

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

**BEFORE,  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.285/Del/2021  
(ASSESSMENT YEAR 2013-14)**

**ITA No.289/Del/2021  
(ASSESSMENT YEAR 2014-15)**

**ITA No.290/Del/2021  
(ASSESSMENT YEAR 2015-16)**

**ITA No.291/Del/2021  
(ASSESSMENT YEAR 2016-17)**

M/s ISOE Printpack Industries Pvt. Ltd. B-1/1691, Vasant Kunj New Delhi-110 070 PAN-AABCI 6734P <b>(Appellant)</b>	Vs.	Asst.CIT Central Circle-06 New Delhi-110 055 <b>(Respondent)</b>
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Appellant by	Mr. Neeraj Mangla, CA
Respondent by	Mr. Waseem Arshad, CIT-DR

Date of Hearing	24/01/2024
Date of Pronouncement	07/03/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

The above captioned appeals are filed by the Assessee pertaining to Assessment Year 2013-14 to 2016-17 against the

orders of Learned Commissioner of Income Tax (Appeals)-24, New Delhi, ["Ld. CIT(A)", for short], dated 29/01/2021.

2. The common grounds of appeal taken in these appeals by the assessee except variance of figures are as under:

1. *On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law and against the principles of natural justice.*
2. *That the learned CIT(A)-24, New Delhi has grossly erred both on the facts and in circumstances of the case and in law by confirming the addition of Rs.6,24,452/- by giving only partial relief on account of unaccounted sales and thereby resulting into unaccounted profit on an estimated basis without any proper reasoning and without any supporting incriminating material found during the survey proceedings, in an arbitrary manner.*
3. *On the facts and in circumstances of the case and in law the Ld. Commissioner of Income-Tax(Appeals) grossly erred by dismissing the ground for generation of single DIN for order assessment u/s 153A of the Income Tax Act, 1961, which is bad in law as per CBDT's circular No.19/2019 dated 14.08.2019.*
4. *That the learned CIT(A)-24, New Delhi has erred on dismissing the ground of the appellant assessee in fact by not allowing assessee's appeal in so far that the ld. AO bringing to tax an additional income which is based on the statement(s) recorded in the course of survey of some non competent and on technical persons in an arbitrary manner and without any supporting finding in this regard.*
5. *That the Ld. CIT(A)-24, New Delhi has erred on the facts and in circumstances of the case and in law by not allowing assessee's appeal in so far that the Ld. AO has not provided proper opportunity of being heard any violated the principle of natural justice by either rejecting or ignoring the submission made by appellant assessee.*
6. *In view of the facts and circumstances of the case the appellant prays that the additions may kindly be deleted or any other order which this Hon'ble Court fit and proper be passed.*

*7. That the appellant craves leave to add, alter amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”*

2.1 The assessee has also filed following additional ground of appeal in all these appeals.

*“That the Ld. AO as well as CIT(A) erred in law and on facts in making addition for unaccounted sales on estimated basis vis-à-vis electricity consumption without appreciating that no addition can be made u/s 153A of the Act without any incriminating material found during the search proceedings. Hence, the addition must be deleted.”*

3. Since the issues involved in the present Appeals are identical, the Appeals were heard together. For the sake of convenience, the brief facts of the case in the Assessment Year 2013-14 have been considered. A search and seizure action u/s 132 of the Income Tax, 1961 ('Act' for short) was carried out in the Jagat/Sood Group of cases on 31/01/2018. A search warrant of authorization u/s 132 of the Act was issued in the name of the assessee on 31/01/2018. Assessee filed original return of income for Assessment Year 2013-14 under Section 139 of the Act on 02/10/2013 declaring total income of Rs. NIL which has been processed u/s 143(1) of the Act on 26/03/2015 no assessment u/s 143(3)/147 of the act was completed before the search. A notice u/s 153A of the Act was

issued on 28/09/2019, in response the assessee filed return of income on 14/11/2019 declaring total income at Rs. NIL. The assessment order came to be passed u/s 153A of the Act on 31/12/2019 by making addition on account of unaccounted sales/unaccounted income of the assessee on the basis of consumption of electricity by calculating the final production rate of finished product per unit of electricity computing at 2.7519 KG per unit of electricity, accordingly, made the addition of Rs. 33,91,428. The Ld. A.O. made the similar additions in all the Assessment Year 2014-15 to 2018-19 which are as under:-

(i)	A.Y 2014-15	Rs. 51,32,006/-
(ii)	A.Y 2015-16	Rs. 94,70,137/-
(iii)	A.Y 2016-17	Rs. 1,52,87,238/-

4. As against the above additions, the assessee preferred Appeals before the CIT(A), the Ld. CIT(A) vide order dated 29/01/2021 confirmed the addition of Rs. 6,24,452/- in Assessment Year 2013-14, Rs. 14,18,436/- in Assessment Year 2014-15, Rs. 28,19,289/- in Assessment Year 2015-16, Rs. 39,70,199/- in Assessment Year 2016-17. Aggrieved by the orders of the Ld. CIT(A), the assessee preferred the present Appeals on the grounds mentioned above.

5. The Ground No. 3 in the Grounds of Appeal is regarding generation of single DIN for the order of the assessment u/s 153A of the Act. The Ld. Counsel for the assessee sought permission to withdraw the Ground No. 3 as not pressed. Recording the submission of the Ld. Assessee's Representative, the Ground No. 3 in all the above appeals are dismissed as not pressed.

6. The assessee has also urged Additional Ground contending that the CIT(A) erred in law and facts in making addition for unaccounted sales on estimated basis vis-à-vis electricity consumption without appreciating that no addition can be made u/s 153A of the Act without their being any material found during the search proceedings, thus, sought for deletion of the addition mad by the A.O. The Ld. Counsel for the assessee drawn our attention to para 5.5 of the Assessment Order and contended that additions have been made on the basis of estimation of production vis-à-vis consumption of electricity over the period time and estimated unaccounted sales derived by extrapolating notional production in all years considering the electricity consumption, the

addition has been made though there was no incriminating material found during the search action. Further submitted that, since there is no existence of incriminating material unearthed during the search, the addition made by the A.O. is contrary to judgment of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 116 CCH 0307 ISCC. Thus, Ld. AR sought for deletion of the addition.

7. Per contra, the Ld. Departmental Representative filed written submission which reads as under:-

*“Assessee's contention based only on abated vis-à-vis unabated assessments, the concept in law not on the existence or otherwise of the incriminating material as a fact in respect of a particular year, Further, the ground or the contention was never raised before the CIT(A) AND THEREFORE the issue as raised I does not relate to the Jurisdictional fact which is the search But to the merits of the addition being based on incriminating material which is a finding on a mixed question of law and facts for every Assessment year.- SUCH A CONTENTION NOT BEFORE THE CIT(A) ENTAILS AN EXAMINATION OF MATERIAL ON THE RECORD.*

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*Show-cause ADDRESSED TO THE ASSESSEE*  
*Incriminating Material*

*-Discrepancy in Books of account ERP-2 and on another version of tally*

*-Excess STOCK Para 11.4.14*

*-Fixed assets, plant and machinery, and their reconciliation with the Books and account, year of installation and bills and invoices pertaining thereto not provided even at the time of the search during survey.*

*-Figures of production arrived at during course of survey based on above discrepancies, statements of production personnel corroborated by the trial run during survey and figures of electricity consumption and the correlation to manufacturing borne out from the survey, therefore constitute incriminating material Accordingly the electricity units consumed per year and their correlation year wise to manufacture as unearthed from the search itself constitute incriminating material for that specific year as complemented by the assets and plant and machinery unexplained and excess stock and the principle of continuity of the sec 114 of the evidence Act.*

*-That the figures of production were suppressed is also borne out by the statements wherein initial statements as regards non operational machines ,slack units were proved to be assertions lacking a factual basis.*

*-The finding of fact of the correlation between units of electricity consumed the production achieved being based on a Trial run in the presence of the Assessee cannot be controverted by a recourse to a legal precept in a case adjudicated by a coordinated authority whose findings are not binding upon the Assessing officer.*

*-Accordingly, the case is whether upon an examination of facts, weighing of evidence and application of law could the said material be construed as incriminating for the year in question and therefore cannot be addressed at the*

*threshold. This is without prejudice to the argument that the said material does constitute incriminating material notwithstanding the continuity principle as applied by the Delhi high court in Chetan Das Laxman Das and the Kerala high court in Travancore Diagnostics.”*

8. We have heard both the parties and perused the material available on record. In all the above appeals the additions have been made on the basis of estimation of production vis-à-vis consumption of electricity over the period of time. The A.O. made addition based on estimated unaccounted sales derived by extrapolating notional production in all years considering the electricity consumption. It is the case of the assessee that there was no incriminating material found on the basis of which the additions have been made. To adjudicate the above issue certain dates and details are to be verified which are as under:-

A.Y	Returned filed on	Time limit for notice u/s 143(2)	Return processed u/s 143(1)	Asst. u/s 143(3) or 147	Status on 31.01.2018
2013-14	02.10.2013	30.09.2014	26.03.2015	NIL	Assessment Unabated
2014-15	07.11.2014	30.09.2015	21.03.2016	NIL	Assessment Unabated
2015-16	25.09.2015	30.09.2016	29.03.2016	NIL	Assessment Unabated
2016-17	30.09.2017	30.09.2017	01.12.2016	NIL	Assessment Unabated



9. As seen from the above, the time limit for issuing notice u/s 143(2) of the Act has been lapsed on the date of search i.e. 31/01/2018 by operation of law. The assessments in the above years under consideration were not pending and the same are unabated. To open the concluded assessment, there should be an incriminating material unearthed during the course of search action u/s 132 of the Act. In the present case, it is the fact that there are no seized material procured during the course of search action which resulted in the addition. The additions have been made based on the estimation of production vis-à-vis consumption of electricity over the period of time. Therefore, the ratio laid down in the Judgment of Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (supra) ie: no addition can be made on the assumption framed u/s 153A de-hors incriminating material found during the search is applicable. We find no merit in the submissions of the Ld. D.R. Accordingly, we allow the Additional Grounds of appeal of the assessee in all the above captioned appeals and quash the assessment orders.

10. Since, we have allowed the additional grounds of Appeal of the assessee and quashed the assessment Orders in all the above matters, we refrain from adjudicating the other grounds of appeal of the assessee.

11. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in open Court on 07<sup>th</sup> March, 2024.

Sd/-

**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 07/03/2024

*Pk/R. N Sr.ps*

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI