

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

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

**ITA No.1688/DEL/2023
(Assessment Year: 2010-11)**

**ITA No.1689/DEL/2023
(Assessment Year: 2011-12)**

**ITA No.1690/DEL/2023
(Assessment Year: 2012-13)**

M/s. KCC Buildtech Pvt. Ltd.,
Shop No.1, GF, E – 18/A,
Om Vihar Extension, Ram Nagar Road,
D.K. Mohan Garden, West Delhi,
D.K. Mohan Garden S.O,
New Delhi – 110 001.

vs.

DCIT,
Central Circle 04,
New Delhi.

(PAN : AADCK2349A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kapil Goel, Advocate
REVENUE BY : Ms. Rajinder Kaur, CIT DR

Date of Hearing : 04.06.2024
Date of Order : 07.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the assessee against the common order of the Id.
CIT (Appeals)-23, New Delhi dated 31.03.2023 for the assessment years
2010-11, 2011-12 & 2012-13.

2. Grounds of appeal taken by the assessee are common except the difference in amount. Hence, we reproduce the grounds of appeal for AY 2010-11, for the sake of brevity, as under :-

“1. The Ld. Assessing Officer has erred in law and facts in initiating assessment proceedings u/s 153C of the Income Tax Act, 1961 as no books of accounts/documents having a bearing on determination of total income of the appellant company were found during the search at the premises of Sh. Rajnish Talwar and there was absence of recording of objective satisfaction by the Ld. A.O. which is a prerequisite for invoking section 153C and CIT(A) erred in not treating the notice u/s 153C as void.

2. The order of the CIT(A) is bad in law and on facts of the case. The addition is made u/s 68 amounting to Rs.50,00,000/- on account of alleged unexplained share application money and share premium despite the fact that all the documents and information was filed with the assessing officer. The addition is made without considering the genuineness, creditworthiness and identity of the appellant and the same is upheld by CIT(A).

3. The Ld. Assessing officer has erred in law and facts while making addition u/s 69C amounting to Rs. 1,00,000/- as unexplained expenditure of the appellant company on account of accommodation entries whereas no such commission was paid as the issue of share capital was a genuine transaction despite the fact that all the documents and information was filed with the assessing officer and the same is upheld by the CIT(A).”

3. Brief facts of the case are that search and seizure operation was conducted in MAPSKO Group on 29.12.2015. AO in assessment order has noted that during the search proceedings under section 132 of the Income-tax Act, 1961 (for short ‘the Act’) at the resident of Shri Rajnish Talwar, a number of documents belonging to the assessee was found and seized.

Hence, proceedings under section 153C/143 (3) of the Act were initiated for the concerned assessment years. AO in the assessment order did not refer to any seized material. Only referring to the questionnaire and enquiry made during the assessment, he proceeded to made addition on account of alleged unexplained share application money and share premium of Rs.51,00,000/- Rs.96,90,000/- & Rs.91,80,000 for the AYs 2010-11, 2011-12 & 2012-13 respectively.

4. Upon assessee's appeal, ld. CIT (A) confirmed the addition.

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

6. Ld. Counsel for the assessee submitted that all the three years are unabated on the date of search, hence addition made *de hors* any seized material is not legally permissible. In this regard, he referred to Hon'ble Apex Court decision in the case of CIT vs. Abhisar Buildwell Pvt. Ltd. 459 ITR 212 for the proposition that no addition can be made in unabated years in assessment u/s 153A/153C of the Act without any incriminating material. Ld. Counsel for the assessee submitted that the above case law is squarely applicable.

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below but she could not dispute that these are unabated assessments and that no incriminating material referred by the AO in his

order. She also could not distinguish Hon'ble Apex Court decision in the case of Abhisar Buildwell Pvt. Ltd. (supra).

8. Upon hearing both the parties and following the aforesaid Hon'ble Apex Court decision, we find that the issue is squarely covered in favour of the assessee and all the three years are unabated on the date of search. The addition was only made on the basis of questionnaire and enquiry made during the assessment proceedings. There is no reference to any seized material for making the addition in the assessment orders or ld. CIT (A)'s orders. Accordingly, respectfully following the precedent as above, we set aside the orders of the authorities below and delete the additions.

9. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 7th day of June, 2024.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 7th day of June, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**