

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 256/Asr/2023
Assessment Year: 2017-18

Sh. Lalit Aggarwal,
1, C/o Satyam Cement
Hatli Road, Rakh Jalphar,
Kathua-184102 J & K
[PAN: AABPA 7622H]

Vs. DCIT, Central Circle
Jammu

(Appellant)

(Respondent)

Appellant by	:	Sh. Rohit Kapoor, CA & V.S. Aggarwal, ITP
Respondent by	:	Smt. Baljeet Kaur, CIT DR & Sh. Ravinder Mittal, Sr. DR
Date of Hearing	:	01.11.2023
Date of Pronouncement	:	07.11.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 26.07.2023 in respect of Assessment Year: 2017-18 challenging therein the

validity of the assessment made u/s 153A of the Act by way of additional ground raised dated 01.11.2023 which reads as under:

“1. That the additions made on account of rent paid by M/s AIMPL vide order passed u/s 153A is bad in law since the same has been made on the basis of material found during search conducted on a person other than the appellant. That the addition on account of material found from the premises of person other than the appellant can only be made u/s 153C instead of section 153A.”

2. At the outset, the Id. counsel for the assessee submitted that there was a search and seizure operation carried out on M/s AIMPL at its registered office located at 16-A, Gali No. 3, Railway Line, Anand Parvat, Industrial Estate, New Rohtak Road, New Delhi and simultaneously a search and seizure operation u/s 132 was carried out at the residential premises at Jammu of the appellant on 06.01.2021 being associated to the Beigh Group of cases. The Id. AR argued that during the course of search certain incriminating documents in the form of rent agreement/ledger document related to House No. 1304 B, Beverly Park-2, M. G. Road, Gurugram was found from the residential premises of the assessee. Since, the addition was made on account of material found from the premises of the person other than the appellant and therefore, the addition can only be made u/s 153C instead of section 153A. He, thus, contended that the

assessment had been completed for the year under consideration without reference to any incriminating document found during the course of search. As such, the assessment order passed by the AO dated 31.03.2022 u/s 153A is bad in law since the AO does not have any jurisdiction to make addition in respect of which no incriminating material was found during the course of search from the premises of the assessee. He, further contended that the Id. CIT(A) failed to appreciate the said fact, and confirmed the addition to the tune of Rs.4,00,646/- as against of Rs. 8,40,000/- made by the AO on the notion that the ledger account was found during the course of search from the registered office of M/s AIMPL, the other person, ignoring the fact that it was a separate independent person. The counsel further argued that it is a settled law that books of account cannot be said to be incriminating material, relying on the decision of various Hon'ble High Courts and the Tribunals.

3. He pleaded that the assessment order passed by the AO confirmed by the Id. CIT(A) is void ab-initio in the light of judgment of the Hon'ble Apex Court in the case of Pr. CIT, Central-3 v. Abhisar Buildwell Pvt. Ltd. [2023] 149 taxman.com 399/293 taxman 141, 459 ITR 212.

4. Per contra, the Id. DR relied on the impugned order.

5. We have heard the rival contention, perused the material on record the impugned order, and the case laws cited. Admittedly, no incriminating material was found from the premises of the appellant assessee during the course of search. In our view, it is only in a case the AO would assume jurisdiction u/s 153A of the Act where incriminating document or material is seized from its premises during the course of search u/s 132 or requisition u/s 132A of the Act to assess or reassess total income of the appellant assessee. In our view, no addition can be made by the Assessing Officer in absence of any incriminating material found during the course of search u/s 132 of the Act in the present case of the assessee. Accordingly, we hold that the addition made by the AO and confirmed by the Id. CIT(A) on account of rent paid by the M/s AIMPL u/s 153A of the Act is bad in law.

6. In the above view, following Apex Court in *Abhisar Buildwell Pvt. Ltd.* (supra), we hold that the addition made on wrong premises based on the material found from the person other than the appellant assessee u/s 153A of the Act is illegal. Thus, the assessment order is held to be void ab-initio and as such same is quashed.

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

Order pronounced in the open court on 07.11.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

GP/Sr.PS

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy

By Order