

आयकर अपीलिय अधिकरण  
दिल्ली पीठ " जी ", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER  
आअसं.2769 & 2770/दिल्ली/2023 (नि.व. 2012-13 और 2014-15)  
ITA Nos.2769 & 2770/DEL/2023 (A.Ys.2012-13 & 2014-15)

Sanjay Gupta,  
90A, J & K Block, Laxmi Nagar,  
Delhi 110092  
PAN No. AKXPG-8396-A

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,  
Central Circle-05, A.R.A Centre,  
Jhandewalan Extension, New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri S. K Gupta, CA  
प्रतिवादीद्वारा/ Respondent by : Shri Dharm Veer Singh, Sr. DR  
सुनवाई की तिथि/ Date of hearing : 23/04/2024  
घोषणा की तिथि/ Date of pronouncement : 26/04/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)(24), Delhi [in short 'the CIT(A)'] for the Assessment Years 2012-13 & 2014-15, respectively. Both the impugned orders are of even date i.e. 11.09.2020.

2. Since, these appeals emanate from identical set of facts and similar issues are involved in both appeals, these appeals are taken up together for adjudication and are decided by this common order.

**ITA No. 2769/Del/2023 for AY 2012-13**

3. Shri S. K Gupta, appearing on behalf of the assessee submitted at the outset that he is not pressing ground no. 1 and 3 of appeal challenging validity of assessment made u/s. 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The Id. Authorized Representative of the assessee pointed that the solitary issue in appeal is that the addition has been made without there being any incriminating material found during the course of search. He submitted that a search and seizure operation u/s. 132 of the Act, was carried out on 02.03.2017. No incriminating material whatsoever was found during the course of search in respect of assessment year under appeal. Nor there was any pending assessment for the impugned assessment year, still the AO made addition of Rs. 9,39,100/- u/s. 69A of the Act.

4. Aggrieved by the assessment order, the assessee carried the issue in appeal before the CIT(A), *inter alia* challenging the addition made u/s. 69A of the Act. The CIT(A) upheld the assessment order. The Id. AR pointed that in the office note the AO has admitted the fact that no incriminating material was found during the course of search relating to assessment year under appeal, nor it is a case of abated assessment. The Id. AR submitted that it is a well-settled law that in the absence of any incriminating material no addition can be made in assessment u/s.

153A of the Act. In support of his contentions, he placed reliance of the following decisions:

**1. PCIT v. Abhisar Buildwell (P.) Ltd, 149 taxmann.com 399 (SC)**

**2. CIT v. Kabul Chawla, 61 taxmann.com 412 (Del)**

5. Per contra, Shri Anuj Garg, Sr. DR, representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submitted that during the period relevant to assessment year under appeal, cash deposits of Rs. 9,39,100/- were reflected in bank account of the assessee. The assessee was asked to explain the source of cash deposits. Though the assessee explained that the cash deposits were out of past savings and amount realized from sales, however, there was no documentary evidence to support the said contention. Hence, the AO made addition of said cash deposits u/s. 69A of the Act.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. On perusal of the assessment order and the order of CIT(A) it is observed that they do not refer to any incriminating material found and seized during the course of search. It is also an undisputed fact that at the time of search there was no pending assessment. Thus, it is a case of unabated assessment. The Id. AR has drawn our attention to the office note annexed to the assessment order, which reads as under:

***“Office note:- There is no incriminating material found during the course of search, in the case, relating to assessment year, under consideration, nor the case was abated. Therefore, assessment is made on Rs. 11,17,820/-.***

**Sd/-  
Assistant Commissioner of Income-Tax**

**Central Circle-5, New Delhi”**

7. Thus, from the documents on record it is evident that there was no incriminating material before the AO to make addition in assessment proceedings u/s. 153A of the Act. The Hon’ble Apex Court in the case of PCIT v. Abhisar Buildwell (P.) Ltd (supra) has held that in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during the course of search u/s. 132 of the Act. Thus, in the facts of the case and the aforesaid decision of the Hon’ble Apex Court, we find merit in ground no. 2 and 4 of appeal of the assessee. Hence, the same are allowed.

8. The Id. AR of the assessee has made statement at bar that he is not pressing ground of appeal no. 1 and 3. In view of the aforesaid statement, ground no. 1 and 3 of appeal are dismissed as not pressed.

9. In the result, appeal of the assessee is partly allowed.

**ITA No. 2770/Del/2023 (AY 2014-15)**

10. Both sides are unanimous in stating that the facts germane to the issues in appeal are identical to AY 2012-13. The Id. AR made statement at bar that he is not pressing ground no. 1 and 3 of appeal. Thus, in view of the statement made by the AR of assessee, the aforesaid grounds are dismissed as not pressed.

11. In ground no. 2 and 4 of appeal, the assessee has assailed addition of Rs. 2,02,000/- u/s. 69A of the Act. The addition has been made in assessment proceedings u/s. 153A of the Act. The AO in Office Note annexed to assessment order has recorded that no incriminating material was found during the search

and no assessment has abated. Since, the facts are identical to AY 2012-13, the findings given by us while deciding the appeal for AY 2012-13 would mutatis mutandis apply to the present appeal. Hence, ground no. 2 and 4 of appeal are allowed for parity of reasons.

12. In ground no. 5 of appeal the assessee has assailed addition of Rs. 50,000/- u/s. 68 of the Act. Since, the aforesaid addition does not stem from any incriminating material found and seized during search action, the addition is unsustainable for the reasons given while adjudicating ground no. 2 and 4 of t appeal. Thus, ground no. 5 of appeal is allowed for similar reasons.

13. In the result, appeal of the assessee is partly allowed.

14. **To sum up, appeal of the assessee for AY 2012-13 and 2014-15 are partly allowed.**

Order pronounced in the open court on Friday the 26<sup>th</sup> day of April, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 26/04/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar) ITAT, DELHI