

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

BEFORE

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

ITA No. 816/Del/2023
Astt. Year: 2014-15

Pushpa Devi Bajaj, AE-17, 2 nd Floor, Tagore Garden, West Delhi, New Delhi – 110 027. PAN ABFPB2234D	Vs.	DCIT, Central Circle-32, Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain, Advocate Shri Aman Garg, CA
Department by:	Shri P.N. Barnwal, CIT-DR
Date of Hearing:	07.11.2023
Date of pronouncement:	04.12.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 06.02.2023 of the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2014-15.

2. The assessee has taken the following grounds:-

- “1. On the facts and circumstances of the case the order passed by the learned Commissioner of Income Tax (Appeals) (CIT (All bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the

assesses that the order passed by the learned AO under section 153A r.w.s 143(3) is illegal and bad in law as the same has been passed without having valid jurisdiction.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the AO under section 153A r.w.s. 143(3) is bad and liable to be quashed as the same has been framed consequent to the search which was initiated under the wrong pretext.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the learned AO under section 153A r.w.s 143(3) is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*
5. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred, in reissuing the notice under section 153A dated 05.09.2019 despite the fact that reassessment proceedings initiated by initial notice issued under section 153A dated. 03.07.2018 was already pending and not concluded by the AO.*
(ii) That the learned AO has erred in ignoring the settled position of law that the AO cannot issue the fresh notice unless and until the assessment proceedings earlier initiated by the AO was completed.
6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed by the AO is illegal and liable to be quashed as the same has been passed violating the provisions of section 124 of the Income Tax Act.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the assessment framed under section 153A r.w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the*

assessee that the learned AO has erred, in passing the order despite the fact that the notice issued under section 143(2) is barred by limitation as the same has been issued beyond the statutory time limit prescribed under the Act.

9. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that notice issued 142(1) of the Act is bad in law as the same was issued prior to the issue of notice under section 143(2) of the Act.*

(ii) That the learned CIT(A) has erred, both on facts and in law, in confirming the action of the learned AO in drawing adverse inference against the appellant on the basis of above notice issued under section 142(1) of the Act which itself is invalid.

10. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred in making the addition in order passed u/s 153A r.w.s 143(3) of the Act, without any incriminating material having been found during the course of search.*

11. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the consequent reassessment framed under section 153A r.w.s 143(3) are in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law.*

(ii) That the CIT(A) has erred in ignoring the contention of the assessee that the purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.

12. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed by the AO is invalid and bad in law as the same was passed in violation of the circular No. 19/2019 Issued by CBDT which mandates that no order shall be passed without there being valid Document Identification Number (DIN)*

13. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs.51,250/- made by the AO on account of agriculture income treating the same as income from undisclosed sources.*

14. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 93,000/- made by the AO on account of cash deposits in the bank account invoking the provision of section 68 of the Income-tax Act.*
15. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 40,00,000/- made by the AO on account of amount received in the bank account invoking the provision of section 68 of the Income-tax Act*
16. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition has been made by misinterpreting the statements recorded during the course of search.*
17. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO by indulging in conjecture and surmises only on the basis of presumption and assumption.*
18. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO in determining the tax liability as per section 115BBE of the Act.*
19. *On the facts and circumstances of the case, the learned CIT (A) has erred in facts and in law in confirming interest charged u/s 234A and 234B of the Act.*
20. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. The facts in brief are that the assessee individual is partner in M/s. Pawan Synthetic. She filed her return for AY 2014-15 on 31.03.2015 declaring income of Rs. 2,27,880/-. It was processed under section 143(1) of the Income Tax Act, 1961 **(the “Act”)**. Search and seizure operation was carried out on Bajaj Group of cases on 20.04.2017. The assessee was also covered. Notice under section 153A of the Act was manually issued on 03.07.2018. The assessee vide letter dated 18.07.2018 submitted that the return filed on 31.03.2015 be treated as return filed in response to notice under section 153A of the Act. During the course of assessment proceedings

vide letter dated 29.11.2019 the assessee filed part details which the Ld. Assessing Officer (“AO”) examined and placed on record. The Ld. AO completed the assessment on total income of Rs. 93,88,660/- on 23.12.2019 under section 153A r.w. section 143(3) of the Act including therein addition of Rs. 2,17,780/- on account of unexplained agricultural income for want of requisite details; addition of Rs. 93,000/- under section 68 being unexplained cash deposit into her IDBI Bank Account No. 88521; addition of Rs. 48,50,000/- under section 68 being unexplained deposits in her Karur Vysya Bank Account and addition of Rs. 40,00,000/- under section 68 being funds transferred by Promina Wealth Management Pvt. Ltd. controlled by Shri Hemant Bajaj, an accommodation entry provider into her IDBI Bank Account.

4. On appeal filed by the assessee, the Ld. CIT(A) restricted the addition on account of unexplained agricultural income to Rs. 51,250/- giving relief of Rs. 1,66,530/- to the assessee; confirmed the addition of Rs. 93,000/- on account of unexplained cash deposit; deleted the addition of Rs. 48,50,000/- on account of unexplained credits in Karur Vysya Bank Account of the assessee and confirmed the addition of Rs. 40,00,000/- on account of unexplained credit entries received from parties.

5. The assessee is in appeal before the Tribunal against the addition of Rs. 51,250/- on account of agricultural income; addition of Rs. 93,000/- under section 68 on account of cash deposit in bank account and addition of Rs. 40,00,000/- under section 68 of the Act apart from certain legal issues raised and all the grounds relate thereto.

6. The crux of the assessee’s case before us is that the impugned additions are devoid of any reference to any incriminating material found at the time of search and therefore in view of the judicial precedents these additions are not sustainable and ground No. 2, 7 and 10 relate thereto.

7. Ground No. 1, 3, 4, 5, 6, 8, 9, 11 and 12 are general and legal grounds which have not been argued before us. Hence not adjudicated.

8. The remaining grounds No. 13 to 18 relate to impugned additions. The Ld. AR submitted that the return for AY 2014-15 filed by the assessee was processed under section 143(1) of the Act. Thereafter a search was carried on Mr. Vikram Bajaj, Mr. Pramod Bajaj, Mr. Vinod Bajaj, Mr. Radhey Shyam Bajaj and Mr. Krishna Kumar Bajaj on 20.4.2017. During the course of search a key of IDBI bank locker was found. This locker was in the name of Mr. Inder Chand Bajaj and the assessee Mrs. Pushpa Devi Bajaj. Thereafter a search action on 20.04.2017 was carried out on locker No. 474, IDBI Bank Ltd., Rajouri Garden, New Delhi. Copy of panchnama drawn in the name of Shri Inder Chand Bajaj and Smt. Pushpa Bajaj appears at page 3-4 of the Paper Book. It is stated that it is evident from the panchnama and the assessment order that no incriminating document/material was found in search action on the said locker.

9. Our attention has been drawn to the order dated 02.02.2023 of the Tribunal in ITA No. 628/Del/2022 in the case of assessee herself for AY 2013-14 (copy at pages 146-159 of Paper Book) wherein unexplained cash deposit of Rs. 1,50,000/- was added to the income of the assessee as income from undisclosed sources. When the matter reached the Tribunal, the Tribunal observed in para 13 thereof that the addition of Rs.1,50,000/- was made by the Ld. AO pursuant to the details of bank account furnished by the assessee. There is not even a whisper of any incriminating material to justify the addition.

10. The Ld. AR relied on the decision of the Hon'ble Delhi High Court in the case of CIT(Central) vs. Kabul Chawla 380 ITR 573 and several other precedents in support of the proposition that completed assessments can be

interfered with in assessment under section 153A only if some incriminating material is unearthed during search.

11. It is contended by the Ld. AR that the Ld. AO has solely relied on the statement of Mr. Hemraj Bajaj i.e. third party which is evident from the assessment order made by the Ld. AO under section 153A of the Act in the case of the assessee. He submitted that if the Ld. AO wanted to make addition on the basis of material found in search in the case of other person, he ought to have followed the mandatory procedure prescribed under section 153C of the Act which has not been done. On this ground the assessment framed by the Ld. AO under section 153A is liable to be quashed. He cited number of decisions in support thereof.

12. The Ld. CIT(DR) relied on the order of the Ld. AO/CIT(A).

13. We have carefully considered the submission of the parties and perused the records. It is a case of search carried on in the premises of Shri Vikram Bajaj, Pramod Bajaj, Radhey Shyam Bajaj, Vinod Bajaj and Kishan Kumar Bajaj on 20.04.2017. During the course of search, key of IDBI Bank Locker was found which was in the name of Inder Chand Bajaj and Smt. Pushpa Bajaj, the assessee. The locker was searched. No incriminating material was found. In response to statutory notices under section 153A of the Act, the assessee stated that return filed on 31.03.2015 for AY 2014-15 be treated as return under section 153A of the Act. During the course of assessment proceedings, the Ld. AO required the assessee, inter alia to submit documentary evidence in support of agricultural income declared; to explain source of cash of Rs. 93,000/- deposited on four dates during the year in IDBI bank account and to explain the nature and source of Rs. 40,00,000/- transferred into IDBI Bank. The assessee furnished explanation which was rejected without assigning any cogent reasons and additions were made. On appeal the Ld. CIT(A) reduced addition to Rs. 51,250/- on account

of agricultural income and maintained the remaining additions of Rs. 93,000/- and Rs. 40,00,000/-.

14. It is not the first year that the assessee has declared agricultural income. In preceding AY 2010-11 and AY 2011-12 also agricultural income was declared and accepted. Details of land holding were also filed during assessment proceedings. Part disallowance sustained by the Ld. CIT(A) is therefore unwarranted.

15. As regards the nature and source of cash deposit in IDBI Bank account aggregating in all to Rs. 93,000/-, vide letter dated 15.12.2019 (copy at page 24 of Paper Book) it was explained that the cash deposit is out of old savings, income earned during the year and withdrawal from banks and partnership firm. Nothing has been brought on record to dismantle the explanation of the assessee by the Ld. AO/CIT(A). It is not the case of the Revenue that the IDBI bank account was not declared by the assessee. The addition in our view is not sustainable as it is not based on any solid factual and/or legal footing.

16. Regarding credit of Rs. 40,00,000/- received by the assessee in her IDBI Bank account, vide letter dated 18.12.2019 filed before the Ld. AO it was explained that credits are on account of RNB Leasing and Financial Services in relation to transactions related to sale of equity shares. PAN and ITR of RNB Leasing and Financial Services were submitted. The Ld. AO made the impugned addition alleging that it represents accommodation entries received by the assessee from shell concern of Shri Hemant Bajaj namely Promina Wealth Management Pvt. Ltd. Before the Ld. CIT(A) it was explained that the said amount received in IDBI Bank account was on account of sale of shares of RNB infrastructure Pvt. Ltd. held by the assessee to RNB Leasing and Financial Services and not on account of accommodation entries and produced documentary evidence under Rule

46A. The Ld. CIT(A) however took an adverse view relying of the factually incorrect premise that the Ld. AO relied on the findings of search and survey operations carried out on the premises of the assessee (para 25.3 of the CIT(A)'s order). As a matter of fact in the case of the assessee search was carried out on locker No. 474 IDBI Bank Ltd., Rajouri Garden, New Delhi and undisputedly no incriminating material was found which is evident from the Panchnama (pages 3-4 of Paper Book). Addition based on incorrect appreciation of facts on record is not sustainable.

17. We find ourselves in agreement with the contention of the assessee that if the Ld. AO wanted to make addition of Rs. 40,00,000/- to the income of the assessee on the basis of material found in the case of other person he should have followed the mandatory procedure prescribed under section 153C of the Act which has not been done.

18. The case of the assessee on facts is covered in favour of the assessee by the following decisions of Hon'ble Delhi High Court:

- i) CIT vs. Kabul Chawla 380 ITR 573 (Del)
- ii) Pr. CIT vs. Ms. Lata Jain 384 ITR 543 (Del)
- iii) Pr. CIT vs. Meeta Gutgutia 395 ITR 526 (Del)

19. It may be mentioned that ratio decidendi of Kabul Chawla's case (supra) has been affirmed by the Hon'ble Supreme Court in PCIT vs. Abhisar Buildwell P Ltd. (2023) (4) TMI 1056 (SC) dated 24.04.2023.

20. For the reasons set out above and following the decisions (supra), we delete the additions sustained by the Ld. CIT(A) and decide ground No.2, 7, 10 and 13 to 18 in favour of the assessee.

21. Ground No. 19 regarding levy of interest under section 234A and 234B of the Act is consequential.

22. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 4th December, 2023.

**sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 04/12/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	