



2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in law and on facts in deleting the addition of Rs. 3.50 crores made by the Assessing Officer on account of undisclosed income.

3. Briefly stated, the facts of the case are that the assessee filed its return of income which was processed u/s 143(3) of the Income-tax Act, 1961 [the Act, for short]. Search and seizure operation u/s 132 of the Act was carried out on 23.03.2018 on Luv Kush Group of cases. The case of the assessee was covered u/s 132 of the Act

4. During the course of search and seizure operation, various incriminating documents, books of account, digital devices were found and seized at the premises of the group companies and persons. Statutory notices were issued and served upon the assessee, pursuant to which, the assessee filed its return of income on 07.11.2019 declaring its income at Rs. 4,76,09,730/-.

5. During the course of assessment proceedings and on perusal of the seized material documents, hard-disk, the Assessing Officer found that the assessee has made certain transactions amounting to Rs. 3.50 crores with M/s Fitworth Constructions Pvt Ltd. The assessee was

asked to explain the nature of transaction alongwith documentary evidences.

6. It was explained that the assessee has taken unsecured loan from M/s Fitworth Constructions Pvt Ltd.

7. Invoking provisions of section 68 of the Act, the Assessing Officer came to the conclusion that the assessee has grossly failed to establish the genuineness of the transaction and capacity of the lender and made addition of Rs. 3.50 crores.

8. The assessee agitated the matter before the Id. CIT(A) and vehemently contended that the entire addition is devoid of any incriminating material found at the time of search and since the addition has been made without there being any incriminating material, it should be deleted.

9. It was further contended that during the course of original assessment proceedings, the assessee has filed complete details of the loan transactions which were verified by the Assessing Officer and

proceedings were completed at an assessed income of Rs. 4,77,78,680/-.

10. The ld. CIT(A), after considering the facts and submissions, was convinced that the said transaction is part of audited accounts and return of income is not in the nature of incriminating material and went on to delete the addition.

11. Before us, the ld. DR could not point out any factual error in the findings of the ld. CIT(A).

12. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

13. We have carefully perused the orders of the authorities below. Search was conducted on 23.03.2018 and the A.Y under consideration is A.Y 2015-16, which means that the impugned A.Y is an unabated A.Y in which assessment has been completed u/s 143(3) of the Act prior to the date of search. Therefore, as per the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell* 454 ITR 212, completed

assessment can only be reopened and reassessed only on the basis of incriminating material relevant to the A.Y under consideration.

14. Since the impugned addition is not based on any incriminating material found at the time of search, the ratio laid down by the Hon'ble Supreme Court [supra] squarely apply. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A).

15. In the result, the appeal of the Revenue in ITA No. 793/DEL/2021 is dismissed.

The order is pronounced in the open court on 31.01.2024.

**Sd/-**

**[SAKTIJIT DEY]  
VICE PRESIDENT**

**Sd/-**

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

Dated: 31<sup>st</sup> JANUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar  
ITAT, New Delhi

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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	
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