

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 285/DEL/2022 [A.Y. 2012-13]

ITA No. 286/DEL/2022 [A.Y. 2013-14]

RNB Overseas Pvt Ltd
RNB House, 1, Shivaji Enclave
Main Road, Near Raja Garden
Opp Mother Dairy, Delhi

Vs.

The Dy. C.I.T
Central Circle - 32
Delhi

PAN: AAACR 5753 Q

ITA No. 420/DEL/2022 [A.Y. 2012-13]

ITA No. 421/DEL/2022 [A.Y. 2013-14]

The Dy. C.I.T
Central Circle - 32
Delhi

Vs.

RNB Overseas Pvt Ltd
RNB House, 1, Shivaji Enclave
Main Road, Near Raja Garden
Opp Mother Dairy, Delhi

PAN: AAACR 5753 Q

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv
Shri Aman Garg, CA
Department By : Shri P.N. Barnwal, CIT-DR

Date of Hearing : 02.11.2023

Date of Pronouncement : 06.11.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the assessee and two separate cross appeals by the Revenue are preferred against the order of the ld. CIT(A) - 30, New Delhi dated 29.12.2021 & 30.12.2021 pertaining to Assessment Years 2012-13 & 2013-14 respectively.

2. Since underlying facts are common in the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Briefly stated, the facts of the case are that search and seizure operation was carried out at various premises of Bajaj Group and its associates including the assessee and directors and others on 20.04.2017. Consequent to the search action, notice u/s 153A of the Income-tax Act, 1961 [the Act, for short] was issued and served upon the assessee, in response to which, the assessee filed its return of income.

4. During the course of scrutiny assessment proceedings, the assessee furnished complete details of opening and closing stock, month-wise details of sales and purchases, alongwith names and addresses of the sellers and the buyers.

5. While scrutinizing the details of sales and drawing support from the statement of the CA, Shri Nirmal Sarda and his brother Shri Anil Sarda, the Assessing Officer formed a belief that the sales made to (1) Shree Chamunda Enterprises (2) Innovative Tradevision Ltd and (3) K.G. Enterprises are bogus and treated the entire sales as unexplained cash credit u/s 68 of the Act and made addition of Rs. 12,18,19,644/- in A.Y 2012-13 and Rs. 6,61,83,639/- in A.Y 2013-14.

6. Assessment was challenged before the Id. CIT(A) wherein it was vehemently argued that the impugned additions in respect of sales made to three parties have already been considered as sales in the turnover of the assessee. Therefore, once again making addition amounts to double addition. It was strongly contended that though the Assessing Officer has treated the sales as bogus, but the corresponding purchases have been accepted by him. Therefore, where availability of goods for sale in the hands of the assessee and movement thereon

has not been doubted by the Assessing Officer, corresponding sales of the same cannot be denied.

7. After considering the facts and submissions, the ld. CIT(A) agreed that the movement of stock/sale of goods is not in question. However, the ld. CIT(A) was of the opinion that additional profit margin arising out of such sales cannot be ruled out and estimated 8% of turnover as profit and confirmed the addition of Rs. 96.49 lakhs in A.Y 2012-13 and Rs. 52.42 lakhs in A.Y 2013-14.

8. The assessee is in appeal against this estimation of profit and the Revenue is in appeal in not treating the entire sales as bogus sales and unexplained cash credit as held by the Assessing Officer.

9. We have given thoughtful consideration to the orders of the authorities below. We have carefully perused the assessment order qua the seized material. We could find only the following observations which were considered as incriminating material found at the time of search:

"During the course of search action, certain documents, including electronic documents were found and seized which further corroborate the fact that the individuals of the Bajaj group had given unaccounted cash to Shri Nirmal Sarda C.A. and his younger brother Shri Anil Sarda C.A. in order to obtain accommodation entries of equal amount from shell concerns controlled by Shri Nirmal Sarda C.A. From the mobile phone of Shri Vikram Bajaj, an SMS confirming the receipt of cash by Shri Anil Sarda C.A. was found."

10. In our considered opinion, there is no reference to any incriminating material found from the premises of the assessee though reference to electronic conversation may be incriminating, but the same has no reference whatsoever with the assessee. The entire assessment is based upon the statement of Shri Nirmal Sarda and his brother Shri Anil Sarda.

11. But nothing was found from the premises of the assessee, which could be termed as incriminating material and could be basis of making the impugned assessment u/s 153A of the Act and, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell 454 ITR 212* squarely apply wherein it has been held that assessment u/s 153A of the Act can be framed only on the basis of

incriminating material found at the time of search. The relevant findings of the Hon'ble Supreme Court read as under:

"In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under [Section 132](#) or requisition under [Section 132A](#), the AO assumes the jurisdiction for block assessment under [section 153A](#);

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under [Section 132](#) or requisition under [Section 132A](#) of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in

exercise of powers under [Sections 147/148](#) of the Act, subject to fulfilment of the conditions as envisaged/mentioned under [sections 147/148](#) of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

15. Insofar as the aforesaid Civil Appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under [Section 143\(1\)\(a\)](#) or 143(3) of the Act, 1961 and to re-assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s)

passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs."

12. In light of the above, the impugned assessment order deserves to be set aside as devoid of any incriminating material.

13. Coming to the merits of the case, there is no dispute that out of total sales, the Assessing Officer has singled out only sales made to three parties mentioned elsewhere. There is no dispute in so far as movement of goods is concerned. There is also no dispute in respect of corresponding purchases. Stock details have been accepted as such. Therefore, we fail to understand how the Assessing Officer could invoke the provisions of section 68 of the Act for making the impugned addition.

14. We further fail to understand that when the Id. CIT(A) has accepted the profit margin for rest of the sales, then why he has applied a different profit margin in respect of sales made to the three parties mentioned elsewhere. Considering the underlying facts, not only the assessment order is erroneous but the order of the first appellate authority is also erroneous. Accordingly, the appeals of the assessee are allowed on merits and those of the Revenue are dismissed.

15. In the result, the appeals of the assessee in ITA Nos. 285 & 286/DEL/2022 are allowed whereas the appeals of the Revenue in ITA Nos. 420 & 421/DEL/2022 are dismissed.

The order is pronounced in the open court on 06.11.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th NOVEMBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
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