

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.3036/Del/2014, 3037/Del/2014, 3038/Del/2014 & 3039/Del/2014
Assessment Years : 2007-08, 2008-09, 2009-10 & 2010-11

M/s Avichal Buildcon Pvt.Ltd., Vs. Deputy Commissioner of
1711, S.P. Mukherjee Marg, Income Tax,
Delhi. Central Circle-4,
PAN : AAFC6846A. New Delhi.
(Appellant) (Respondent)

Appellant by : Shri R.S. Singhvi and
Shri Satyajeet, Advocates.
Respondent by : Shri Ravi Jain, CIT-DR.

Date of hearing : 18.01.2017
Date of pronouncement : 31.01.2017

ORDER

PER G.D. AGRAWAL, VP :-

These appeals by the assessee for the assessment years 2007-08, 2008-09, 2009-10 & 2010-11 are directed against the order of learned CIT(A)-XXXIII, New Delhi dated 23rd January, 2014.

2. The first common ground raised by the assessee in all these appeals reads as under :-

"That having regard to the facts and circumstances of the case, Id.CIT(A) has erred in law and on facts in assuming jurisdiction u/s 153A more so when there was no search u/s 132 of the Income Tax Act, 1961, on the appellant."

3. At the time of hearing before us, the learned counsel made a categorical statement that no search proceedings have taken place at the premises of the assessee. There was no search warrant in the case of the assessee, no panchnamas were drawn and, therefore,

proceedings u/s 153A are void. He also referred to the assessment order and pointed out that the Assessing Officer has mentioned that search and seizure operation u/s 132 was carried out in M/s Dharampal Satyapal Group of cases. There is no mention by the Assessing Officer that the search operation was carried out in the case of the assessee. Learned CIT-DR wanted some time to verify this position. However, both the parties agreed that these appeals can be treated as heard and no order would be pronounced for a period of ten days. In the meanwhile, if the Revenue produces any evidence of search at assessee's place, the cases would be refixed for hearing on merits.

4. After the lapse of ten days, no evidence is produced by the Revenue for search at the assessee's business premises. Therefore, we proceed with the presumption that no search has taken place vis-a-vis the present assessee is concerned. Section 153A reads as under :-

“153A. Assessment in case of search or requisition.- (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—”

5. Thus, Section 153A would be applicable in the case of the assessee where a search is initiated u/s 132 or books of account, other documents or any asset are requisitioned u/s 132A. The Revenue has not been able to point out that either the search has taken place at the premises of the assessee or books of account or document or any other asset are requisitioned u/s 132A in the case of the assessee. Merely because the search has taken place in the other group companies would not be a ground for taking action u/s 153A in the case of the assessee. For the purpose of taking recourse to Section 153A, search u/s 132 or requisition of document/asset u/s 132A in the case of the assessee is an essential condition. Since the same is not

fulfilled, we quash the initiation of proceedings u/s 153A and consequentially, the resultant assessment orders are also quashed.

6. Before we part with this matter, we may mention that even if later on the Revenue is able to find that search had actually taken place at the assessee's premises, they would be at liberty to file the application for recalling the order in accordance with law by producing necessary evidence of search having taken place at the premises of the assessee. With these observations, the appeals of the assessee are allowed as above.

7. In the result, all the appeals of the assessee are allowed as above.

Decision pronounced in the open Court on 31.01.2017.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **M/s Avichal Buildcon Pvt.Ltd.,
1711, S.P. Mukherjee Marg, Delhi.**
2. Respondent : **Deputy Commissioner of Income Tax,
Central Circle-4, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar