

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2735/DEL/2023 [A.Y. 2014-15]
ITA No. 2736/DEL/2023 [A.Y. 2015-16]
ITA No. 2737/DEL/2023 [A.Y. 2016-17]

The Dy CIT [E]
Central Circle - 16
Delhi

Vs.

Kawatra Tent And Caterers Pvt Ltd
5/108, Subhash Nagar
Delhi

PAN - AAECK 2061 L

(Applicant)

(Respondent)

Assessee By : Shri Manoj Gupta, CA
Department By : Shri Mukesh Kumar Jha, CIT-DR

Date of Hearing : 08.05.2024
Date of Pronouncement : 22.05.2024

ORDER

PER BENCH:-

The above captioned three separate appeals by the Revenue are preferred against three separate orders of the ld. CIT(A), New Delhi dated 05.07.2023 pertaining to Assessment Years 2014-15, 2015-16 and

2016-17 respectively. All these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The sum and substance of the grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition made by the Assessing Officer on account of the same being devoid of any incriminating material found during the course of search, rendering the assessment order bad in law.

3. The challenge before us is that whether the impugned assessment orders are devoid of any incriminating material found at the time of search and therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573 affirmed by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt Ltd 454 ITR 212 squarely apply making the impugned assessment order null and void.

4. Briefly stated, the facts of the case are that during the search operation conducted on Kawatra Tent Group, the premises of the assessee was also covered on 03.05.2018 u/s 132 of the Income-tax

Act, 1961 [the Act, for short], and a number of incriminating documents were found and seized. This included documents relating to cash sales which were not accounted for in the books of account. The Assessing Officer summarized the accounted and unaccounted sales based on seized documents. On the basis of this data, the ratio between total sales and unaccounted sales for the corresponding functions was calculated and termed as "Sale Suppression Factor". On the basis of the sale suppression factor, the Assessing Officer made an addition of Rs. 4,28,43,828/- for A.Y 2014-15, Rs. 5,99,57,099/- for A.Y. 2015-16 and Rs. 8,39,44,391/- for AY 2016-17 on account of unaccounted business receipts.

5. The assessee agitated the matter before the ld. CIT(A) and vehemently contended that the entire addition is devoid of any incriminating material found at the time of search and since the addition has been made without there being any incriminating material, it should be deleted.

6. In turn, the ld. CIT(A) after considering the facts and submissions, allowed the appeal of the assessee. The ld. CIT(A), after considering the facts and submissions, was of the view that the

Assessing Officer has made additions for AYs 2014-15, 2015-16 and 2016-17 without having possession of any incriminating material. The incriminating material found in the course of search pertained to AYs 2013-14, 2017-18, 2018-19 and 2019-20. As there was no reference to seized material nor any statement recorded during the search or during the proceedings for the A.Ys under consideration, the CIT(A) held that the Assessing Officer was not justified in assuming jurisdiction u/s 153C of the Act and therefore the proceedings initiated u/s 153C was void ab initio and held as under:

“5.2.2 In view of the above, it has been seen that the addition made by the assessing officer is without incriminating material/evidence found during the search proceedings, The additions have been made on the basis of certain documents pertaining to A.Y. 2013-14 2017-18, 2018-19 and 2019-20, based on which estimation of sales considering the suppression factor was made. There is neither any reference to any seized material nor to any statement recorded during the search or during assessment proceedings for the AY under consideration. In view of the facts of the case and various decisions including CIT Vs. Kabul Chawla [2016] 380 ITR 573 (Del) *(the case of Kabul Chawla has been affirmed by the Hon 'ble Supreme Court in the lead case being Abhisar Buildwell vide judgment (dated 24.04.2023 (2023) 149 taxmann.com 399 and has affirmed that if there is no incriminating material found during search proceedings no addition under section*

153A could be made in case of completed/unabated assessment years.) and Pro CIT Vs. Meeta Gutgutia reported in 257 taxsmann.com 441 (SC) (Wherein Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court), it is held that in absence of any incriminating material found during search, the AO was not justified in assuming jurisdiction U/s 153C of the Act .so as to proceed against the appellant and hence the proceedings initiated u/s 153C of the Act was void ab-initio and the order passed U/s 153C of the Act is quashed. Accordingly, the ground no 1 of the appeal is allowed"

7. Now the Revenue is aggrieved and is in appeal for the above three AYs against this relief given by the ld. CIT(A).

8. Before us, the ld. DR could not point out any factual error in the findings of the ld. CIT(A). The ld. DR, however, heavily relied on the decision of the Hon'ble Delhi High Court in the case of Chetan Das Laxman Das order dated 07.08.2012 to buttress the point that extrapolation on the basis of seized documents can be made in A.Ys where no seized material was found.

9. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. The ld AR pointed out to the

order of the Assessing Officer to show that AO himself admits in his order that the seized incriminating material pertained to AY 2013-14, 2017-18, 2018-19 and 2019-20 only. The ld AR further contended that the seized documents pertaining to different AYs was utilized for making addition in the impugned assessment years. The Assessing Officer relying on Bombay High Court decision in the case of Harish Textiles Engineers extrapolated the sale for the impugned AYs. The ld AR vehemently argued that the Assessing Officer cannot extrapolate the sales for the instant impugned years on the basis of different A.Ys for which the incriminating material were found and he relied on the decision of the Delhi High Court in the case of Kabul Chawla and the Supreme Court in the case of Abhisar Buildwell.

10. We have carefully perused the orders of the authorities below. Having heard the rival submissions and perusing the relevant material on record we find that the search on the assessee was conducted on 03.05.2018 and the impugned A.Ys have been processed u/s 143(1) of the Act prior to the date of search. We find that the ld. CIT(A) has given a categorical finding for the A.Ys under consideration i.e., for A.Y 2014-15, 2015-16 and 2016-17 that the incriminating seized materials pertain to A.Ys 2013-14, 2017-18, 2018-19 and 2019-20. We

find that nowhere in the assessment order the Assessing Officer has mentioned that the seized material pertain to A.Y 2014-15, 2015-16 and 2016-17.

11. In fact, the Assessing Officer himself admits that there is no incriminating material for A.Y 2014-15, 2015-16 and 2016-17 when he writes in his order “From the seized material, it can be seen that the same pertain to AY 2013-14, AY 2017-18, AY 2018-19 and AY 2019-20 covering major part of the periods under assessments”. We find that the AO has made the additions on the basis of assumption and inference when he further writes that “it can be safely inferred that assessee is engaged in suppression of sales since AY 2013-14 and it cannot be said that for AY 2014-15, 2015-16 and 2016-17 the assessee has not suppressed sales.” (emphasis supplied). The ld. DR could not rebut this pertinent fact that there is a total absence of reference to any incriminating material for the impugned AYs. The fact that emerges, therefore, is that the additions were made without any reference to incriminating material in the impugned A.Ys of 2014-15, 2015-16 and 2016-17.

12. The Hon'ble Supreme Court has set at rest the entire quarrel revolving around the assessments devoid of incriminating material.

The relevant findings are as under:

23. "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;

iii) 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."

13. The ratio laid down by the Hon'ble Supreme Court in the case of *Abhisar Buildwell* 454 ITR 212 (SC), [supra] squarely apply to the facts and circumstances of the instant case. The impugned addition is not based on any incriminating material found relevant to the A.Ys under consideration. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A) and consequently the action of the CIT(A) in quashing the orders of the AO is confirmed. However, it is pointed out that the CIT(A) has held that Assessing Officer was not justified in assuming jurisdiction u/s 153C whereas the correct position is that Assessing Officer has passed order u/s 153A r.w.s 143(3) of the Act. To that extent, the decision of the CIT(A) is modified.

14. In the result, the appeals of the Revenue in ITA Nos. 2735, 2736 and 2737/DEL/2019 stand dismissed.

The order is pronounced in the open court on 22.05.2024.

Sd/-

Sd/-

[MADHUMITA ROY]
JUDICIAL MEMBER

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 22nd MAY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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