

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'C' NEW DELHI)**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 2871/Del/2022, (A.Y. 2014-15)**

Sh. Inder Chand Bajaj AE-17, 2 nd Floor, Tagore Garden, West Delhi-110027 PAN: ABFPB2238R	Vs.	DCIT Central Circle-32, New Delhi
Appellant		Respondent

Assessee by	Sh. Aman Garg, CA
Revenue by	Mr. Javed Akhtar, CIT (DR)

Date of Hearing	27/05/2024
Date of Pronouncement	29/05/2024

ORDER

PER YOGESH KUMAR, U.S. JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi["Ld. CIT(A)", for short], dated 09/11/2022 for the Assessment Year 2014-15.

2. Grounds of the Assessee are as under:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax

(Appeals) [CIT (A)] is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in passing the ex-parte order without giving the assessee an opportunity of being heard is clear violation of the principle of Natural Justice.

(ii) That the non-appearance before the CIT(A) was because of the reasons beyond the control of the assessee.

3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the learned AO under section 153A r.w.s 143(3) is illegal and bad in law as the same has been passed without having valid jurisdiction.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the AO under section 153A r.w.s. 143(3) is bad and liable to be quashed as the same has been framed consequent to the search which was initiated under the wrong pretext.

5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the

learned AO under section 153A r.w.s 143(3) is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.

6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred, in reissuing the notice under section 153A dated 05.09.2019 despite the fact that reassessment proceedings initiated by initial notice issued under section 153A dated. 03.07.2018 was already pending and not concluded by the AO.

ii) That the learned AO has erred in ignoring the settled position of law that the AO cannot issue the fresh notice unless and until the assessment proceedings earlier initiated by the AO was completed.

7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed by the AO is illegal and liable to be quashed as the same has been passed violating the provisions of section 124 of the Income Tax Act.

8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated

under section 153A against the appellant and the assessment framed under section 153A r.w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

9. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred, in passing the order despite the fact that the notice issued under section 143(2) is barred by limitation as the same has been issued beyond the statutory time limit prescribed under the Act.

10 (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that notice issued under section 142(1) of the Act is bad in law as the same was issued prior to the issue of notice under section 143(2) of the Act.

(ii) That the learned CIT(A) has erred, both on facts and in law, in confirming the action of the learned AO in drawing adverse inference against the appellant on the basis of the above notice issued under section 142(1) of the Act which itself is invalid.

11. On the facts and circumstances of the case, the learned CIT(A) has erred, both on fact and in law, in

rejecting the contention of the assessee that the learned AO has erred making the addition in order passed u/s 153A r.w.s 143(3) of the Act, without an incriminating material having been found during the course of search.

12. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both facts and in law, in rejecting the contention of the assessee that the proceedings initial under section 153A against the appellant and the consequent reassessment framed under section 153A r.w.s 143(3) are in violation of mandatory provisions of Section 1530 of the Act and as such the same is bad in eyes of law.

(ii) That the CIT(A) has erred in ignoring the contention of the assessee that the purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.

13. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed by the AO is invalid and bad in law as the same was passed in violation of the circular No. 19/2019 issued by CBDT which mandates that no order shall be passed without there being valid Document Identification Number (DIN)

14. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition of Rs. 16,00,000/- made on account of deposit in the bank account treating the same as income from undisclosed sources invoking the provision of section 68 r.w.s. 115BBE of the Act.*

15. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition of Rs. 1,00,000/- made on account of deposit in the ban account treating the same as income from undisclosed sources.*

16. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO by indulging in conjecture and surmises only on the basis of presumption and assumption.*

17. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts a in law, in confirming the action of the AO in determining the tax liability as per sect 115BBE of the Act.*

18. *On the facts and circumstances of the case, the learned CIT (A) has erred in facts an law in confirming interest charged u/s 234A, 234B and 234C of the Act.*

19. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

3. Brief facts of the case are that, a search and seizure operation was carried out at the various premises of Bajaj Group and its Associates including the Assessee and the Directors on 20/04/2017. Consequent to search action, a notice u/s 153A of the Income Tax Act, 1961 ('Act' for short) was issued on 03/07/2018 and one more notice issued on 05/09/2019, requiring the Assessee to file the return of income within 15 days. In response, the Assessee submitted that the return filed by the Assessee on 31/03/2015 may be treated as return filed u/s 153A of the Act. The Assessment Order came to be passed on 18/12/2019 by making addition of Rs. 16,00,000/- u/s 68 of the Act as income from undisclosed sources and an addition of Rs. 1,00,000/- was made to the income of the Assessee as income from undisclosed sources. Aggrieved by the said assessment order, the Assessee preferred an appeal before the Ld. CIT(A). During the first appellate proceedings, vide Ground No. 14 the Assessee specifically raised the Ground that the addition made u/s 153A read with

Section 143(3) of the Act without any incriminating material having been found during the course of search. However, since the Assessee has not appeared, the Ld. CIT(A) dismissed the Appeal filed by the Assessee. As against the order of the Ld. CIT(A), the Assessee preferred the present Appeal on the Grounds mentioned above.

4. The Ld. Counsel for the Assessee submitted that the Assessment Order passed u/s 153A read with Section 143(3) is illegal and bad in law as the additions have been made in the absence of any incriminating material having been found during the course of search. The Ld. Counsel also brought to our notice that in Assessee's wife's case, the Coordinate Bench of the Tribunal has already decided the issue in favour of the said Assessee by quashing the assessment order in ITA No. 628/Del/2022 (A.Y 2013-14). The Ld. Counsel strongly placed reliance on the Judgment of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Circle 3 Vs. Abhisar Build well P. Ltd. 2034 (4) TMI 1056- (Supreme Court) dated April-24, 2023.

5. Per contra, the Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Appeal filed by the Assessee.

6. We have heard the parties perused the material available on record. In the present case, it is found from the record that the addition of Rs. 16,00,000/- u/s 68 of the Act and addition of Rs. 1,00,000/- were made on account of undisclosed sources on verifying the bank statement produced by the Assessee during the assessment proceedings. In the entire assessment order, there is not even a single whisper on any incriminating material found during the search to substantiate the addition. The Co-ordinate Bench of the Tribunal in Assessee's wife's case in ITA No. 628/Del/2022 (A.Y 2013-14), by relying on the Judgment of Kabul Chawla in 380 ITR 573 and Meeta Gutgutia Pro M/s Ferns N Petals in ITA No. 306 to 308/2017 dated 25/05/2017 deleted the addition. Further, the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Circle 3 Vs. Abhisar Build well P. Ltd. 2034 (4) TMI 1056-(Supreme Court) dated 24/04 2023, decided the issue in favour of the Assessee holding that the Assessing Officer cannot make additions to assessee's income in

respect of completed/unabated assessment if no incriminating material has been found during the course of search u/s 132 or requisition u/s 132A of the Act. Following the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Build Well (supra), we delete the addition of Rs. 17,00,000/- made by the A.O. which was confirmed by the Ld. CIT(A). Accordingly the Appeal of the Assessee is allowed.

7. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open court on 29th May, 2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Date: - 29.05.2024

R.N, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

