

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA Nos. 1811 & 1812/DEL/2021  
Assessment years: 2011-12 & 2012-13**

Dy. Commissioner of Income-tax, Central Circle, Ghaziabad.	<u>Vs</u>	M/s KDP Buildwell Private Ltd., A-213, Santi Gopal Chamber Vikas Marg, Shakarpur, Delhi-110092.  <b>PAN: AABCS 6353 E</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**AND**

**C.O. Nos. 56 & 57/Del/2022  
( In ITA Nos. 1811 & 1812/DEL/2021)  
Assessment years: 2011-12 & 2012-13**

M/s KDP Buildwell Private Ltd., A-213, Santi Gopal Chamber Vikas Marg, Shakarpur, Delhi-110092.  <b>PAN: AABCS 6353 E</b>	<u>Vs</u>	Dy. Commissioner of Income-tax, Central Circle, Ghaziabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee represented by</b>	Shri Suresh Kumar Gupta, CA; Shri Baldev Raj, CA; & Shri Manish Upneja, CA
<b>Department represented by</b>	Ms. Ritu Sharma, CIT(DR)
<b>Date of hearing</b>	09.07.2024
<b>Date of pronouncement</b>	16.07.2024

**ORDER****PER SAKTIJIT DEY, VP:**

Captioned appeals by the Revenue and cross objections by the assessee arise out of two separate orders of learned Commissioner of Income-tax (Appeals), Kanpur, for the assessment years 2011-12 and 2012-13. Grounds raised in appeals and cross objections are, more or less, identical except variation in figures.

2. In its cross-objections the assessee has raised certain legal and jurisdictional issues challenging the validity of the assessment orders. Since the issues raised in the cross-objections are jurisdictional issues, going to the root of the matter, we deem it appropriate to adjudicate them at the very outset.

3. In ground number 1 & 2 of cross objections the assessee has challenged the validity of proceedings initiated u/s 153A of the Income-tax Act, 1961(hereinafter referred to as the "Act"), on the ground that in the absence of any incriminating material found and seized in course of search and seizure operation conducted u/s 132 of the Act, additions could not have been made in assessment u/s 153A of the Act.

4. Facts, necessary for deciding this issue, briefly, are, the assessee is a resident corporate entity, stated to be engaged in the business of real estate development. In

the assessment years under dispute, assessee had filed its returns of income u/s 139(1) of the Act, respectively on 30.09.2011 and 30.09.2012. On 26.09.2014, a search and seizure operation u/s 132 of the Act was carried out in the premises of the assessee and other group entities. Consequent to the search and seizure operation, proceedings u/s 153A of the Act were initiated against the assessee. In course of assessment proceedings the Assessing Officer noticed that in the assessment years under dispute the assessee had received share application money/share premium. Noticing this fact, the Assessing Officer called upon the assessee to furnish names and addresses of persons from whom the share application money/share premium was received, their confirmations, income tax return copies and bank statements of the concerned persons etc. In compliance with the query raised, the assessee filed income tax return copies, bank statements, confirmations etc. Alleging that the assessee failed to furnish regular source of income of the entities, who had contributed towards share application money/share premium, and complete bank statements, the Assessing Officer ultimately concluded that the share application money/share premium received are in the nature of unexplained cash credits in terms of Section 68 of the Act. Accordingly, he added back amounts of Rs. 11,17,00,000/- and Rs. 30,15,90,000/- representing share application money/share premium in assessment years 2011-12 and 2012-13 respectively. Additionally, in assessment year 2011-12 the Assessing Officer added

back an amount of Rs. 17,170 by way of disallowance u/s 14A of the Act read with Rule 80.

5. Against the additions so made, the assessee preferred appeals before First Appellate Authority, inter alia, on the ground that in absence of incriminating material, proceedings u/s 153A of the Act could not have been initiated. While deciding appeals, First Appellate Authority did not find merit in the legal grounds raised by the assessee. However, while deciding the issue of addition of share application money/share premium u/s 68 of the Act, on merit, the First Appellate Authority on verifying the facts and materials on record as well as upon considering the submissions of the assessee was satisfied that the assessee had established the identity of the creditors, their creditworthiness and genuineness of transactions. Accordingly, he deleted the addition made u/s 68 of the Act. However, he confirmed the disallowance made u/s 14A read with Rule 8D in assessment year 2011-12.

6. We have considered rival submissions and perused materials on record. Before us learned counsel, appearing for the assessee, submitted that none of the additions made by the Assessing Officer is with reference to any incriminating/seized material, found as a result of search and seizure operation conducted on the assessee. He submitted, since on the date of search the

assessment proceedings for the impugned assessment years have not abated, the Assessing Officer could not have made any addition in absence of any incriminating/ seized material. In support of such contention he relied upon following decisions:

- CIT v. Kabul Chawla 380 ITR 573 (Del.); and
- PCIT v. Abhisar Buildwell (P) Ltd. (2023) 149 taxmann.com 399 (SC).

7. Learned Departmental Representative submitted that assessee's contention that proceedings were not initiated based on any incriminating material is incorrect as in the statement recorded in course of search and seizure operation, reference to undisclosed income was found. However, she fairly submitted that in the assessment orders the Assessing Officer has not specifically referred to any incriminating/seized material.

8. We have considered rival submissions and perused materials on record. We have also applied our mind to the judicial precedents, cited supra. It is a fact on record that the additions made in the impugned orders are in relation to share application money/share premium received by the assessee, being treated as unexplained cash credit u/s 68 of the Act and disallowance made in assessment year 2011-12 u/s 14A of the Act read with Rule 8D. Careful perusal of the assessment orders reveal that in course of assessment proceedings, while verifying

the audited financial statements of the assessee, the Assessing Officer came to know about the receipt of share application money/share premium during the years under dispute. To verify the genuineness of the money received the assessing Officer conducted inquiry by calling upon the assessee to furnish documentary evidences including bank statement, names and addresses of persons from whom share application money/share premium was received, their confirmations, income tax return copies etc. In compliance with the queries raised, the assessee did furnish various documentary evidences. However, the Assessing Officer was not convinced with the evidence furnished by the assessee to prove the creditworthiness of the persons/entities from whom the share application money/share premium was received. Hence, he also doubted the genuineness of the transaction. However, nowhere in the impugned assessment order the Assessing Officer has referred to any incriminating/ seized material, much less any incriminating/seized material having direct bearing on the additions made. Even, he has not referred to any statement recorded in course of search & seizure operation. On the contrary, reading of the assessment order clearly reveals that the additions made u/s 68 of the Act as well as section 14A read with Rule 8D are based on inquiry conducted in course of assessment proceedings and nothing else. Thus, it is established on record that none of the additions made in the assessment

orders are based on any incriminating/ seized material, found during search and seizure operations.

9. In the case of *Abhisar Buildwell (P) Ltd.* (supra), the Hon'ble Supreme Court has held as under:

*“(i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A; (ii) 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 11 ITA 713/Del/2019 & ors. C.O. nos. 61/Del/2019 & ors. of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

10. Thus, as per the ratio laid down by the Hon'ble Supreme Court (supra), in case of unabated assessment u/s 153A of the Act, no addition can be made in absence of any incriminating/ seized material found as a result of search and seizure operations. That being the settled legal position, the additions made by the Assessing Officer u/s 68 and 14A cannot survive. Accordingly, we direct the

Assessing Officer to delete the addition. Resultantly, we allow ground nos. 1 & 2 of the cross objections.

11. In view of our decision above, the other grounds raised in the cross objections as well as grounds raised by the Revenue in its appeals have become infructuous, hence, do not require adjudication.

12. In the result, cross objections of the assessee are allowed and appeals of the Revenue are dismissed.

Order pronounced in open court on 16.07.2024.

**Sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SAKTIJIT DEY )**  
**VICE PRESIDENT**

**Dated: 16.07.2024.**

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**