

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA Nos. 2901 to 2905/Del/2023
(Assessment Years:2013-14 to 2017-18)

JPMC Hospital and Path Lab, A-40, Gandhi Nagar, Moradabad-244 001 (Appellant)	Vs.	ACIT, Central Circle, Moradabad (Respondent)
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PAN:AADFJ98156B

Assessee by :	Shri Kapil Goel, Adv Shri Sandeep Goel, Adv
Revenue by:	Mr. Waseem Arshad, CIT (DR)
Date of Hearing	21/02/2024
Date of pronouncement	21/02/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA Nos. 2901 to 2905/Del/2023 for AYs 2013-14 to 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-3, Lucknow [hereinafter referred to as 'Id. CIT(A)', in short] dated 28.08.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.04.2021, 27.04.2021, by the Assessing Officer, DCIT/ACIT, Central, Moradabad (hereinafter referred to as 'Id. AO').
2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. Though the assessee had raised several grounds of appeal, the first identical issue involved in all these appeals is as to whether the Id. CIT(A) was justified in confirming the addition made on account of estimation of profits @42.82% of gross receipts based on the seized documents found only for a period of three months in Asst Year 2019-20 and extrapolating it to other earlier assessment years, in respect of unabated assessments on the date of search.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a partnership firm running a hospital under the name and style of M/s JPMC Hospital and Path Lab. It is not in dispute that the time limit for issuance of notice u/s 143(2) of the Act for these assessment years under consideration had already expired as on the date of search conducted u/s 132 of the Act on 17.1.2019. Hence, the assessment for the Asst Years 2013-14 to 2017-18 becomes unabated assessments as on the date of search. Hence any addition that is to be made in these assessment years could be made only when there is any incriminating material found during the course of search. Accordingly, the Id. AO had to simply complete the assessment u/s 153A of the Act by adopting the earlier assessment figures without making any additions thereon. During the course of search, the search team found some undisclosed receipts for a period of three months pertaining to Asst Year 2019-20. The Id. AO while completing the assessment for the year of search had applied the gross profit rate of 42.82% on such undisclosed receipts and estimated the profits of the assessee. Profits were estimated by the revenue for the earlier assessment years (i.e Asst Years 2013-14 to 2017-18 which are unabated assessments) by way of extrapolation on the suspicion that similar unaccounted receipts would be there in earlier years too. Hence the entire addition has been made only on suspicion and surmise without having any support from any incriminating materials found during the course of search in respect of unabated assessments. We find that there is absolutely no seized document found during the search in order to estimate the profit for the unabated assessment years. Hence, the additions made deserves to be quashed. This issue is no longer res integra in

view of the recent decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell P Ltd reported in 454 ITR 212 (SC) wherein it was held that-

"In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A."

5. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, the additions made in the unabated assessment years are hereby directed to be deleted as there is no incriminating material found during the course of search. Accordingly, the grounds raised by the assessee are allowed.

6. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 21/02/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 21/02/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi