

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
I.T.A. No. 26/DEL/2023 (A.Y 2017-18)**

ACIT 3 rd Floor, Income Tax Office, Opposite Bhainsali Ground, Meerut, Uttar Pradesh (APPELLANT)	Vs.	Mohd. Zahid Siddiqui 246, Lane No. 4, Haiderpur Road, Shalimar Bagh, New Delhi PAN No. ABOPZ6005F (RESPONDENT)
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Assessee by :	Sh. Vaibhav Goel, CA
Department by:	Sh. Subhra Jyoti Chakraborty, CIT DR

Date of Hearing	03.07.2024
Date of Pronouncement	10.07.2024

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue for Assessment Year 2017-18 against the order of the Ld. Commissioner of Income Tax (Appeals), Kanpur, dated 27/10/2022.

2. The Grounds of Appeal are as under:-

“ 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 88,03,137/-, on account of introduction of unexplained capital during the year.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that as elaborated in the assessment order that the assessee has no sufficient income in earlier years for which reason the assessee has not filed ITR for earlier years. Thus, the capital of Rs. 88,03,137/- is the fresh introduction of capital during the assessment year 2017-18. The assessee has not explained the sources of the capital during the assessment proceedings. 3 On facts and circumstances of the case and in law, the Ld. CIT(A) is not justified in pronouncing its decision only based upon referring the judgment of the Apex Court in the case of M/s Singhad Technical and Educational Society and CIT vs Kabul Chawla. However, the other referred judicial decisions quoted by the AO in his order, have not been considered and analyzed with respect to the case. Like:

In the case of E.N. Gopa kumar vs. CIT (2016) 75 taxmann.com 215 (Kerla), Hon'ble Court held that assessment proceedings can be concluded against the interest of the assessee including making additions even without any incriminating materials being available against the assessee.

In the case of CIT vs. Kesarwani Zarda Bhandar Sahson Alld. ITA No. 270 of 2014 the Hon'ble Court held that the assessing officer has power to reassess return of the assessee not only for undisclosed income found during search but also the materials found at the time of original assessment.

In the case of Filatex India Ltd. vs. CIT (49 Taxmann.com 465) - Hon'ble Delhi High Court held that during the assessment under section 153A, addition need not be restricted to or limited to incriminating materials found during the course of search.

In the case of Pr. CIT vs M/s Shri Mehandipur Balaji, Hon'ble Allahabad High Court held that the Assessing Officer has the power to reassess the returns of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to the material that was available at the time of original assessment.”

3. Brief facts of the case as mentioned in the CIT(A) are that:

“On 17.11.2018, information was received from AJU Delhi that a passenger Sh. Firoz Rana was travelling by Indigo Flight No. 6E-943 from New Delhi to Lucknow and carrying cash of Rs. 10,00,000/-, Sh. Firoz Rana was intercepted at Lucknow Airport and cash of Rs. 10,00,000/- was found from his possession. The warrant was executed over Sh. Firoz Rana and the search assessment proceedings were completed u/s 153A of IT Act. However during the search proceedings, post search inquiries and assessment proceedings in case of Sh. Firoz Rana, it was found that this money belonged to Sh. Mohd. Zahid prop. of M/s. Hitkari Productions and Creations, therefore information was passed on to the jurisdictional assessing officer. Order u/s 127 of IT Act was passed by PCIT Ghaziabad

vide order F No. Pr. CIT-GZB/ITO(T&J)/u/s 127/Meerut/2021-22/1482 dt. 23.08.2021 centralizing the case from ITO Ward 1(1)(1). Meerut to DCIT/ACIT CC-Meerut. The case records and the appraisal report were transferred to DCIT Central Circle Meerut on 06.04.2021 in pursuance to guidelines of the board vide F No. 225/126/2020/ITA-II dt. 17.09.2022. The reasons for initiating proceedings u/s 153C of IT Act were recorded on 02.09.2021 and notice u/s 153C of IT Act was issued and served on 14.09.2021. Notice u/s 142(1) along with questionnaire was issued on 23.09.2021 and final show cause was issued to the appellant on 25.09.2021 and the assessment order was passed on 30.09.2021. The A.O. completed assessment by making addition of Rs. 88,03,137/- u/s 68 of IT Act.”

4. Aggrieved by the assessment order dated 30/09/2021, the assessee preferred an Appeal before the CIT (A). The Ld. CIT (A) deleted the addition on the ground that the notice issued u/s 153C of the Act and the addition made by the A.O. without their being

incriminating material found and seized pertaining to the year under consideration. Though, the Ld. Departmental Representative relied on the orders of the Lower Authorities, but has not put forth any material to contradict the findings of the Ld. CIT (A).

5. Per contra, the Assessee's Representative by relying on the findings of the Ld. CIT (A) submitted that, no proceedings u/s 153C of the Act should have been initiated for the Assessment Year 2017-18 as the date of seizure of the amount was 17/11/2018 which is relevant to the Assessment Year 2019-20, therefore, submitted that the Ld. CIT (A) has rightly deleted the addition.

6. We have heard both the parties and perused the material available on record. It is not in dispute that on 17/11/2018 an amount of Rs. 10,00,000/- was found in the possession of Sh. Firoz Ran who was traveling from New Delhi to Lucknow. The said Sh. Firoz Rana stated that he was carrying the said amount which belongs to Sh. Md. Zahid Siddiqui to be used for payments to labours at Prayagraj. Based on the said seizure the proceedings

u/s 153C was initiated in the case of the assessee. As there was no any other incriminating seized material, the Ld. CIT(A) held that no proceedings u/s 153C should have been initiated for the Assessment Year 2017-18 as the date of seizure of the amount was 17/11/2018 which is relevant to Assessment Year 2019-20. Thus, in our opinion the order of the Ld. CIT(A) does not suffer any infirmity and we find no merit in the grounds of Revenue, accordingly, Appeal of the Revenue is dismissed.

Order pronounced in the open court on 10th JULY, 2024.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 10 /07/2024

*R.N, Sr. PS**

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

