

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
ITA No.2833/Del/2022
(ASSESSMENT YEAR 2015-16)**

DCIT Central Circle-20	Vs.	Rajiv Jain Room No.269A 2 nd Floor, ARA Centre E-2, Jhandewalan New Delhi PAN-ADGPJ 9522M
(Appellant)		(Respondent)

Appellant by	Mr. Vivek Vardhan, Sr. DR
Respondent by	None

Date of Hearing	16/08/2023
Date of Pronouncement	04/09/2023

ORDER

PER M. BALAGANESH, AM:

This appeal of the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-27, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A), Delhi-27/10142/2017-18 dated 21/09/2022 against the order passed by Ld. Assistant Commissioner of Income Tax, Central Circle-20, New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the

Income Tax Act (hereinafter referred to as 'the Act') on 29/12/2017 for the Assessment Year 2014-15.

2. None appeared on behalf of the assessee despite service of notices. Hence, we proceed to dispose of this appeal by hearing the Ld. Sr. DR and based on materials available on record. The Revenue has raised the following grounds of appeal:

"1. Whether the Ld. CIT(A) has erred on facts and in law, in considering the assessment order passed u/s 143(3) of the Act, null and void by invoking the provisions of section 153A of Act. ignoring the fact that the notice u/s 143(2) was issued in this case on 18.09.2017 Le after e date of search and no proceedings for the AY 2015-16 were pending on the date of search.

2. Whether the Ld. CIT(A) has erred on facts and in law, in ignoring the fact that the assessment u/s 143(3) of the Act for AY 2015-16 was not pending on the date of search and it as not required to be abated as per the second proviso to the section 153A(1) of the IT. Act. 961.

3. Whether the Ld CIT(A) has erred on facts and in law, in deleting the addition of Rs.2,03,23,200/-on account of unexplained credits u/s 68 of the IT Act, 1961, on the basis of non-abatement of the proceedings of AY 2015-16 consequent upon the search action and not tenable in law and on facts.

*4. (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.
(b) The appellant craves leave to add, alter or amend any all of the grounds of appeal before or during the course of the hearing of the appeal."*

3. We have heard the Ld. Sr. DR and perused the materials available on record. We find that a search in this case was initiated on 12/01/2017. Hence, the assessment for AY 2015-16 would be

covered u/s 153A of the Act. But we find that the Ld. AO has framed the assessment for AY 2015-16 u/s 143(3) of the Act on 29/12/2017 which is bad in law. In this regard, we find that the Ld. CIT(A) had duly appreciated the contention of the assessee by observing as under:

"6.5 In view of the above discussion, the AY under appeal Le. 2015-16 is covered u/s 153A and proceedings related to this AY should have been abated. However, AO has decided to continue the assessment proceedings u/s 143 of the Act and passed the order u/s 143(3). Simultaneously, he also started the proceedings u/s 153A of the Act for AY 2015-16 and made the same addition as was made u/s 143(3) of the Act. This action of the AO is not sustainable and order passed u/s 143(3) of the Act is ab initio void in view of the provisions of Section 153A of the Act. Therefore, addition of Rs.2,03,23,200/- is deleted and this ground of appeal is hereby allowed."

3.1 In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) granting relief to the assessee. Accordingly, grounds raised by the Revenue are dismissed.

4. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 4th September, 2023.

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Dated:14/09/2023

Pk/sps

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI