

**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.4785/Del/2015
Assessment Year: 2005-06

Poonam Promoters and Developers Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi-110001 PAN No.AAACP6882G	Vs.	ACIT Central Circle- 32 E-2, ARA Centre, Jhandewalan Extension, New Delhi-110055
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Piyush Kaushik, Advocate Sh. Ajay Bhagwani, CA
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT DR

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

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-30, New Delhi dated 27.03.2015 pertaining to A.Y. 2005-06.

2. The grievance of the assessee read as under :-

"1. That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-XXX, New Delhi are bad in law and void ab initio.

2. That on the facts and circumstances of the case and in law the GIT(A) erred in confirming the addition of Rs. 50,00,000/- as Income from undisclosed sources.

3. That the order passed by the Assessing Officer, and confirmed by CIT(A), is bad on facts and in law in as much as it suffers from the vice of violation of the principles of natural justice and denial of opportunity of being heard, rendering the assessment void ab initio.

4. The appellant craves permission to add, amend, alter or vary all or any grounds

3. The assessee has also raised the following supplementing ground :-

1.1 That on the facts and circumstances of the case and in law, the order passed u/s 153A by the Assessing Officer as confirmed by the Commissioner of Income Tax (Appeals) is bad in law and void ab initio and only deserves to be quashed as addition made by AO is not based on any incriminating seized document found during search which belong to assessee and relate to year under consideration during the course of search on 07.12.2010 being an undisputed position by the CIT(A) himself."

4. Representatives of both the sides were heard at length. Case records carefully perused. On perusal of the assessment order we find that a notice u/s. 148 of the Act was issued on 29.03.2012. A search and seizure operation was carried out at the various premises of BPTP Limited and its group concerns and associated

persons on 07.12.2010 and was finally concluded on 05.02.2011. The observations of the AO that the reassessment proceedings initiated has been abated are factually incorrect in as much as the notice u/s. 148 was served after more than a year from the date of search. On identical set of facts in one of the group cases M/s. USG Buildwell Private Limited in ITA No. 2155/Del/2015 and ITA No.1351/Del/2015 for A.Y. 2005-06 and 2006-07 this Tribunal had considered an identical situation and held as under :-

“7. We have heard both the parties and perused the material available on U record. It is pertinent to note that no incriminating material was found during the search and seizure in respect of assessee company, hence the decision of the Delhi High Court in case of Kabul Chawla is squarely applicable in the present case. The Hon'ble Delhi High Court held as under :-

“Summary of the legal position

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post- search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (ie. those pending on proceedings of search) and the word 'reassess' to completed assessment

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made

separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

Since no incriminating material was found in the assessee's case, no addition can be made in the present case. Besides this, the assessee has made investment in prior period and sold the said investment in this particular year which was clearly set out from the submissions and the evidences produced before the Assessing Officer and the CIT(A). Therefore, the appeal of the assessee being ITA No. 2155/Del/2015 for Assessment Year 2005-06 allowed."

5. In the case in hand also the addition of Rs. 50 lacs has been made in respect of the entries credited by the assessee in the books of account in the form of sale of investments to Narmata Marketing

Private Limited and Passion Chits Private Limited is not based on any incriminating material found at the time of search. This issue is now well settled in favour of the assessee and against the revenue by the Hon'ble Supreme Court in the case of Abhisar Buildwell Private Limited 454 ITR 212. Respectfully following the decision of the coordinate Bench (supra) in the light of the decision of the Hon'ble Supreme Court (supra) we direct the AO to delete the impugned addition.

6. In the result, the appeal of the assessee is allowed.
7. Decision announced in the open court on 23.01.2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

NEHA

Date:- .01.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR
NEW DELHI