

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA Nos. 2927 & 2928/Del/2023
(Assessment Years: 2016-17 & 2017-18)

DCIT, Central Circle-16, Delhi (Appellant) PAN: AAACU6777D	Vs. Umrao Hotels and Resorts Pvt. Ltd, National Highway No. 8, Village- Samalkha Near Rajori Crossing, New Delhi (Respondent)
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Assessee by :	Shri S. C. Garg, CA
Revenue by:	Ms. Sapna Bhatia, CIT DR

Date of Hearing	21/03/2024
Date of pronouncement	04/06/2024

ORDER

PER ANUBHAV SHARMA, J. M.:

1. These appeals in hand have been preferred by the revenue against the order dated 16.06.2023 of Ld Commissioner of Income Tax (Appeals)-26, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. ITBA/APL/S/91/2023-24/1053768825(1) arising out of an appeal before it against the order dated 27.03.2022 passed u/s 153C r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the Ld Deputy Commissioner of Income Tax, Central Circle-16, New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that during assessment proceedings in the case of searched person, Shri Sumit Kohli, it was noticed that an excel file titled "The Umrao_149" containing six sheets retrieved from the laptop copied in hard drive marked as Annexure A-7 seized from the

residence of Shri Sumit Kohli at 59/15 Ramjas Road, Karol Bagh, New Delhi, contain details of cash and cheque receipts, functions dates etc. in respect of functions held at Milap and Elroy Banquets at the premises owned by M/s Umrao Hotel & Resorts Pvt. Ltd. As per transaction recorded on the said sheets cash totaling to Rs. 7,14,00,001/- was received against functions held. It was found mentioned that the payments were split in the ratio of 60:40 between M/s Umrao Hotel & Resorts Pvt. Ltd. M/s Key Events. Accordingly, recording a satisfaction note about seized assets pertaining to person other than the persons searched. The notice u/s 153C was issued upon the assessee and consequently the assessment proceedings were concluded in which additions were made which stood deleted by the CIT(A) for which the Revenue is in appeal for the two AY and as the grounds are common, except referring to the amounts, we consider it relevant to reproduce the grounds for AY 2017-18:-

"1 Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act by relying on the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central)-3, Delhi vs Abhisar Buildwell Pvt. Ltd. while holding that that there was no incriminating material for the year under consideration found during the search whereas the said decision of Hon'ble Supreme Court is not applicable in this case as the additions have been made based on the incriminating material seized during the search?

2 Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not appreciating that the appeals in the case of the assessee for AY 2018-19, having the same facts and circumstances, have been decided the Ld. CIT(A) himself wherein he has restricted the addition to Rs. 7,91,46,164 from Rs. 13,19,58,682/- made on account of suppressed business receipts/unrecorded business receipts?

3 Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding- initiated u/s 153C of the Act while not appreciating that it is modus operandi of the assessee wherein a portion of the total receipts is received by him in cash which remains unaccounted?

4 Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not

appreciating that when the modus operandi of the assessee of receiving unaccounted cash has been established for AY 2018-19 based on incriminating material, it is clear that, as per the principle of preponderance of probability, the assessee adopted the same modus operandi in the year under consideration also and judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell is not applicable in this case?

5. *Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not appreciating that the decision of Hon'ble Supreme Court in the case of the Pr.CIT (Central)-3, Delhi vs Abhisar Buildwell Pvt. Ltd. is not applicable in this case as Hon'ble Apex Court has upheld the decision of Hon'ble Delhi High Court in the case of Smt. Dayawanti vs Commissioner of Income Tax in Civil Appeal No. 15617/2017, 10267/2017, 10266/2017 & 10268/2017, wherein it has been held that the assessing authority can draw inference in respect of activities carried on by the assessee in other years as well if it has some reasonable nexus with the statements recorded and documents seized ?*

6. *It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the AO may be restored to the above extent.*

7 (a) *Whether on law and facts of the case, the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts?"*

3. After hearing the rival sides it comes up that the Id First Appellate Authority had given a factual finding in regard to assessment orders involved in these two appeals that the so called incriminating materials seized during the search dated 03.05.2018 on Kohli Tent Group had nothing qua the present assessee.

4. As we appreciate the matter on record it comes up that the AO of the searched person had recorded that action is required to be taken against M/s. Key Event and accordingly seized material was handed over to the jurisdictional AO of Key Events. Ld. AR has claimed that this satisfaction note of the AO of the searched person nowhere had any mention of the name of the assessee.

5. At the same time the Id DR could not dispute the fact that the contents of excel sheets did not pertain to the relevant two years

before us and additions on the basis of said material have been made for AY 2018-19 in which there are separate appeals pending. The CIT(A) has relied on the settled proposition of law in **Kabul Chawla Case reported in 380 ITR 573**, which now stand upheld by the Hon'ble Supreme Court in **PCIT vs Abhisar Buildwell P Ltd reported in 454 ITR 212 (SC)**, that in absence of incriminating material, no addition can be made in re-assessment u/s 153C of the Act. There is no force in the ground that the assessing authority can draw inference in respect of activities carried on by the assessee in other years as well if it has some reasonable nexus with the statements recorded and documents seized as admittedly there was no such material with AO.

6. In the light of the aforesaid, we find that there is no substance in the grounds of the Revenue and the appeals of the revenue are dismissed.

Order pronounced in the open court on 04/06/2024.

-Sd/-
(G.S. PANNU)
VICE PRESIDENT

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 04/06/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi