

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.139/Del/2024  
Assessment Year: 2013-14

<b>ACIT Central Circle Ghaziabad</b>	<b>Vs.</b>	<b>Anand Educational Society R-2/83, Sector-2, Raj Nagar, Ghaziabad PAN No.AABTA0477G</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant by</b>	<b>Sh. Mahesh Kumar, CIT DR</b>
<b>Respondent by</b>	<b>Sh. Satyajeeet Goel, Advocate</b>

Date of hearing:	20/06/2024
Date of Pronouncement:	27/06/2024

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal by the revenue is directed against the order passed by the Commissioner of Income Tax (Appeals), Noida-3 [hereinafter referred as 'CIT(A)'] dated 18.05.2023 pertaining to A.Y.2013-2014 under section 153A/143(3) arises out of the assessment order passed by Assessing Officer, Central Circle,

Ghaziabad dated 02.08.2021 under section 143(3)/153A of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. Aggrieved by the order of the lower authorities, the revenue is in appeal before us by raising the following grounds:-

*1. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs.1,76,00,000/- made by the AO on account of unexplained advance u/s 69 of LT. Act. 1961 without considering the fact as elaborated in the assessment order*

*2. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying the judgment of Apex Court in the case of PCIT Central-3 vs. Abhisar Buildwell Pvt. Ltd and other in the Civil Appeal No. 6580 of 2021 dated 24.04.2023, whereas the Apex court in the case of PCIT Central-3 vs. Abhisar Buildwell Pvt. Ltd has discussed the case of M/s Kesarwani Zarda Bhandar Sahson, Allahabad wherein it has been observed that the AO has the power to reassess the return of assessee not only for the undisclosed income which was found during the*

*search operation but also with regard to material that was available at the time of original assessment.*

*3. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

3. The brief fact of the case is that the assessee society is registered u/s.12A of the Act and had applied more than 85% of its receipts for charitable purposes. The society runs an educational Institute in the name of Hi-Tech Institute of Engineering & Technology at Delhi Hapur Bypass, Ghaziabad.

3.1 A search and seizure operation u/s. 132 of the Income Tax Act, 1961 was conducted on 30.07.2018 at the premises at R-2/83, Raj Nagar, Ghaziabad. Notice u/s. 153A of the Act was issued on 11.02.2021 and in the compliance of the notice, the assessee filed its return of income on 05.03.2021 declaring total income of Rs. Nil. In response to the notice u/s. 153A of the Act the AO completed the assessment u/s.143(3) r.w.s. 153 of the Act on 02.08.2021. The AO made the addition on account of unexplained advances of Rs.1,76,00,000/-. The assessee preferred to file the appeal before the CIT(A) adjudicated the

aforesaid issues and granted relief to the assessee and held that there was no incriminating material found during the course of search and set aside the addition made by the AO by observing as under :-

*“6.4 In the ground of appeal no. (i), the appellant had challenged addition of Rs. 1,76,00,000/- made under section 68 of IT Act considering the advances as unexplained. In the assessment order Ld. AO states that during the year under consideration, the assessee has shown sundry creditors of Rs. 3,79,70,826/- in its Balance sheet and in the assessment proceedings, details of the same were called for and the appellant furnished its balance sheet and its annexures including that of sundry creditors. Ld. AO states that the addresses, PAN and confirmations of these creditors have not been furnished. Ld. AO states that out of total sundry creditors of Rs. 3,79,70,826/-, the sundry creditors amounting to Rs. 3,77,00,000/-, pertain to advance against land received by the assessee. Ld. AO observes that during assessment proceedings, the assessee was specifically asked to furnish the details of advances received alongwith their confirmations and documentary evidences,*

however, the same were not furnished. Ld. AO states that in respect of the advances against land, the copy of agreement, details and confirmation of persons from whom advances have been received, were not furnished for verification. Ld. AD observes that vide reply furnished on 24.06.2021, the assessee has stated that out of Rs. 3,77,00,000/-, Rs. 2,01,00,000/- was received from M/s Sigma Buildcrafts Pvt Ltd against sale of land at Piplahera, Khasra No. 660 and 661, Pargana Dasna, Tehsil Dhaulana, District Hapur on 07.06.2013 and the relevant sale deed of the property alongwith ledger account and bank statement has been furnished. However regarding the remaining amount of Rs 1,76,00,000/- the assessee has stated that these advances were received against Land at Khichra village and the advances were returned back to the parties (6 entities), in subsequent financial year as no deal could materialize. Ld. AO states that the assessee has furnished the ledger accounts and his bank statement showing the receipt of advances, however, no confirmation and documentary evidences have been furnished to prove that the amounts received from these 6 parties are advances against land. Ld. AO further states that no agreement to sell or

