

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.8644/DEL/2019
Assessment Year 2012-13

Meera Gupta A-76, Sector-17 GB Nagar, Noida Uttar Pradesh	Vs.	DCIT Circle-20(1) New Delhi
TAN/PAN: AAMPG3386P		
(Appellant)		(Respondent)

Appellant by:	Shri Suresh Kumar Gupta, Adv.		
Respondent by:	Sh. Subhra Jyoti Chakraborty, CIT-DR		
Date of hearing:	05	03	2024
Date of pronouncement:	13	03	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi ('CIT(A)' in short) dated 20.09.2019 arising from the assessment order dated 30.12.2016 passed by the Assessing Officer (AO) under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. In the captioned appeal, the assessee has raised several grounds and has *inter alia* challenged the action of the Revenue Authorities over the legitimacy of additions/disallowances made under Section 153A of the Act. We thus deem it expedient to dispose of the aforesaid preliminary ground as it strikes to the root of the matter.

3. Briefly stated, in the present case, a search action under Section 132 was conducted on the assessee on 12.11.2014. Consequently, notice under Section 153A of the Act was issued and proceedings under Section 153A were set in motion. An assessment order under Section 153A r.w.

Section 143(3) was framed for the Assessment Year 2012-13 in question and several additions were made by the AO to the income returned under Section 153A of the Act.

4. In the first appeal, the CIT(A) confirmed the action of the Assessing Officer towards additions of Rs.20 Lakh under Section 68 of the Act and Rs.5 Lakh under Section 69 of the Act.

5. Aggrieved, the assessee preferred appeal before the Tribunal to assail the action of CIT(A).

6. When the matter was called for hearing, the Id. counsel submitted at the outset that the search was conducted in the present case on 12.11.2014 and the assessment for A.Y. 2012-13 already stood concluded at the time of search and remained unabated. Therefore, the additions made under Section 153A is squarely dependent upon the discovery of any incriminating document in the course of the search in the case of assessee as held in landmark judgment rendered by the Hon'ble Apex Court in the case of *CIT vs. Abhisar Buildwell (P) Ltd. (2023) 149 taxman.com 399 (SC)*. Consequently, the scope of assessment under Section 153A is restricted to the incriminating material found in the course of search in the case of the assessee.

6.1 The Id. counsel thereafter adverted to panchnama dated 12.11.2014 drawn in the case of the assessee as placed in pages 1-7 of the paper book and pointed out that the list of inventories found and seized in the course of search do not make reference to any document to implicate the assessee on both the impugned additions carried out by the AO. The Id. counsel further referred to the assessment order and submitted that the assessment order itself makes it clear that material was purportedly found in the course of search of other person and not in the case of the assessee.

6.2 On facts, the Id. counsel submitted that the addition of Rs.20 Lakh is based on the allegation that Mr. Y.K. Gupta has received Rs.20 Lakh

in cash towards sale of property no. G-260, Khuskhera. Such transaction was stated to be noted in the document found from the office of Mr. Y.K. Gupta. Thus, in such backdrop, a valid proceeding for addition could be initiated if any, probably under the shelter of Section 153C in distinction to present proceedings under 153A which is confined to the documents found and seized from the premises of the assessee. Likewise, additions of Rs. 5 Lakh is also unsustainable in law being outside the scope and ambit of Section 153A in an unabated assessment owing to absence of any incriminating material discovered during the course of search in the case of the assessee. The Ld. Counsel contended that in paragraph 9 of the assessment order, the AO has observed that the alleged unexplained expenditure of Rs. 5 Lakh is vouched from the incriminating material found and seized from the office premises of Sunworld Group. Thus, the alleged incriminating material found from the premises of Sunworld Group cannot provide basis for assumption of power for assessment under Section 153A either.

6.3 The ld. counsel referred to various decisions by the Co-ordinate Bench in identical facts listed hereunder:

- *Trilok Chand Choudhary vs. ACIT, ITA No.5870/Del/2017 order dated 20.08.2019*
- *ACIT vs. Real Marketing P. Ltd. & Ors, IT (SS)A No.128-133/Ahd/2021 order dated 19.05.2023*
- *ACIT vs. Moon Beverages Ltd., ITA No.115 to 118/Del/2018, order dated 27th November, 2020*
- *DCIT vs. Mapsa Tapes P. Ltd., ITA No.3539/Del/2017 order dated 17.12.2021*
- *ACIT vs. Atul Kumar Gupta, ITA No.1931/Del/2020 order dated 17.02.2023*

7. The ld. DR for the Revenue, on the other hand, relied upon the order of the lower authorities.

8. We have perused the orders of the authorities below and examined

the merit of legal contentions raised on behalf of the assessee and counter raised on behalf of the Revenue.

8.1 It is the case of the assessee that impugned additions/disallowances could not be made in the assessment proceedings framed under Section 153A of the Act *de hors* reference to any incriminating material found in the course of search in the hands of the assessee. It is further case of the assessee that neither panchnama drawn in the hands of the assessee nor the assessment order makes reference to any incriminating material unearthed from the possession or control of the assessee in relation to impugned additions. The foundation for making additions under Section 153A is thus absent in the present unabated assessment as held in *Abhisar Buildwell (supra)*.

8.2 The appeal of the assessee thus hinges around a pertinent legal point as to whether, while making assessment under section 153A, the Revenue is entitled to interfere with unabated assessment which stood concluded either under section 143(1) or under section 143(3) and not pending at the time of search in the absence of any incriminating material unearthed as a result of search in the case of assessee.

9. As pointed out on behalf of the assessee, there is a total absence of reference to any incriminating material which may have any bearing to the impugned additions/disallowances. The Assessing Officer has relied on material found in a different search proceedings. There is no rebuttal from revenue on this pertinent aspect. As a corollary, it is manifest that additions/disallowances have been made without reference to any specific incriminating material/document found as result of search and seizure action under Section 132 of the Act and such additions are solely based on certain information/material collected against the assessee in the course of search in another case.

10. Guided by the principles laid down in the case of *Abhisar Buildwell (P.) Ltd. (SC)(supra)*, and view expressed by Co-ordinate

Bench in cases cited, we find force in the legal plea raised on behalf of the assessee. Hence, in the absence of any incriminating material in an unabated assessment, additions/disallowances made by the AO is unsustainable within the remit of s. 153A of the Act and consequently the additions under challenge in the captioned appeal requires to be quashed. In this view of the matter, we do not consider it necessary to adjudicate other legal and factual aspects concerning additions/disallowances.

11. In the result, the captioned appeal of the assessee is allowed.

Order pronounced in the open Court on 13/03/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **13/03/2024**

Prabhat/Pramod

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar