

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

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Yogesh Kumar US, Judicial Member

ITA No. 2039/Del/2021 : Asstt. Year: 2015-16

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| DCIT, Central Circle-8, New Delhi | Vs | Sanjeev Singhal, 9-10, Saraswati Kunj, 8, Alipur Road, Civil Lines, New Delhi-110054 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AOZPS8667N | | |

**Assessee by : Sh. Amit Goel, CA &
Sh. Pranav Yadav, Adv.
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 08.11.2023

Date of Pronouncement: 06.02.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-24, New Delhi dated 22.06.2020.

2. Following grounds have been raised by the Revenue:

"1. The Ld. CIT(A) erred in holding that the income assessable u/s 153A is the income as determined u/s 143(3) vide order dated 27.12.2017 after appeal effect, falling to note that there is no valid assessment u/s 143[3] in this case as the Ld. OTA-37 wide an earlier under dated 09.03.2020 had quashed the same.

2. The Ld. CIT(A) erred in not applying the correct position of law while deciding the appeal against assessment u/s 153A, as the pending assessment proceedings u/s 143(3) stood abated on 15.11.2017 and the issue of deduction u/s 54F against bogus capital gain should have been considered in the assessment u/s 153A only.

3. Whether the CIT(A) should not have examined the merits of disallowance of deductions u/s 547 against bogus capital gains in the appeal against u/s 1534, as once the Assessing Officer adopts the income after disallowing the deductions us 54F in the under u/s 1534, the same amounts to an addition in the under u/s 1534, albeit without detailed discussions."

3. A search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out in the Sanjay Singhal Group of cases on 15.11.2017. The assessee filed return of income on 28.09.2015 declaring total income of Rs.4,74,97,680/- which was processed u/s 143(1) of the Income Tax Act, 1961.

4. The pertinent facts are as under:

- Order u/s 143(3) on 27.12.2017 disallowing the LTCG claimed of Rs.4,17,60,000/- on sale of shares of SMS IT Solutions Pvt. Ltd. and determining the total income at Rs.5,25,74,894/-.
- Aggrieved, the assessee filed appeal before the Id. CIT(A).
- Meanwhile, a search & seizure action u/s 132 on the assessee on 15.11.2017.
- Subsequent to the search action, an order u/s 153A has been passed by the Assessing Officer on 18.12.2019 determining the total income at the same amount of Rs.5,27,74,894/- (the correct figure should be Rs.5,25,74,894/-) which was determined u/s 143(3).
- The Id. CIT(A)-37, Delhi vide order dated 09.03.2020 held that, in view of the search conducted on 15.11.2017 on the assessee, the order passed u/s 143(3) dated 27.12.2017 was *null and void*.

- Aggrieved, the assessee filed appeal before the Id. CIT(A)-24.
- The Id. CIT(A)-24 vide order dated 22.06.2020 held that *"the assessment u/s 143(3) of the Act was completed at assessed income of Rs. 5,27,74,894/- by making addition on account of disallowance of deduction u/s 54F/54EC as gain on sale of shares of SMS IT Solutions Pvt. Ltd. taxed u/s 68 of Rs. 50,77,214/-. The appellant has filed separate appeal against this addition. Hence, the Assessing Officer is directed to adopt the income computed/assessed after appeal effect of the appeal order(s) in relation to disallowance of deduction u/s 54F/54EC of Rs. 50,77,214/- in the original assessment order passed u/s 143(3) of the Act. Ground No. 3, 4 and 5 are decided accordingly."*
- Aggrieved, the revenue filed appeal before us pleading that *"the Ld. CIT(A) erred in holding that the income assessable u/s 153A is the income as determined u/s 143(3) vide order dated 27.12.2017 after appeal effect, falling to note that there is no valid assessment u/s 143[3] in this case as the Ld. CIT(A)-37 wide an earlier under dated 09.03.2020 had quashed the same."*

5. In this case, the AO has made addition in order passed u/s 143(3) inspite of the fact that there has been a search and the order ought to have passed u/s 153A without keeping the proceedings u/s 143(3) in abeyance. Hence, the Id. CIT(A)-37 dealing with the order u/s 143(3), held that the order passed u/s 143(3) was *null and void*.

6. Subsequently, the Id. CIT(A)-24 dealing with the order passed u/s 153A, held that since the order passed u/s 143(3) has been declared as *null and void*, did not interfere with the decision of the Id. CIT(A)-37. There was no addition made on

this account in the order passed u/s 153A. Hence, Id. CIT(A)-24 could not have adjudicated on this issue which he rightly did so.

7. Hence, we hold that no interference is called for in the order passed by the Id. CIT(A)-24.

8. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 06/02/2024.

Sd/-

**(Yogesh Kumar US)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 06/02/2024

Subodh Kumar, Sr. PS
Copy forwarded to:

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

ASSISTANT REGISTRAR