

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.3067/Del/2014
(Assessment Year: 2009-10)**

ACIT, Central Circle 09,
New Delhi.

vs.

M/s. Divine Infracon Pvt. Ltd.,
Plot No.4, Sector 13,
Dwarka City Centre, Dwarka,
New Delhi – 110 075.

(PAN : AACCD4476A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Sr. Advocate
Shri Sailesh Gupta, Advocate
Shri Umashankar, Advocate
REVENUE BY : Shri T. James Singson, CIT DR

Date of Hearing : 25.01.2024

Date of Order : 07.02.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. CIT (Appeals)-XXXII, New Delhi dated 24.02.2014 for the assessment year 2009-10.

2. Grounds of appeal taken by the Revenue read as under :-

“1. Whether Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the ground of the assessee that provision of section 153A of the Act could not be applied in a case where no material has been found as a result of search and since no evidence or material had been

found on search the instant addition made was outside the scope of section 153A of the Act.

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.4,30,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the I.T. Act.

3(a) The order of the CIT (Appeals) is erroneous and not tenable in law and on facts.”

3. Brief facts of the case are that the assessee company is engaged in the business of real estate development and running of hotels. A search and seizure and a survey operation u/s 132/133A of the Income-tax Act, 1961 (for short 'the Act') was conducted by the Directorate of Income Tax (Inv)-II, New Delhi in Jagat group of cases, its directors, other individuals and its connected associates at 'their business and residential premises on 14.09.2010. The assessee business premises at Plot No.4, Sector-13, Dwarka City, Centre, New Delhi has also simultaneously searched by the Investigation Wing of the department u/s 132(1) of the Act. The case of the assessee was centralized u/s 127 by the CIT-IV/Centralization/68/2012-13/1681 dated 25.09.2012 and the jurisdiction over the assessee's case was assigned to the present Assessing Officer, Central Circle-9, New Delhi. Thereafter, a notice u/s 153A of the Act was issued and served upon the assessee in response to which, vide letter dated 20.11.2012, the assessee stated that the return filed u/s 139(1) of the Act may be treated as return filed in response to the notice u/s 153A. The assessee also filed a copy of the return filed u/s 139(1) on 28.10.2009 vide receipt no.99913801281009 declaring nil income for the assessment year 2009-10. However, vide letter

dated 6.12.2012, the assessee objected to the initiation of proceedings u/s 153A of the Act. The Assessing Officer considered the objections raised by the assessee and thereafter vide letter dated 24.01.2013 addressed and rejected the same. Subsequently, notices u/s 143(2) and 142(1) alongwith a questionnaire were issued and served upon the assessee. In response to the same, the ARs of the assessee attended the proceedings from time to time and filed the requisite replies and explanations. The Assessing Officer after examining the correctness of the assessee's declared income and after verifying the various claims made during the course of assessment proceedings, completed the assessment in terms of an order u/s 143(3)/153A dated 28.03.2013 at a total income of Rs.4,30,00,000/- as against nil income declared wherein, the Assessing Officer made an addition of Rs.4,30,00,000/- u/s 68 of the Act on account of unexplained cash credits.

3.1 The facts leading to the impugned addition are that in the course of assessment proceedings, on perusal of the balance sheet, the Assessing Officer noticed that the assessee had taken unsecured loans from the following parties :

(i)	M/s Index Securities & Research Pvt. Ltd.	Rs.1,00,00,000/-
(ii)	M/s Attractive Finlease Ltd.	Rs. 30,00,000/-
(iii)	M/s Trans National Growth Fluid Ltd.	<u>Rs:3,00,00,000/-</u>
	Total :	<u>Rs.4,30,00,000/-</u>

3.2 Vide notice u/s 142(1) dated 31.12.2012, the Assessing Officer asked the assessee to furnish the details of the un-secured loans, with the complete address of the lenders, PAN and confirmations etc of the lenders. According to the Assessing Officer inspite of the opportunity given, the assessee did not furnish any documentary evidence in respect of the above loans. The Assessing Officer also noted that during the course of search and seizure operation at the premises of Sh. S.K. Jain and Sh. V.K. Jain, it was established beyond doubt that they were involved in giving accommodation entries in the form of share capital, capital gain, un-secured loans and expenditure in lieu of certain commission through various companies managed and controlled by them. The Assessing Officer noted that the above three companies which were shown as creditors in the balance sheet of the assessee on account of un-secured loans were also managed and controlled by the Jain brothers and were being used for giving accommodation entries. According to the Assessing Officer, the Jain brothers and the companies managed and controlled by them were intimately related to the assessee and its group companies and were indulged in taking accommodation entries for routing their undisclosed income into their books of account in the grab of all sorts of entries i.e. share capital, share premium and unsecured loans etc. In view of these facts and the fact that the assessee failed to establish the identity and creditworthiness of the loan creditors i.e. the above mentioned companies and the genuineness of the loan transactions, the Assessing

Officer treated the un-secured loans amounting to Rs.4,30,00,000/- as un-explained cash credits in the books of account of the assessee and added the same to the income of the appellant u/s 68 of the Act.

4. Upon assessee's appeal, ld. CIT (A) deleted the addition by concluding as under :-

“10.1.10 Therefore, in short, to summarize, no addition was made on the basis of the seized material. in the present case by the Assessing Officer which is, as good as no incriminating material found in the course of search as, the transactions on the said material was found recorded in the books of account of the appellant and disclosed in the return filed before the Assessing Officer, prior to the search. However, this does not restrict the Assessing Officer not to enquire other issues u/s 153A. In view of the above discussion, there appears to be merit in the contentions raised by the appellant in this ground of appeal.”

5. Against the above order, Revenue has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. DR for the Revenue submitted that on the date of search, time period of issuance of notice was still there in connection with the concerned assessment year. Hence, he submitted that it can be said that assessment has abated. He submitted that AO is entitled to rely upon his enquiry and other material available to him to make the addition. In this regard, he placed reliance upon the decision of the Hon'ble Delhi High Court in case of Chintels India Ltd. vs DCIT reported in 84 taxmann.com 57(Del.). In this regard, the written submission by the Ld. DR reads as under:-

“please find attached herewith synopsis of case law order of Delhi High Court in the case Chintels India Ltd. Vs DCIT, Circle -8, [2017] 84 taxmann.com 57 (Delhi).

Herein, as per para 21 the Hon'ble Court has observed that once an assessee does not received a notice u/s 143(2) of the I.T. Act within the period stipulated then such an assessee can take it that returned filed by him has became final and no scrutiny proceedings are to be started in respect of the return. (means thereto if the period for issuance of notice is still available then the case will not be considered as completed assessment).

3. As per proviso to section 143(2) of the I.T. Act 1961 "provided that no notice under this subsection shall be served on the assessee after the expiry of [three months from the end of the financial year in which the return is furnished."

(84. Substituted for "six" by the Finance Act, 2021, w.e.f. 01.04.2021.)

4. In the instant case original return was filed u/s 139(1) on 28.10.2009 means notice u/s 143(2) of the IT Act can be issued up to 30.09.2010. (six months from the end of the financial year in which return was filed i.e. 2009-10) whereas search was conducted on 14.09.2010 (before the end of the stipulated time period for issuance of notice u/s 143(2) of the I.T. Act. Hence, the assessment for A.Y. 2009-10 was to be treated abated or pending on the date of initiation of search.”

7. Per contra, ld. Counsel of the assessee relied upon the decision of ITAT in the case of ACIT (CC)-45 vs. Pratibha Industries Ltd. 141 ITD 151 (Mumbai) for the proposition that once search has been conducted, AO is bound to issue notice u/s 153A and then has to pass orders thereon.

8. Upon careful consideration, we find ourselves in agreement with the submission of the Ld. DR. The decision of the Hon'ble jurisdictional High Court takes precedence over of all other Tribunal and lower courts. As per the ratio emanating from the said decision in case of Chintels India ltd. (supra) is that if the period for issuance of notice is still available then the case will not be considered as completed assessment. To recapitulate the

facts of this case, original return was filed u/s 139(1) of the Act on 28.10.2009, this means that notice u/s 143(2) of the Act could be issued up to 30.09.2010 (i.e. six months from the end of the financial year in which return was filed i.e. 2009-10). The search in this case was conducted on 14.09.2010 before the end of the stipulated time period for issuance of notice u/s 143(2) of the Act. Hence, the assessment for AY 2009-10 cannot be treated as abated or pending on the date of initiation of search. In this view of the matter, the addition is not restricted to seized material found during the course search in case of abated assessment. Assessing Officer can very rely upon his own enquiry. In the present case Assessing Officer's enquiry has clearly revealed that the unsecured loan amounting to Rs.4,30,00,000/- is unexplained cash credit in the books of the assessee and he has rightly added u/s 68 of the Act. We set-aside the order of the Ld. CIT(A) and restore that of the Assessing Officer.

9. In the result, the Revenue's appeal stands allowed.

Order pronounced in the open court on this 07th day of February, 2024.

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

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 07th day of February, 2024

TS/ Shekhar

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XXXII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**