*cancellation agreement has been furnished, therefore it is hard to believe that such huge amounts were received and given back by the assessee without any paperwork like agreement. In view of this, Ld. AO concluded that the appellant failed to establish link between the advance of Rs. 1,76,00,000/-received by it as advance against land and the amounts shown to be received in its bank account from the 6 parties. Thus Ld. AO observed that the appellant failed to prove genuineness of the transaction and thus amount of Rs. 1,76,00,000 was considered an unexplained in terms of section 68 of IT Act and the addition was made accordingly.*

*6.5 On the other hand L. AR submits that in the instant case the Ld. AO had made an addition of R 176,010,010-w/s 68 of the Income Tax Act, 1961. He submits that during the year under consideration appellant society has received Rs. 1,76,00,000/- from various parties as an advance against sale of a piece of land situated at Khichra Village. The detail of parties are as follows :*

S. No.	Particulars	Opening Balance as on 31 <sup>st</sup> March 2012	Opening Balance as on 31 <sup>st</sup> March 2012	Addition during the year	Closing Balance as on 31 <sup>st</sup> March 2013	Repayment during the year 2015-16
1	Janeshwar Dayal Jain	-	1,000,000.00	-	10,00,000/-	-
2	Mohan Frozen Foods Pvt. Ltd.	-	2,000,000.00	-	-	2,000,000.00
3	Shashank Financial Services Pvt. Ltd.	-	5,000,000.00	-	5,000,000.00	-
4	Shivam Petroleum and Fuels	-	8,000,000.00	6,70,00,000.00	1,300,000.00	-
5	Sky Tech Infotech Pvt. Ltd.	-	4,800,000.00	-	4,800,000.00	-
6	Yogesh Singhal	-	7,500,000.00	4,000,000.00	3,500,000.00	-
	Total Rs.		2,83,00,0000.00	1,07,00,0000.00	1,56,00,000.00	20,00,000.00

*remaining amount of Rs. 20,00,000/- in FY 2015-15. As an evidence copy of bank statement of the society maintained with Punjab National Bank bearing account number 0679000100355502 and 0674002190409185 were furnished*

*6.6 Ld. AR submits that the Ld. AO in the instant case made the addition of Rs. 1,76,00,000/- by merely stating that it is a well established fact that only transaction through banking channel does not make a*

*transaction genuine and that the source of the funds has to be explained, which assessee failed to do. Ld. AR submits that the appellant had approached all the concerned parties and requested them to provide their bank statements and income tax returns for the period under consideration however since the matter pertains to F.Y. 2012-13 which is almost 10 years old, most of them were unable to retrieve the statements and some were reluctant to provide the same. Ld. AR submits that after constant persuasion, the said parties provided their PAN details and confirmed accounts. The said details were furnished before the Ld.. AO during the remand proceedings however the Ld. AO merely stated that these documents do not satisfy the credit worthiness of the parties Ld. AR submits that in order to justify the advances, the appellant submitted the confirmed copies of accounts from all the parties containing their name, address and PAN details before the Ld. AO. Ld. AR submits that from these details, it can be seen that the transactions held amongst the parties are genuine. He further submits that in addition to these copies of the supporting documents ie confirmations, copies of ITR and bank statements of parties have also been enclosed to prove the identity*

and creditworthiness of the parties as well as genuineness of the transactions.

6.7 In the remand report the assessing officer submits that during the assessment proceedings, the assessee failed to furnish documentary evidences with respect to the advances of Rs. 1,76,00,000/-, hence the same were treated as unexplained and added to the total income of the assessee. He submits that during appellate proceedings, the assessee appellant has furnished additional evidences in form of confirmation of accounts and submitted that amount of Rs. 1,76,00,000/- was received from 6 parties as advance against land at Khichra Village and that these advances were repaid on account of non materialization of the deal. Ld. AD states that the documents/ evidences have been perused and it is found that the assessee received amount of Rs. 1,76,00,000/- from 6 entities/ persons during the year under consideration and the assessee has claimed that the aforesaid amounts were repaid, however, in support of its claim, the assessee failed to furnish the relevant bank accounts of the said concerns and further, ITRs of these concerns have also not been

*furnished. Thus Ld. AO concludes that the creditworthiness of lenders and genuineness of transactions remained unproved.*

*6.8 in the appellate proceedings Ld. AR furnished bank statements of the appellant to prove the receipt of these advances as well as repayment of the same from its bank accounts. The appellant furnished copies of ITRs of Sh. Janeshwar Dayal Jain (Rs. 10,00,000/-) M/s Shashank Financial Services Pvt Ltd. (Rs. 50,00,000/-), Shivam Petroleum and Fuels prop concern of Sh. Yogesh Singhal (Rs. 80,00,000/-), Sky Tech Infotech Pvt Ltd. (Rs. 48,00,000/-) and Sh. Yogesh Singhal (Rs. 75,00,000/-). However return of income of M/s Mohan Frozen Foods Pvt Ltd. could not be furnished, though PAN-AAECM0634K was submitted in the confirmed copy of ledger account. Ld. AR further claimed that by furnishing these details all the three limbs of a genuine cash credit have been proved in case of these persons, from whom land advances have been taken.*

*6.9 During the appellate proceedings, Ld. AR also submitted that in this case in the year under*

*consideration, addition is not based on the seized material and hence the assessment order cannot be made u/s 153A of IT Act. Ld. AR has placed reliance in the recent judgment of Hon'ble Supreme Court in case of PCIT Central-3 vs Abhisar Buildwell Pvt Ltd. and others in the Civil Appeal no. 6580 of 2021 and connected appeals filed by the Revenue as well as various other assessees in the judgment delivered on 24.04.2023 (Hon'ble Judges Sh. M R Shah and Sh. Sudhanshu Dhulia), in which following observation has been made:*

*.....14. In view of the above and for the reasons stated above, it is concluded as under in case of search under Section 132 or requisition under Section 132A, the AD assumes the jurisdiction for block assessment under section 153A 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.*

*15. Insofar as the aforesaid Civil Appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.*

*It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under Section 143(1)(a) or 143(3) of the Act, 1961 and to reassess the total income taking notice of undisclosed income even found during the search and seizure operation. 15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments Therefore, the impugned judgment(s) and order(s) passed by the High*

*Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee M/s Kesanwani Zarde Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. in the facts and circumstances of the case, no costs.*

*16. Insofar as the aforesaid appeals filed by the assessee Dayawanti through legal heir against the impugned common judgment and order dated 27.10.2016 passed by the High Court of Delhi at New Delhi in ITA Nos 357/2015, 358/2015, 565/2015 and 566/2015. The question before the High Court was, whether the Income Tax Appellate Tribunal was justified in upholding the addition made on the basis of the incriminating material during the course of search.*

*16.1 In view of the aforesaid discussion and the reasoning, all these appeals filed by the assessee - Dayawanti through legal heir fail and the same deserve to be dismissed and are accordingly dismissed. No costs.*

*Ld. AR submits that in view of this decision of Hon'ble Supreme Court, the issue stands settled that if there is no incriminating material, the assessment cannot be framed u/s 153A of IT Act.*

*6.10 Looking to the facts and circumstances of the case and latest decision of Hon'ble Supreme Court in case of PCIT Central-3 vs Abhisar Buildwell Pvt Ltd. and others in the Civil Appeal no. 6580 of 2021 and connected appeals filed by the Revenue as well as various other assessee in the judgment delivered on 24.04.2023 (Hon'ble Judges Sh. M R Shah and Sh. Sudhanshu Dhulia), I am of the opinion that the addition le. Rs. 1,76,00,000/- made u/s 68 of IT Act cannot be sustained. Hence the same is deleted and relief is allowed to the appellant. The concerned ground of appeal is adjudicated accordingly.*

*6.11 In the ground of appeal no. (iii) the appellant submits that Ld. AO has erred in initiating penalty proceeding u/s. 271 (1) (c) of the IT Act. In this regard, it is observed that no appeal lies against initiation of penalty proceedings, hence the submission of appellant is not tenable, therefore, the concerned ground of appeal is dismissed.*

4. We have heard the rival submissions and perused the relevant material available on record.

5. The Ld. DR has submitted that the Ld CIT(A) has failed to explain the income which was found during the search and seizure operation. He has further submitted that the Ld. CIT(A) had wrongly deleted the addition made by the AO.

6. The Ld. Counsel for the assessee has submitted that no incriminating material was found during the search and seizure and without such material the addition cannot be made. He has relied upon the Judgment of **Hon'ble Supreme Court in the case of ACIT Vs. Abhisar Buildwell Pvt. Ltd. 454 ITR 212.**

7. Perusal of the order of the CIT(A) reveals that remand report was called out by the Ld.CIT(A) and on the basis of remand report the Ld. CIT(A) passed the impugned order and deleted the additions made by the AO as no incriminating material was found during the search and seizure operation. The **Hon'ble Supreme Court in the case of ACIT Vs. Abhisar Buildwell Pvt. Ltd. 454 ITR 212** held that without any incriminating material no addition can be made u/s. 68 of the Act, therefore, we do not find any reason to interfere with the findings of the CIT(A). The appeal is liable to be dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 27.06.2024.

**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*

Date:- .06.2024

Copy forwarded to:

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

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI