

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.3083/Del/2012  
(Assessment Year : 2009-10)

Shri Rumneek Bawa House No.6161, Pocket – B Sector – 8, Vasant Kunj New Delhi – 110070 <b>PAN No. AAJPB 2393 Q</b> <b>(APPELLANT)</b>	Vs.	ACIT Circle – 10(1) New Delhi <b>(RESPONDENT)</b>
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Assessee by	Shri R. S. Singhavi, C.A. & Shri Rajat Garg, C.A.
Revenue by	Shri P. N. Barnwal, CIT-D.R.

Date of hearing:	12.10.2023
Date of Pronouncement:	23.10.2023

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee directed against the order of Learned Commissioner of Income Tax (Appeals)-XIII, New Delhi dated 06.03.2012 pertaining to Assessment Year 2009-10.

2. The grounds of appeal raised by the assessee, which read as under :-
1. *BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs.24,25,000/- on erroneous assumption of facts and law.*
  2. *BECAUSE the addition sustained by the learned CIT(A) is wholly erroneous as no matching assets or cash was found from the possession of the appellant.*
  3. *BECAUSE the income shown in the return filed fully matches with the appointment letter found and seized during the course of search*

*under section 132(1) from the office of employer of the appellant namely M/s Zoom Developers (P) Ltd.*

4. *The appellant craves leave to amend, modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”*

3. The assessee has also filed additional grounds, which reads as under:

*“1(i) That on facts and circumstances of the case, the assessing officer was not justified in assuming jurisdiction u/s 153A and framing assessment u/s 153A/143(3) in absence of any incriminating material; found during the course of search qua year under consideration.*

*(ii) That the notice w/s 153A and consequential addition of Rs.24,25,000/- being based on material found during search on third party, the assessing officer grossly erred in relying upon the same while framing assessment u/s 153A in total disregard to specific provisions of section 153C of the Income tax Act, 1961.*

*(iii) That in absence of recording of satisfaction in terms of section 153C or issuance of valid notice u/s 153C, the impugned proceedings u/s 153A and addition is illegal and bad in law.*

*2(i) That on the facts and circumstances of the case, the Assessing Officer was not justified in passing the Assessment Order without issuing mandatory notice u/s 143(2) of the Income Tax Act, 1961.*

*(ii) That the notice u/s 143(2) issued prior to filling of income tax return is illegal and without jurisdiction.”*

4. This is the second round of appeal before the ITAT. Earlier this appeal was disposed off by the order dated 21.02.2019. Subsequently, the order was recalled by Misc. Application (MA) No.622/Del/2019 order dated 22.10.2019.

In the MA, while recalling the order, ITAT has observed as under:

*“3. We have heard both the parties and perused the records especially the orders passed by the Revenue authorities as well as the Tribunal's*

*order along with the all relevant evidences/documents. We find considerable cogency in the arguments advanced by the Ld. Counsel for the assessee that the Tribunal has overlooked a crucial fact that the alleged incriminating documents during the search were recovered from the business premises of M/s Zoom Developers Ltd., hence, it belongs to M/s Zoom Developers Ltd. and not the assessee as per section 132(4A) & section 292C of the Income Tax Act and also that section 153A of the Act cannot be invoked in this case since the search has been conducted in the business premises of the company and not on the assessee and this legal ground was raised by the assessee before the Tribunal during the course of arguments, however, the Bench rejected the same on the premise that the assessee had not raised this legal ground in the grounds of appeal and not admitted the same by not following the Hon'ble Supreme Court decision in the case of NTPC vs. CIT (1999) 157 CTR (SC) 249Ed. In view of above, we are of the considered view that the Tribunal committed an error apparent from the face of the record by not considering the fact that entries of cash payments made in the loose sheets were not in the name of the assessee but in the name of Mr. R. Bawa, Mr. Vikash Aggarwal and IRCTC and further noted that the amount of Rs. 10,00,000/- which was added to the Income of the assessee was infact a cash entry in the name of IRCTC and the assessee had not nexus with the same. Therefore, in our view there is a mistake apparent from record in Tribunal's order dated 21.02.2019 passed in ITA No. 3083/Del/2012 (AY 2009-10), hence, we recall the Tribunal's order dated 21.02.2019 and accordingly, the Registry is directed to fix the main appeal for hearing afresh and issue notice of hearing to both the parties.”*

5. Pursuant to the above recall, we have heard the appeal. In this case, there was a search and seizure operation under section 132A of the Income Tax Act, 1961 conducted on 04.02.2009 in the case of M/s. Zoom Developers Pvt. Ltd and the residential as well as Office premises of Shri Ramneek Bawa, CEO of M/s. Zoom Developers Pvt. Ltd. In the assessment order, Assessing Officer further noted that on going through the seized material, it was noticed that in the Office of M/s. Zoom Developers Pvt. Ltd. some incriminating documents were found which disclosed that Mr. Ramneek Bawa, the assessee was handed over the cash amounts on various dates

amounting to Rs.24,65,000/- by the company which was not recorded in the Return of Income filed by the assessee. Regarding the amount, the assessee submitted that this amount must have been transferred from Head Office to the Branch Office for various time to time expenses. This amount did not pertain to any personal income received by the assessee from the company that the same must have been received and accounted by the Branch Office. However, the Assessing Officer was not satisfied. He observed that assessee himself accepted that his annual salary income was Rs.1.31 crores instead of Rs.80.59 lacs as declared by the assessee. Entire amount of Rs. 24,65,000/- was treated as undisclosed income of the assessee. Upon assessee's appeal part relief given by the CIT(A) of Rs.40,000/- and he confirmed Rs.24,25,000/-.

6. Against this order, assessee has filed appeal before ITAT. We have heard both the parties and perused the records. The Learned Counsel of the assessee submitted that in this case, the addition is based upon one sheet of paper found on the premises of M/s. Zoom Developers Pvt. Ltd., that these were with reference to various expenses of Rs.24,65,000/- pertaining to M/s. Zoom Developers Pvt. Ltd. incurred through the assessee. That based on 3<sup>rd</sup> party document, Assessing Officer considered addition vide order under section 153A even though the same is 3<sup>rd</sup> party document and even without considering that the action is already been taken in the case of M/s. Zoom Developers Pvt. Ltd. It is further submitted that with reference to the said document, Assessing Officer neither initiated proceedings under section 153C nor recorded requisite satisfaction as provided as per statutory

requirement of Section 153C of the Act. He further submitted that in absence of initiation of proceedings under section 153C of the Act, there was no legal basis in the said case of the assessee with reference to assessment order passed under section 153A of the Act. For this, assessee's Counsel submitted following Delhi High Court decisions:

- (i) PCIT vs. Anand Kumar HUF (ITA No.23/2021 dated 12.02.2021)
- (ii) PCIT vs. Subhash Khattar (ITA No.60/2017 dated 25.07.2017)

6.1 It is further submitted that hence there is no valid basis for assuming jurisdiction and consequential addition in the case of the assessee. It is further submitted that even on merits, the said document is relevant in the case of M/s. Zoom Developers Pvt. Ltd. and the company has fairly admitted the same and addition to the extent of Rs.24,65,000/- was made in the case of M/s. Zoom Developers Pvt. Ltd. as per assessment order placed in the paper book. It is further submitted that the said income has already been subjected to tax in the case of the company, hence there was no valid basis for taxing the same again in the case of the assessee. In this regard, following case laws has been submitted:

- (i) Ashish Plastic Industries vs. ACIT 373 ITR 45 (SC)
- (ii) PCIT vs. Surya Agrotech Infrastructure Ltd. [2023] 154 taxmann.com 156. (Delhi HC)

7. Per contra, Learned DR relied upon the order of the authorities below.

8. Upon careful consideration, we find that first challenge of the assessee is to the assessment framed under section 153A of the Act. Undisputedly,

the document on the basis of which addition has been made was not recovered from the search upon assessee but from the premises of M/s. Zoom Developers Pvt. Ltd. In such circumstances, assessment should have been framed under section 153C of the Act following the proper procedure as per section 153C of the Act. Having not followed the mandate of section 153C of the Act, Revenue has committed fatal error and on this account assessment is liable to be quashed. For this proposition, we placed reliance on following case laws:

- **Hon'ble Delhi High Court** in the case of **PCIT v. Anand Kumar HUF (ITA 23/2021 dated 12/02/2021)** wherein it was held as under.

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.

- **Hon'ble Delhi High Court** in the case of **Pr. CIT v. Subhash Khattar (ITA 60/2017 dated 25/07/2017)** wherein it was held as under :

7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter.

8. Consequently, the impugned order of the ITAT calls for no interference of this Court. The question framed by this Court on 7th February, 2017 is answered in negative, that is, in favour of the Assessee and against the Revenue.”

9. Furthermore, it is also the plea of the assessee that the amount has been already added in the assessment of M/s. Zoom Developers Pvt. Ltd. In such circumstances, the same amount cannot be again added in hands of the assessee. For this proposition, we refer to the decision of Hon'ble Delhi High Court in the case of PCIT vs. Surya Agrotech Infrastructure Ltd. order dated September 6, 2023, where it was held that when undisclosed income already having been taxed in hands of Flagship Company the same could not be again subjected to tax in the hands of assessee company. This case law is applicable in this case and the sum which has been taxed in the hands of Zoom Developers Pvt. Ltd. cannot again be taxed in the hands of assessee. Thus, the addition needs to be deleted on this count also. Since the addition has been deleted as above, adjudication on other aspects, in this case is of academic interest. Hence, we are not engaging into the same.

10. In the result, this appeal filed by assessee is allowed.

**Order pronounced in the open court on 23.10.2023**

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Date:- 23.10.2023

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI