

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

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

ITA No.772, 773 & 774/Del/2018  
Assessment Year: 2011-12, 2012-13 & 2013-14

<b>ACIT Central Circle – 13 New Delhi</b>	<b>Vs.</b>	<b>Manish Merchants Pvt. Ltd. Business Communication Centre – 21, Parsi Church Street, Kolkata, West Bengal-700001 PAN No.AAFCM1912R</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Salil Agarwal, Sr Advocate Sh. Shailesh Gupta, Advocate

Date of hearing:	23/01/2024
Date of Pronouncement:	23/01/2024

**ORDER**

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

ITA No.772/Del/2018, 773/Del/2018 and 774/Del/2018 are three separate appeals by the revenue preferred against three separate orders of the CIT(A)-26, New Delhi dated 13.11.2017 pertaining to A.Y. 2011-12, 2012-13 and 2013-14.

2. Since common grievance is involved in the captioned appeals, therefore, they were heard together and are disposed of by this common order of the sake of convenience and brevity though the quantum may differ.

3. Representatives of both the sides addressed the facts of ITA No.772/Del/2018 for A.Y.2011-12 and agreed that though quantum may differ but the under lying facts in other appeals are identical. On such concession we heard the representatives on the facts of A.Y.2011-12.

4. The grievance of the revenue read as under :-

*I. Whether Ld. CIT(A) has erred on facts and in law in deleting the addition made u/s. 68 of the I.T.Act, 1961 on aggregate amount of Rs. 5,83,09,975/-treating the same as protective addition whereas the addition was made in the hands of the assessee on substantive basis.*

*II. Whether Ld. CIT(A) has erred on facts and in law in deleting the addition made u/s. 68 of the I.T.Act, 1961 on protective basis on aggregate amount of Rs. 19,67,00,025/- based on the relief allowed in the case of group companies in which substantive additions were made.*

*III. Whether Ld. CIT(A) has erred in deleting the addition despite the fact that the assessee failed to discharge its primary onus to satisfactorily explain cash credits in the books of account.*

*IV. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

5. A search and seizure operation u/s. 132 of the Act was conducted in the Minda group of cases on 20.09.2013. During the search and seizure operation documents belonging to the assessee were also seized from the business and residential premises of the Minda Group. Accordingly statutory notices were issued and served upon the assessee.

6. The returned income of the assessee of Rs.32419/- was assessed at Rs.255042420/- after making addition of Rs.255010000/-.

7. The addition was challenged before the CIT(A) on the ground that it is not based on any incriminating material found at the time of search. Therefore, the initiation of proceedings u/s. 153C of the Act is bad in law.

8. Though the CIT(A) deleted the addition on the ground that the same are not based upon any incriminating material found at the time of search but upheld the initiation of proceedings u/s.153C of the Act.

9. Before us the Counsel for the assessee drew our attention to the decision of this Tribunal in assessee's own case in ITA

No.363/Del/2018 for A.Y.2013-14 and pointed out that this Tribunal has quashed the assessment order on the ground that no incriminating material was found basis which the assessment could have been framed.

10. In so far as the additions made in the hands of the Minda Group of cases our attention has been drawn to the order of this Tribunal in a bunch of appeals in ITA No.6627/Del/2017 and others ITA No.222/Del/2017 and others order dated 23.12.2021 wherein the coordinate Bench has decided the appeal in favour of the assessee and against the revenue.

11. We have given a thoughtful consideration to the orders of the authorities below. We find that this Tribunal in the bunch of appeals (supra) has deleted the additions in the hands of Minda Group of cases. The relevant findings read as under :-

*“46. We have also noticed that the assessee apart from submitting the various documents related to receipt of share capital and share premium as listed hereinabove, also furnished the workings for share valuations using discounted cash flow method and furnished explanation for issuing shares at a premium taking into account the future growth in the business of the assessee and also considering the future prospects of the assessee business coupled with the fact entire group had a turnover of over Rs. 2500 crores in financial year 2014-15. It was submitted that assessee is a leading business in automotives having various high end customers and commands significant Goodwill, excellent past performance and high investors’*

*confidence resulting into bright future prospects for the assessee in the long run. It was submitted that these aspects were duly appreciated by the shareholders and accordingly the shareholders had agreed to invest in the assessee company at a premium.*

*47. Before concluding, we would like to discuss the judgments so relied by learned CIT DR. He has placed reliance on the judgments of Hon'ble High Court of Delhi in the case of PCIT vs NDR Promoters Ltd. reported in 410 ITR 379, CIT vs Nova Promoters & Finlease Pvt. Ltd. reported in 342 ITR 169 and Hon'ble Supreme Court in the case of PCIT vs NRA Iron & Steel (P) Ltd. reported in 412 ITR 161. We have gone through all the aforesaid cases and rather have found that the said judgments support the case of assessee companies, as the main proposition which has been laid down in all the aforesaid judgments is that "Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries once documents are submitted by the assessee or the subscriber companies whereas, we have noticed in the instant set of appeals that the AO has besides issuing notices under section 133(6) of the Act, has done no enquiry or investigation whatsoever and has merely relied on the investigation report so provided by the investigation wing, thus, the judgments so relied by the learned CIT DR are clearly distinguishable on facts and in our view rather support the case of the assessee.*

*48. In the result, all the sixteen appeals filed by the Revenue are dismissed on merits as well, in addition to the twelve appeals being decided above, wherein, we have held that the additions so made are beyond the scope of assessments so made under section 153A of the Act and are beyond jurisdiction."*

12. Similarly in ITA no.363/Del/2018 this Tribunal has held as under :-

*“9. It can be seen from the above satisfaction note that the incriminating/seized document pertains to F.Y. 2010-11 relevant to A.Y 2011-12. A.Y before us is A.Y 2013-14 and it can be safely concluded that no incriminating material was found pertaining to A.Y 2013-14 basis which the assessment could have been framed.*

*10. The ratio laid down by the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344 squarely applies wherein the Hon'ble Supreme Court has held that for each A.Y of the block period, there should be separate incriminating material to frame assessment. This has been reaffirmed by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt Ltd 454 ITR 212.*

*11. In light of the satisfaction note [supra] and the ratio laid down by the Hon'ble Supreme Court [supra], we are of the considered view that the impugned assessment order cannot stand on its own legs and hence quashed.*

*12. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.”*

13. Though the above findings refers to some seized document which pertains to A.Y.2011-12 but in A.Y. 2011-12 (present appeal) no addition has been made on the basis of this document.

14. Considering the facts of the case in totality in the light of the judicial decision discussed here in above we do not find any reason

to interfere with the findings of the CIT(A) all the appeals of the revenue are dismissed.

15. Decision announced in the open court on 23.01.2024.

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

\*NEHA\*

Date:- .01.2024

Copy forwarded to:

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

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

ASSISTANT REGISTRAR  
NEW DELHI