

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3164/Del/2014
(ASSESSMENT YEAR 2007-08)**

M/s Saga Developers Pvt. Ltd. B-67, Sarita Vihar New Delhi-110 076 PAN-AAJCS 4932K	Vs.	ACIT Central Circle-10 New Delhi
(Appellant)		(Respondent)

Assessee by	Sh. M.P.Rastogi, Adv.
Department by	Sh. Binod Kumar, CIT-DR
Date of Hearing	10/10/2023
Date of Pronouncement	13/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-XXXII, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.40/2011-12 dated 28/02/2014 against the order passed by Assistant Commissioner of Income Tax, Central Circle-10, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 153A/143(3) of the

Income Tax Act (hereinafter referred to as 'the Act') on 03/08/2011 for the Assessment Year 2006-07.

2. The assessee has raised the following grounds of appeal:-

"1) The order passed u/s 153A of the Act is without jurisdiction.

2) The CIT(A) has erred in holding that "there is no requirement for an assessment u/s 153A of the Act to be based only on any material seized in the course of search. Such findings are opposed to presently prevailing settled legal positions.

3) The addition of Rs. 4,75,075/- on account of negative cash in hand, not being based on seized material, being based on regularly maintained books of accounts, the assessment being completed before the date of search, cannot be sustained u/s 153A of the Act. The CIT(A) has erred in confirming the disallowance of Rs. 4,75,075/-.

4. The CIT(A) has erred in enhancing the income of the appellant by treating a sum of Rs. 29,06,914/- by invoking the provisions of sec. 2(2)(e) of the Act.

5. It is contended that the provisions of sec. 2(22)(e) of the Act are not applicable to advances made in the course of conduct of business and for the purposes of business.

6. Without prejudice to the ground of appeal nos. 4 & 5, the addition of Rs.29,06,914/- not being based on seized materials, the assessments having been completed prior to date of search, is not sustainable u/s 153A of the Act.

The appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing."

3. At the outset, we find that this is a reconstructed appeal filed pursuant to the permission granted by Hon'ble President. On 28/07/2023, the assessee was directed by the Bench to furnish an affidavit confirming that the appeal has not been disposed of by this

Tribunal on the basis of original memorandum of appeal. This affidavit has been placed on record by the assessee wherein they have duly confirmed that the appeal is still pending before this Tribunal. Accordingly, we proceed to take up this appeal for hearing based on the reconstructed file placed before us.

4. The only effective issue to be decided in this appeal is as to whether the additions/disallowances could be made in the search assessment completed u/s 153A of the Act for the unabated assessment year in the absence of any incriminating material found during the course of search.

5. We have heard the rival submissions and perused the materials available on record. The assessee for the assessment year 2007-08 had originally filed its return of income on 30.03.2008. The time limit for issuance of notice u/s 143(2) of the Act expired on 30.09.2008. A search and seizure operation u/s 132 of the IT act was conducted in the case of M/s Saamag group of cases. The assessee company's business premises at B-67, Sarita Vihar, New Delhi-110044 was also covered u/s 132 (1) of the Act. Accordingly, notice u/s 153A of the Act was issued to the assessee on 10/07/2009. A search assessment was completed u/s 153A r.w.s

143(3) of the Act on 03/08/2011 making certain additions / disallowances. The additions/disallowances that are contested before us are as under:

(a) addition on account of negative balance –Rs.4,75,075/-

(b) Enhancement made by the Ld. CIT(A) by making addition towards deemed dividend u/s 2(22)(e) of the Act – Rs.29,06,914/-.

6. We have gone through the assessment order and the order of the Ld. CIT(A) wherein an enhancement to the total income was made. It is pertinent to note that for none of the aforesaid two additions, there is any reference to any seized documents or incriminating material found during the course of search. Admittedly, as on the date of search on 29/01/2009, the assessment for the AY 2007-08 had already been concluded/unabated in view of the fact that time limit for issuance of notice u/s 143(2) of the Act had expired on 30/09/2008. Hence, if the Ld. AO chooses to disturb the concluded assessment while framing search assessment, then he should have recourse to any seized document or incriminating material found during the course of search qua the additions made thereon. As stated earlier, there is absolutely no reference to any incriminating document qua these

additions found during the course of search. This issue has been recently addressed by the Hon'ble Supreme Court in the case of *PCIT vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)* dated 24/04/2023. Respectfully following the same, we hold that the addition made by the ld. AO and enhancement made by the Ld. CIT(A), which are in dispute before us, are not supported with any incriminating documents found in the course of search and accordingly, those additions are hereby directed to be deleted. Accordingly, grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13th October, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/10/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

