

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NOS. 6490, 6491, 6492 & 6493/Del/2019		
A.YRS. : 2011-12, 2012-13, 2013-14 & 2014-15		
ASHOK SHAH, MUZAFFARNAGAR C/O M/S SATISH AGGARWAL & ASSOCIATES, 4/5B, 1 ST FLOOR, ASAF ALI ROAD, NEW DELHI - 110 002 (PAN: AFYPS3881A)	VS.	DCIT, CENTRAL CIRCLE, MEERUT AAYAKAR BHAWAN, 3 RD FLOOR, BHAINALI GROUND, MEERUT, UP - 250001
(APPELLANT)		(RESPONDENT)

Assessee by : Shri Satish Agarwal, CA & Ms.
Anju Sharma, CA
Department by : Mr. Binod Kumar, CIT(DR)
Date of hearing : 03.07.2024
Date of pronouncement : 08.07.2024

ORDER

PER SHAMIM YAHYA, AM :

Assessee has filed the aforesaid 04 Appeals against the common order dated 20.5.2019 passed by the Ld. CIT(A)-IV, Kanpur relating to assessment years 2011-12 to 2014-15. Since the common issues are involved in all the 04 Assessee's appeals, hence, the said appeals were heard together and are being disposed of by this common order. For the sake of convenience, we are only dealing with Assessee's Appeal No. 6490/Del/2019 (AY 2011-12) and the decision thereof will apply *mutatis mutandis* to other Assessee's ITA Nos. 6491 to 6493/Del/2019 (AYrs. 2012-13 to 2014-15).

2. The grounds raised in Assessee's Appeal No. 6490/Del/2019 (AY 2011-12) are reproduced as under:-

1. *That the order of the CIT(A)-4, Kanpur is arbitrary, biased and bad in law and in facts and circumstances of the case in so far as it confirms the additions made by the Assessing officer.*
2. *That the Ld. CIT(A) has grossly erred in not quashing the assessment order passed u/s. 153A as no incriminating material was found during the course of search action to enable the AO to validly assume jurisdiction for assessment u/s. 153A of the Act, as no assessment was pending as on the date of search.*
3. *That the CIT(A) has grossly erred in not quashing the assessment order passed by the AO pursuant to such illegal and unjust assumption of jurisdiction u/s. 143A of the Act, which order was void ab initio.*
4. *The CIT(A) has grossly erred in confirming the action of the AO in invoking the provisions of section 69A of the Act, while making the addition of Rs. 2,93,150/-, which provisions were not applicable in the facts and circumstances of case.*
5. *Without prejudice to above grounds of appeal, the Ld. CIT(A) has grossly erred in confirming an addition of Rs. 2,93,150/- made by the AO u/s. 69A of the Act, ignoring the fact that the appellant had furnished the requisite evidences and explanation to prove the identity and creditworthiness of the loan creditors and the genuineness of the transactions with loan creditors.*
6. *That the Ld. CIT(A) has grossly erred in confirming the action of the AO in treating the loan of Rs. 2,9,150/- received from below mentioned parties who are filing the returns of income, have confirmed the granting of loans and furnished the copies of their return acknowledgement as under as unexplained.*

S.NO.	NAME OF PARTY	AMOUNT IN (RS.)
1.	Kanubhai Madhubala (HUF)	85,000/-
2.	Kanubhai Basant (HUF)	2,08,150/-

7. *That the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 2,93,150/- u/s. 69A of the Act, for receipt of unsecured loan from aforesaid parties despite the AO confirming the creditworthiness identity of the loan creditors and genuineness of the transactions in the*

remand proceedings without seeking any further clarification/ explanation from the appellant on conjectures, surmises, suspicion and without rebutting the documentary evidences on record.

8. *Without prejudice to the above Grounds of Appeal, the Ld. CIT(A) while confirming the addition of Rs. 2,93,150/- being the amount received by the assessee from above parties has grossly erred in stating that the said amount was sourced by these parties by depositing cash in their bank accounts whereas these parties had issued cheques to the assessee after depositing cash of Rs. 2,56,500/- in its bank accounts from their tax reflected sources.*
9. *That the appellant crave to add, alter or delete the above grounds of appeal at the time of hearing.*

3. Brief facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on the assessee on 01.03.2016. Accordingly, notices u/s. 153A of the Act were issued on 12.01.2017 for AY 2011-12 to AY 2015-16 and notice u/s. 142(1) of the Act was issued on 11.8.2017 for AY 2016-17. In response, assessee filed his return for all assessment years disclosing income as per following table. Later on, notices u/s. 143(2) & 142(1) were also issued and AO completed the assessments by making addition as mentioned here-in-under, for all the assessment years.

S.No.	A.Y.	Return of Income (In Rs.)	Nature of Addition	Amount of addition (In Rs.)
1	2011-12	1,77,710	Unexplained unsecured loans/cash credits	37,73,052/-
2	2012-13	2,19,010/-	Unexplained unsecured loans/cash credits	71,15,961/-
3	2013-14	3,16,210/-	Unexplained unsecured loans/cash credits	1,16,50,000
4	2014-15	3,76,520/-	Unexplained unsecured loans/cash credits	93,51,500/-

From the details mentioned in the above table, it is seen that in all the appeals of the assessee, additions were made by the AO on account unexplained unsecured loans/cash credits. It is seen from the assessment order for all assessment years that AO has made additions by giving finding that assessee could not furnish the required details to prove the genuineness of transaction and creditworthiness of lenders in respect of unsecured loans/ cash credits. Against the above action of the AO, assessee appealed before the Ld. CIT(A).

4. Upon assessee's appeal, Ld. CIT(A) granted part relief as under:-

"..6.5 In view of the above discussion & judicial pronouncement cited hereinabove, addition of Rs. 34,79,902/, Rs. 21,15,961/-, Rs. 79,00,000/-, Rs. 86,51,500/-, Rs. 60,46,386/- & Rs. 4,00,000/- for AY 2011-12 to AY 2016-17 respectively is hereby deleted and addition of Rs. 2,93,150/-, Rs. 50,00,000/-, Rs. 37,50,000/-, Rs. 7,00,000/-, Rs. 15,80,000/- and Rs. 16,10,000/- for AY 2011-12 to AY 2016-17 respectively is hereby sustained. Accordingly, grounds of appeal of the appellant are partly allowed."

5. Before the Ld. CIT(A) assessee challenged the legal ground that assessment made by the AO is illegal and beyond the provisions and scope of section 153A of the Act and not based on any material found during the course of search. Therefore, he submitted that assessment made by the AO u/s. 153A of the Act is bad in law and deserve to be quashed. Assessee placed reliance on the following cases laws in the proceedings before the Ld. CIT(A).

- i) CIT vs. Kabul Chawla (2016) 380 ITR 573 (20151 234 Taxman 300/61 taxmann.com 412 (Delhi).
- ii) CIT vs. Continental Warehousing Corpn. (Nhava Sheva) Ltd. (2015) 374 ITR 645/232 Taxman 270/58 taxmann.com 78 (Mob).
- iii) All Cargo Global Logistics Ltd. vs. Dy. CIT (2012) 137 ITR 287 (SB) (Mumb.) (Tri).
- iv) Kusum Gupta vs. DCIT – ITA No. 4873/Del/2009, etc.

6. However, Ld. CIT(A) was not convinced with the Assessee's contention and dismissed the Grounds of Appeal by holding as under:-

"...5.2 *Undersigned has carefully considered the submission and the case laws cited by the appellant. Framing of assessment order u/s. 153A of the Act is also justified considering the express provisions of section 153A of the Act. Section 153A of the Act clearly provides the power to AO to assess/reassess the cases of person searched u/s. 132(1) of the Act for immediately six preceding years. Section 153A of the Act does not specifically provide existence of incriminating material as essential requirement. In the opinion of the undersigned, the action u/s. 132/132A of the Act would automatically trigger the provisions of section 153A of the Act for computation of total income of the appellant. This provision does not restrict the Assessing Officer to take action in those cases where assessment has already been completed. Since, the AO has rightly exercised his powers to assess/reassess the case u/s. 153A of the Act. Case laws cited*

by Ld. AR of the appellant are on their own footings and are distinguishable in present facts of the case. The undersigned find no force in the submission of the appellant and therefore, this ground is dismissed.”

7. Against the above order, assessee is in appeal before us.

8. At the outset, assessee's AR submitted that as regards Ground No. 2 & 3 which are legal in nature, have been squarely covered in favour of the assessee by the decision of the Apex Court in the case of CIT vs. Abhisar Buildwell Pvt. Ltd. 454 ITR 212 (SC), wherein, the Hon'ble Apex Court has expounded that for assessment u/s. 153A incriminating material is a sine quo non and in the absence of incriminating material as referred, the assessment is bad in law.

8.1 Ld. DR could not controvert the submission of the assessee's AR and also could not dispute that the assessment are framed beyond the incriminating material during the search.

9. We have heard the rival contentions and perused the case laws cited by the Ld. AR for the assessee and also perused the impugned order. On perusal of the assessment order, it is noted that the instant assessment is pursuant to notice u/s. 153A of the Act. We note that the additions in dispute are not based upon any incriminating material found during the course of search. Ld. DR could not dispute this proposition. We note that as per the decision of the

Hon'ble Supreme Court of India in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd., CA No. 67580/2021 dated 24.4.2023, (2023) SCC Online SC 481, no addition can be made, the assessment framed u/s. 153A de hors incriminating material found during the search.

10. Keeping in view the aforesaid discussions and following the precedent of Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (Supra), we set-aside the order of the Ld. CIT(A) and decide the legal grounds being Ground No. 2 & 3 in favour of the assessee.

11. Since we have decided the aforesaid appeals on the legal grounds only, in favour of the assessee and also impugned order of the Ld. CIT(A) have been set-aside, therefore, the other Grounds raised by the Assessee have become academic and do not require any adjudication.

12. In the result, the ITA No. 6490/Del/2019 (AY 2011-12) of the assessee is allowed in the aforesaid manner.

13. As regards remaining appeals pertaining to assessment years i.e. AY 2012-13 to 2014-15 are concerned, following the consistent view as taken in AY 2011-12, as aforesaid, the issues raised in Assessee's other ITA Nos. 6491 to 6493/Del/2019 (Ays. 2012-13 to 2014-15) are also decided in favour of the assessee by setting aside the orders of the Ld. CIT(A) in the remaining three years too and accordingly allowed the appeals of the assessee.

14. In the result, all the 04 Assessee Appeals are allowed in the aforesaid manner.

Order pronounced on 08/07/2024.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar

