the assessee of any consideration over and above the consideration recorded in books of accounts though the revenue had even searched all the premises of the assessee and in the absence of any direct incriminating material, any addition merely on the basis of fair market value hypothetically calculated by the assessing officer is illegal, unjustified and therefore, ought to be deleted.

6. That, on the facts and circumstances of the case, the addition of Rs. 1,10,00,000/- u/s 68 in respect of unexplained cash credits being alleged accommodation entries is illegal and unjustified and, therefore, ought to be deleted.

7. *That the addition of Rs. 1,10,00,000/- on account of alleged accommodation entries is illegal because the addition was made without making any inquiry from the provider of amounts to the assessee. The addition is based merely upon the whims, fancies and caprices of the Assessing Officer.*

8. *That the report of the inspector if any as mentioned in the assessment order with respect to addition of Rs. 1,10,00,000/- on account of alleged accommodation entries was neither furnished nor confronted to the assessee and, therefore, any evidence collected at the back of the assessee is void in the eyes of law.*

9. *That no show cause notice or any other notice with respect to any adverse inference drawn by the Assessing Officer for making any addition of any nature whatsoever for the year under consideration was ever served upon the assessee and, therefore, the consequential assessment order is illegal and void.*

10. *That the charging of interest u/s 234A and 234B is illegal, unjustified and ought to be deleted.*

3. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out on M/s Satya Prakash & Brothers groups of cases on 28/10/2010, during the search on the group, certain documents relating to Assessee's were claim to have been found and seized. Notices u/s 153C of the Act was issued in the case of the assessee on 08/05/2012. Assessment order came to be passed u/s 153C read with Section 143(3) of the Act by making addition of Rs. 20,59,10,700/- on account of unexplained cash investment in the property, Rs. 28, 762/- on account of business or profession and Rs. 1,10,00,000/- on account of unexplained

credits. Aggrieved by the assessment order, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide common order dated 27/02/2015 quash the assessment order for Assessment Year 2010-11 by treating the assumption u/s 153C of the Act as bad in law. Aggrieved by the order of the CIT(A), dated 27/02/2015, the Revenue preferred the Appeal in ITA No. 2892/Del/2015 and the Assessee also filed Cross Objection No. 106/Del/2016 by supporting the order of the CIT(A) and also raised grounds on the merits of the case.

4. The Ld. Departmental Representative submitted that the order of the CIT(A) is erroneous and liable to be set aside. By relying on the assessment order, sought for reversal of the finding and conclusion of the CIT(A).

5. The Assessee's Representative on the other hand, submitted that the addition made by the A.O. are devoid of any incriminating material, therefore, relying on the ratio laid down by the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax, Central 3 Vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580/2021, submitted that the Appeal of the Revenue requires to be dismissed is devoid on merit.

6. We have heard both the parties and perused the material available on record. On perusal of the impugned assessment order shows that the addition made by the A.O. are devoid of any incriminating materials. The Ld. Departmental Representative has not contradicted the said facts. Thus, the ratio laid down by the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central 3 Vs. Abhisar Buildwell Pvt. Ltd. (supra)

454 IT 22 is squarely applicable to the case. Since, the CIT(A) has quashed the assessment order treating the assumption of jurisdiction u/s 153C bad in law, we find no error or infirmity in the order of the CIT(A), by applying the ratio laid down by the Supreme Court in the case of Abhisar Build well (supra), we find no merit in the Grounds of Appeal of the Revenue, accordingly the Appeal of the Revenue in ITA No. 2892/Del/2015 is dismissed.

7. In view of the dismissal of the ITA No. 2892/Del/2015 filed by the Revenue, the C.O No. 106/Del/2016 filed by the assessee becomes infructuous, accordingly C.O No. 106/Del/2016 is dismissed.

Order pronounced in open Court on 10th October, 2023

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 10/10/2023

Pk/R.N, Sr. ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR

ITAT, NEW DELHI

