

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

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

ITA No.207/Del/2023
Assessment Year: 2013-14

DCIT Central Circle New Delhi	Vs.	RNB Leasing and Financial Services, RNB House 1, Shivaji Enclave Main Road, Opp. Mother Diary Near Raja Garden New Delhi- 110027 PAN No.AAJFR5528H
(APPELLANT)		(RESPONDENT)

Cross Objection No.121/Del/2023
(In ITA No.207/Del/2023)
Assessment Year: 2013-14

RNB Leasing and Financial Services, RNB House 1, Shivaji Enclave Main Road, Opp. Mother Diary Near Raja Garden New Delhi- 110027 PAN No.AAJFR5528H	Vs.	DCIT Central Circle New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P.N. Baranwal, CIT DR
Respondent by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA

Date of hearing:	05/12/2023
Date of Pronouncement:	05/12/2023

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.207/Del/2023 by the revenue and cross objection No.121/Del/2023 by the assessee preferred against the order of the CIT(A)-30, New Delhi dated 11.11.2022 pertaining to A.Y.2013-14.

2. The grievance of the revenue reads as under :-

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made by the AO.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in considering the reply of the assessee dated 22.12.2019 ignoring the facts that the assessee during the whole assessment proceedings never comply on the due date and intentionally lingered the assessment proceedings.

3. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in considering the reply of the assessee dated 22.12.2019 without calling remand report from the AO on the issue of investment of Rs.5,95,11,000/- in the unlisted equity shares of RNB Infrastructure Pvt. Ltd.

4. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in considering the reply of the assessee dated 22.12.2019 without seeking comments

from the AO especially when the AO could not see the reply of the assessee in system due to technical error and hence did not considered the reply of the assessee.

5. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

6. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

3. The cross objection reads as under :-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is 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 assessee that the order passed by the learned AD under section 153A .ws143(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, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order is null and void as the same is in violation of CBDT Circular No. 19/2019 requiring mandatory DIN

4. *On the facts and circumstances of the case, the addition made by the AO in order passed u/s 153A r.w.s. 143(3) of the Act is unsustainable in absence of any incriminating material having been found during the course of search on assessee.*

5. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.*

6. *On the fact and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of 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 fact 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 AO has erred in passing the order despite the fact that authorization for the search was issued on non-existing entity as well as by the person not authorized to issue such authorization.*

8. *On the fact 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 u/s 153A of the Act and the consequent*

reassessment proceedings are bad in law as the same has been made on the non-existent party.

9. That the appellant craves leave to add, amend or alter any of the grounds of appeal.

4. Since the cross objection go to the root of the matter the same is adjudicated first.

5. Briefly stated the facts of the case are that a search and seizure operation was carried out at the various premises of Bajaj Group and its associates including the assessee and the Directors on 20.04.2017. Accordingly statutory notices u/s. 153A of the Act were issued and served upon the assessee. Pursuant to which the assessee filed its return of income. The assessment was completed vide order dated 24.12.2019. The following observations of the AO are most relevant for the adjudication of the cross objection of the assessee :-

“4. Vide Notice u/s 142(1) dated 16.12.2019, the assessee was asked that

“On perusal of ITR filed on 31.08.2012 for the AY 2012-13 it has been noticed that Sundry Debtors of Rs.5,96,17,000/- and Investment in Securities Rs. NIL are appearing.

Further, as per ITR filed on 28.03.2015 for A.Y. 2013-14 show investment in Unlisted Equities at Rs.5,95,11,000/-.

You are required to explain the sources of fresh investment made towards Unlisted Equities of M/s RNB Infrastructure Pvt. Ltd. Rs.5,95,11,000/- alongwith documentary evidence. Failing which Rs.5,95,11,000/- will be added to the income of the assessee firm u/s 69 of the I. T. Act.

4.1 Despite of allowing ample opportunity, the assessee did not put forth any explanation/clarification in the regard, therefore, it is amply clear that the assessee does not have any explanation in support of his case. Hence, an addition of Rs.5,95,11,000/-/ is made to the income of assessee au/s 69 of the I. T. Act. I am satisfied that the assessee has reported inaccurate particulars of its income. Hence, penalty u/s 271(1)(c) of the Act, is initiated separately.

[Addition of Rs.5,95,11,000/-]

It is stated that the Appellate Authorities have been allowing appeals, where in search cases, additions are made on grounds other than based on incriminating material in seized documents in assessments made under section 153A read with section 143(3) while relying on the decisions of the Hon'ble Delhi High Court in the case of Kabul Chawla (2015) 380 ITR 573 (Delhi) against which

the Department filed SLP with Diary No. 3267 of 2016, 5952 of 2016 and 6377 of 2016 but withdrew the same on account of Low Tax Effect below Rs. 1 Cr. in pursuance of CBDT Circular No. 3 of 2018. However, Hon'ble Supreme Court vide order dated 17.09.2018 reported these cases as dismissed.

It is respectfully submitted that the Hon'ble Supreme Court has admitted SLP vide Diary No. 37848/2015 in the case of APAR Industries Ltd. decided by Hon'ble Bombay High Court in ITA No. 1669 of 2013 dated 08.05.2015 which is a lead case tagged with more than 115 cases on the issue of restriction of additions only to incriminating materials found during search. Therefore, withdrawal of SLP in the case of Kabul Chawla on account of Low Tax Effect leading to reporting of dismissal of SLP by Hon'ble Supreme Court is mitigated by admission of SLP by Hon'ble Supreme Court in the case of APAR Industries Ltd. as mentioned above, tagged with 115 cases as a lead case.

6. From the above it is crystal clear that the impugned addition is devoid of any reference to any incriminating material found at the time of search. The observations of the AO has been set at rest by the Hon'ble Supreme Court in the case of Abhisar Buildwell 454 ITR 212 wherein the Hon'ble Supreme court has held 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.”

7. Respectfully following the decision of the Hon’ble Supreme Court (supra) the assessment order is treated as null and void.

8. In result, cross objection filed by the assessee is allowed and appeal of the revenue is dismissed.

9. Decision announced in the open court on 05.12.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI