

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2260/Del/2023
(Assessment Year: 2016-17)

ACIT,
Central Circle,
Ghaziabad
(Appellant)
PAN:AABTA0477G

Vs. Anand Educational Society,
R-2/83, Sector-2, Raj
Nagar, Ghaziabad
(Respondent)

Assessee by : Shri Satyajeet Goel, Adv
Revenue by: Mrs. Sunita Verma, CIT DR

Date of Hearing 07/03/2024
Date of pronouncement 11/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2260/Del/2023 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-3, Noida [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A)-III/Noida/10650/2015-16 dated 18.05.2023 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 02.08.2021 by the Assessing Officer, DCIT, Central Circle, Ghaziabad (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal :-

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 5,40,000/- made by the AO on account of unexplained unsecured loan u/s 68 of 1 T. Act, 1961 without considering the fact as elaborated in the assessment order.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 2,38,70,000/- made by the AO on account of unexplained advances u/s 69 of the IT Act, 1961, without considering the fact as elaborated in the assessment order.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying the judgment of Apex Court in the case of PCIT Central 3 vs. Abhisar Buildwell Pvt. Ltd and other in the Civil Appeal No. 6580 of 2021 dated 24.04.2023, whereas the apex court in the case PCIT Central-3 vs Abhisar Pvt. Ltd. has discussed the case of M/s Kesarwani Zarda Bhandar, Allahabad wherein it has been observed that the assessing officer has the power to reassess the return of assessee not only for the undisclosed Income which was found during the search operation but also with regard to material that was available at the time of original assessment."

3. We have heard the rival submissions and perused the material available on record. The assessee society is registered u/s 12A of the Act and had applied more than 85% of its receipts for charitable purposes. The assessee runs an educational institute in the name of Hi-Tech Institute of Engineering and Technology at Delhi Hapur bypass, Ghaziabad. A search and seizure action u/s 132 of the Act was carried out on 30.07.2018. Notice u/s 153A was issued to the assessee for AY 2018-19 on 11.02.2021. The assessee filed its return of income on 05.03.2021 declaring total income of Rs. Nil in response to notice u/s 153A of the Act. The assessment was completed u/s 143(3) read with section 153A of the Act on 02.08.2021 after making the following additions:-

- a. addition made on account of unexplained unsecured loan u/s 68 of the Act :- 5,40,000/-
- b. unexplained advances u/s 69 : 2,38,70,000

4. The assessee preferred appeal before the Id CIT(A). The Id CIT(A) adjudicated the aforesaid issues and granted relief to the assessee both on merits as well as on legal aspect that there is absolutely no incriminating material found during the course of search qua these additions by observing as under:-

"6.3 In the ground of appeal no. (i), the appellant had challenged addition of Rs. 5,40,000/- made under section 68 of IT Act considering the same as unexplained unsecured loan. In the assessment order Ld. AO states that during the year under consideration, the assessee has received unsecured loan of Rs. 5,40,000/- from M/s Anvil Ispat Agencies Pvt Ltd. Ld. AO further states that the assessee has furnished the confirmed copy of account of the lender but no other document was furnished. In the assessment proceedings, the appellant explained that a house property has been taken on rent from M/s. Anvil Ispat Agencies Pvt Ltd. for the purpose of providing hostel facility to the students of the college and for the same annual rent of Rs. 6,00,000/- was paid @ Rs. 50,000/- per month. The appellant also explained that after deduction of TDS amount of Rs. 60,000/-, balance outstanding amount was Rs. 5,40,000/- due to repaid to M/s. Anvil Ispat Agencies Pvt Ltd. The appellant also furnished conformed copy of ledger account and ITR of this concern. Ld. AO

observes that no other evidence has been furnished in this regard including the copy of rent agreement and that the appellant is showing rent payable of Rs. 5,40,000/- to M/s. Anvil Ispat Agencies Pvt Ltd however it has filed ITR of only Rs. 1,91,660/-, which means that accrued rental income has not been shown by M/s. Anvil Ispat Agencies Pvt Ltd. Hence the AO concluded that the reply of the appellant was not backed by cogent evidences and therefore addition of Rs. 5,40,000/- was made u/s 68 of IT Act considering the outstanding amount as unexplained cash credit.

6.4 On the other hand Ld. AR submits that the Ld AO had made an addition of Rs. 5,40,000/- u/s 68 of IT Act by considering the same as unsecured loan. Ld. AR submits that as a matter of fact the outstanding balance of Rs. 5,40,000/- was due to be paid to M/s. Anvil Ispat Agencies Pvt. Ltd. from whom assessee has taken residential property situated at KJ-80, Kavi Nagar, Ghaziabad, UP on rent. The said property was taken for a monthly rent of Rs. 50,000/- totaling to Rs. 6,00,000/- per year and the assessee society has also deducted due TDS at the rate of 10% on the amounts payable. Thus the closing balance of amount payable to the said party comes to Rs. 5,40,000/- [50,000 x 12 = 6,00,000 (-) 60,000 [10% TDS on 6,00,000] = Rs. 5,40,000]. Ld. AR submits that the said amount of Rs. 5,40,000/- was actually expense payable as the aforementioned house property being taken from M/s. Anvil Ispat Agencies Pvt. Ltd. was used for hostel purpose of the students of the college. It is submission of Ld. AR that due to an error on the part of the accounts team, the said party was classified as "unsecured loan" rather than "Sundry Creditor" in the books of accounts. He submits that the confirmed copies of account of the said party were submitted along with copy of ITR during the assessment proceedings and the issue was explained in detail. Ld. AR submits that copy of confirmed ledger account of M/s. Anvil Ispat Agencies Pvt. Ltd. for AY 2016-17 is placed at page no. 75 of the paper book. Ld. AR submits that the aforementioned addition has been made purely on the assumptions by Ld. AO. He submits that at para 4.2 of the assessment order, it has been observed that M/s. Anvil Ispat Agencies Pvt. Ltd. has only filed ITR declaring income of Rs. 1,91,660/- as against rent payable in respect of said party by assessee of Rs. 5,40,000/-, thus Ld AO presumed that M/s. Anvil Ispat Agencies Pvt. Ltd. has not shown rental income. However this observation of Ld AO is incorrect and bad in law Ld. AR submits that the Ld. AO was unable to bring in any corroborative evidence whereby it could be said that M/s. Anvil Ispat Agencies Pvt. Ltd. has not disclosed rental income. The fact of the matter is that in the Income Tax Return Acknowledgement only the profit figures are disclosed and there is no column or place where the total revenue/ turnover is disclosed, therefore merely placing reliance on ITR acknowledgement disclosing income of Rs. 1,91,660/- as against rental receipts of Rs. 5,40,000/- is against facts of the case.

Ld. AR submits that as per the provisions of section 68 of the Income Tax Act, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year, hence it can be seen that in actual there is no unexplained cash credit case in the impugned transaction, the Ld AO seems to be misdirected at one hand she admits it to be an outstanding amount against rental expenditure and on the other hand, she considers it to be an unexplained credit, only due to a fact that said amount has wrongly been classified

as "unsecured loan" in the balance sheet. Thus he submits that the instant amount is in no case an unexplained cash credit, that is in actual no amount has been received by the appellant from said party in the year under consideration, and in actual it is an expense, hence no addition can be made u/s 68 of IT Act.

6.5 From the facts of the case it has been found that the appellant i.e. M/s. Anand Educational Society has taken a residential property situated at KJ-80, Kavi Nagar, Ghaziabad, UP on rent from M/s. Anvil Ispat Agencies Pvt. Ltd. The said property was taken for a monthly rent of Rs. 50,000/- totaling to Rs. 6,00,000/- per year and the assessee society has also deducted due TDS at the rate of 10% on the amounts payable and thus the closing balance of amount payable to the said party comes to Rs. 5,40,000/-. In the assessment proceedings, the appellant explained the nature of transaction as also copy of ITR of M/s. Anvil Ispat Agencies Pvt. Ltd. was filed. However without conducting any inquiry Ld. AO concluded that this concern has not included rental income in its return. In-fact no credit entry has been received by the appellant from this party and the outstanding dues are created monthly on account of monthly rentals. Therefore looking to the facts and circumstances, there is no case of invocation of provisions of section 68 of IT Act in this issue. Hence the addition made by Ld. AO cannot be sustained.

6.6 In the ground of appeal no. (ii), the appellant challenges addition of Rs. 2,38,70,000/- made u/s 69 of IT Act on account of advances given by the appellant to Daya Steel Agencies Pvt Ltd., an associated concern of the same group. In the assessment order Ld. AO states that in this case, an information was received from Exemption Circle, Ghaziabad that the assessee has given an advance of Rs. 2,38,70,000/- to M/s Daya Steel Agencies Pvt. Ltd. for purchase of property during the year under consideration. In the assessment proceedings, the assessee was asked to furnish the details of advances forwarded by it alongwith confirmation of parties and sources of funds. AO states that the assessee furnished reply on 24.06.2021, along with confirmed copy of ledger account of M/s Daya Steel Agencies Pvt Ltd and its bank statement. Ld. AO states that the assessee did not furnish its own bank statement to explain the source. Ld. AO states that on perusal of the ledger account it is seen that Rs. 2,25,00,000/- has been shown to be transferred on 04.06.2015 with narration "Anand Educational Society-Prop." however, this entry is not appearing anywhere in the bank statement of M/s Daya Steel Agencies Pvt Ltd. Ld. AO observes that no other details of this amount transferred to M/s Daya Steel Agencies Pvt Ltd has been furnished. Thus Ld. AO states that despite providing sufficient opportunities, the assessee failed to furnish details to prove the source of advances given to M/s. Daya Steel Agencies Pvt Ltd. Hence, the amount of Rs. 2,38,70,000/- has been treated as advance forwarded from undisclosed sources and hence the same has been added to the income of the assessee u/s 69 of IT Act.

6.7 On the other hand Ld AR submits that the Ld AO has made addition of Rs. 2,38,70,000/- being advance given to M/s Daya Steel Agencies Private Limited by stating that assessee has forwarded an advance from undisclosed sources. In the instant case the amount which has been disputed is duly recorded in the books of accounts still Ld. AO has considered the same as unexplained. It is submission of Ld AR that during the assessment proceedings the appellant society has furnished the confirmed copy of accounts of M/s. Anand Educational Society in the books of M/s. Daya Steels Pvt. Ltd. wherein the balance as appearing in appellant's books was matching. He further explains that as a matter of fact the appellant was running a college in the name of 'Hi-Tech Institute of Engineering and Technology' and it has

been maintaining separate books of accounts for the same, for its effective management. The said unit was part of M/s. Anand Educational Society (appellant) and it also had a bank account in its name. He submits that the Ld. AO has erred in understanding the basic accounting entries. The Ld. AO at para No. 5.2 of the impugned had stated that it could not verify the entry dated 04.06.2015 of Rs. 2,25,00,000/- in the bank statement of M/s. Daya Steel Agencies Pvt. Ltd., however as a matter of fact the appellant had already disclosed the fact that Rs. 2,25,00,000/- was paid in various parts for which a ledger extract in the books of appellant M/s. Anand Educational Society for the year under consideration was provided and the same is placed at page no. 111 of the paper book. The details of transactions are as follows:-

S.No	Bank A/c. details	Name	of Account	Date	Amount
		Holder			(Rs)
1	Punjab National Bank A/c. 0674000100355502	Anand Soceity	Educational	05.05.2015	90.00,000/-
2	Punjab National Bank A/c. 0674000100355502	Anand Soceity	Educational	08.05.2015	1,00,00,000/-
3.	Punjab National Bank A/c. 0674000100355502	Anand Soceity	Educational	04.06.2015	35.00.000/-
					2,25,00,000/-

Ld. AR submits that the observation of Ld AO is incorrect since he could not appreciate that the appellant was maintaining separate books for the appellant society in the form of Head Office and for the college, another set of books was prepared and both of these were consolidated in the year-end. Thus amount of Rs. 2,25,00,000/- was paid through the bank account maintained in the name of the society M/s. Anand Educational Society and the said balance was transferred to the appellant's own college where the account of M/s. Daya Steel Agencies Pvt. Ltd. was maintained. These entries were initially recorded in ledger account with heading "Anand Educational Society - Prop." since payment was made through bank account held in the name of "Anand Educational Society" and then transfer entry was posted in ledger account of "M/s. Daya Steel Agencies Pvt. Ltd." in books of "Hi-Tech Institute" on 04.06.2015. Though being the payments recorded in different set of books maintained by the appellant, the payments were made to single entity - "M/s. Daya Steel Agencies Pvt. Ltd." which is evident from its bank statement and Copy of confirmed ledger account of "Anand Educational Society" in the books of "M/s. Daya Steel Agencies Pvt. Ltd." produced on record. Ld. AR submits that the copy of bank statement of M/s Anand Educational Society maintained with Punjab National Bank bearing account no. 0674000100355502 for the A.Y. 2016-17 is placed at page no. 112 to 113 of the paper book from which all the transactions can be verified.

6.8 From the facts of the case as explained in detail, it is very clear that Ld. AO could not appreciate the advances made to M/s. Daya Steel Agencies Pvt Ltd. amounting to Rs. 2,38,70,000/-, though the same were duly recorded in the books of account of M/s. Anand Educational Society and hence the source of the same was duly explained. Therefore looking to the fact and circumstances of the case, the

addition of Rs. 2,38,70,000/- made by AO u/s 69 of IT Act cannot be sustained. Hence the same is deleted and relief is allowed to the appellant.

6.9 During the proceedings, Ld. AR also submitted that in this case in the year under consideration, addition is not based on the seized material and hence the assessment order cannot be made u/s 153A of IT Act. Ld. AR has placed reliance in the recent judgment of Hon'ble Supreme Court in case of PCIT Central-3 vs Abhisar Buildwell Pvt Ltd. and others in the Civil Appeal no. 6580 of 2021 and connected appeals filed by the Revenue as well as various other assessees in the judgment delivered on 24.04.2023 (Hon'ble Judges Sh. MR Shah and Sh. Sudhanshu Dhulia), in which following observation has been made:

.....14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

15. Insofar as the aforesaid Civil Appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under Section 143(1)(a) or

143(3) of the Act, 1961 and to reassess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

16. Insofar as the aforesaid appeals filed by the assessee - Dayawanti through legal heir against the impugned common judgment and order dated 27.10.2016 passed by the High Court of Delhi at New Delhi in ITA Nos. 357/2015, 358/2015, 565/2015 and 566/2015. The question before the High Court was, whether the Income Tax Appellate Tribunal was justified in upholding the addition made on the basis of the incriminating material during the course of search

16.1 In view of the aforesaid discussion and the reasoning, all these appeals filed by the assessee - Dayawanti through legal heir fail and the same deserve to be dismissed and are accordingly dismissed No costs.

Ld. AR submits that in view of this decision of Hon'ble Supreme Court, the issue stands settled that if there is no incriminating material, the assessment cannot be framed u/s 153A of IT Act.

6.10 Looking to the facts and circumstances of the case and latest decision of Hon'ble Supreme Court in case of PCIT Central-3 vs Abhisar Buildwell Pvt Ltd. and others in the Civil Appeal no. 6580 of 2021 and connected appeals filed by the Revenue as well as various other assesseees in the judgment delivered on 24.04.2023 (Hon'ble Judges Sh. MR Shah and Sh. Sudhanshu Dhulia), I am of the opinion that both the additions ie. Rs. 5,40,000/- made u/s 68 of IT Act and Rs. 2.38,70,000/- made u/s 69 of IT Act cannot be sustained. Hence the same are deleted and relief is allowed to the appellant All the concerned grounds of appeal are adjudicated accordingly

6.11 In the ground of appeal no. (iv), the appellant submits that Ld. AO has erred in initiating penalty proceeding u/s 271(1)(c) of IT Act. In this regard, it is observed that no appeal lies against initiation of penalty proceedings, hence the submission of appellant is not tenable, therefore the concerned ground of appeal is dismissed.

7. Result

In the result, for statistical purposes the appeal is partly allowed."

5. There is absolutely no dispute that the year under consideration is an unabated assessment as on the date of search. The return of income was filed by the assessee on 08.01.2017 u/s 139 of the Act for AY 2016-17. The due date for issuance of notice u/s 143(2) of the Act expired on 30.09.2017. Admittedly no notice u/s 143(2) of the Act was issued to the assessee for AY 2016-17 prior to search on 30.07.2018. Hence, as on the date of search, assessment year 2016-17 assessment was completed and hence becomes unabated. Even if completed assessment is to be disturbed in the search assessment framed u/s 153A of the Act, the law requires the existence of incriminating material found during the course of search qua each of the additions proposed thereon. Admittedly, there is absolutely no incriminating material found during the search for framing the aforesaid addition in the search assessment proceedings for AY 2016-17 in the hands of the assessee. 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. Abisar Buildwell Pvt. Ltd 454 ITR 212. This fact is also cleared from the ground raised by the revenue. Hence, we do not find any infirmity in the order of the Id CIT(A). Accordingly, grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 11/03/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/03/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi