

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.843/DEL/2022
(Assessment Year: 2011-12)**

DCIT, Central Circle 32,
Delhi.

vs.

RNB Mercantile Pvt. Ltd.,
House – 1, Shivaji Enclave,
Main Road,
Opp. Mother Dairy Near Raja Garden,
New Delhi – 110 027.

(PAN : AABCR9334G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aman Garg, CA

REVENUE BY : Shri P.N. Barnwal, CIT DR

Date of Hearing : 12.03.2024

Date of Order : 14.03.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. CIT
(Appeals)-30, New Delhi dated 28.02.2022 for the assessment year 2011-12.

2. The Revenue has taken the following grounds of appeal :-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in quashing the proceedings u/s 153A and deleting the additions made by the AO.

2. On the facts and in the circumstances of the case, the CIT(A) did not consider the facts of the case.

3. On the facts and in the circumstances of the case, the CIT(A) has erred in not deciding the case on merit and decided the case only on ground 7 & 12 raised by the appellant.

4. The order of the CITCA) is erroneous and is not tenable on facts and in law.”
3. Brief facts of the case are that search and seizure operation under section of the Income-tax Act, 1961 (for short ‘the Act’) was carried out in the case of Bajaj Group on 20.04.2017. Consequently, notice under section 153A of the Act was issued by the AO. AO assessed the income of the assessee at Rs.6,39,62,330/- as against the returned income of Rs.5,62,330/- by making an addition of Rs.6,34,00,000/- on account of unexplained investment in shares under section 68 of the Act.
4. Upon assessee’s appeal, ld. CIT (A) noted that addition was made *de hors* of any incriminating material found, hence he deleted the addition. The observation of the ld. CIT (A) may be gainfully read as under :-

“Moreover, in the case of the appellant the addition made by the AO of Rs.6,34,00,000/- on account of investments in preference shares is otherwise unwarranted under the provisions of the Act. The year under consideration being the year which falls beyond the period of 6 years and is covered in the extended period of 10 years from the end of relevant assessment year as per the amendment vide Finance Act, 2017, the AO was authorized to issue notice under section 153A only where he is in possession of any tangible evidence found during the course of search which reveals any undisclosed investment in the form of asset in the hands of the assessee. However, in the present case of the appellant, in the assessment order there is no reference to any such tangible evidence found during the course of search leading to any undisclosed investment in the form of asset being made by the appellant. The preference shares of Rs.6,34,00,000/- are appearing in the schedule of investments of audited financial statements of the appellant company. Further there is no finding/ observation of the AO that the said investment was not disclosed in the financial statements. Hence, the AO was not justified in reopening the case for the year under consideration by issuing notice under section 153A without referring to any books of account, other documents or evidence which reveal the escapement of income as per the 4th proviso to Section 153A which is pre- condition to issue notice in the relevant assessment year (i.e. beyond six assessment years). In view of these facts the assessment framed under section 153A for the year under consideration is hereby quashed and addition made by the AO of Rs.6,34,00,000/- is hereby directed to be deleted.”

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

6. Ld. DR for the Revenue fairly accepted that addition is made *de hors* of any incriminating material found in this case.

7. Ld. Counsel of the assessee, on the other hand, submitted that investment in preference shares has been duly disclosed in the financial statement. He further submitted that AO has not made reference to any incriminating material found in this case. Hence, he submitted that the issue is squarely covered in favour of the assessee by catena of case laws. He submitted that recently this position was affirmed by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. vide order dated 24th April, 2023.

8. Upon careful consideration, we find that it is undisputed that addition in this case was made without any incriminating material found during search and seizure operation. In this view of the matter, ld. CIT (A)'s view is correct one and duly supported by case laws in this regard. Accordingly, in the background of the aforesaid precedent and factual position, we do not find any infirmity in the order of the ld. CIT(A). We affirm the same.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this 14th day of March, 2024.

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 14th day of March, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**