

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

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos. 8180 to 8184 /Del/2018  
(Assessment Years : 2011-12 to 2015-16)**

M/s. KS Ultratech Pvt.  
Ltd.,  
303, Savitri Sadan-1  
Preet Vihar, Delhi - 92

DCIT  
Central Circle,  
Noida, UP

**PAN: AADCK 4329 C**

**(Appellant)**

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**(Respondent)**

**Appellant by :** Dr. Rakesh Gupta, Adv.  
Shri Somil Agrawal, Adv.  
**Respondent by :** Shri Rishpal Bedi, CIT-D.R.

**Date of Hearing** 02.07.2024  
**Date of Pronouncement** 26.07.2024

**ORDER**

**PER MS. MADHUMITA ROY – JUDICIAL MEMBER :**

All the appeals filed by the assessee are directed against the common order dated 23.10.2018 passed by the Commissioner of Income Tax (Appeals)-IV, Kanpur, under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the orders dated 28.12.2016 passed by the Learned DCIT, Central Circle – Noida, under Section 153C/143(3) of the Act for Assessment Years 2011-12 to 2015-16 respectively.

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2. Since all the matters relate to the same assessee, these are heard analogously and are being disposed of by this common order.

**ITA No.8180/Del/2018 for A.Y. 2011-12**

3. The assessee company is a Private company incorporated on 21 July, 2008 and is registered with the Registrar of Companies, Delhi, involved in the business of architectural, engineering and other technical activities having two Directors namely Kumar Saurav, Abhay Maheshwari.

4. The brief fact leading to the case is this that a search and seizure operation under Section 132 of the Act was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group Noida at its business premises and residences of one of the Directors namely Shri Abhay Maheshwari (of the appellant) lying and situated at S-550/D, School Block, Shakarpur wherein various incriminating documents were claimed to have been found and seized. Subsequently, a survey under Section 133A of the Act was conducted at the business premises of the company at 303, Plot No.11, Savitri Sadan-1, Preet Vihar Community Centre, Delhi. After issuance of order under Section 127 of the Act by the Pr CIT, New Delhi, notice under Section 142(1) of the Act was issued on 27.06.2016 in response whereof, the assessee filed its return of income on 25.07.2016 declaring total income at Rs.1,26,08,850/-. Thereafter, notice under Section 143(2) of the Act dated 12.07.2016 followed by a further notice under Section 142(1) of the Act due to

change of incumbent along with questionnaire dated 25.07.2016 was issued. The said proceeding was culminated in an order of addition on account of unverified receipt to the tune of Rs.2,13,57,660/-, in fact, the entire receipt has been treated as income of the assessee. Such addition was made on the basis of the statement claimed to have been made by the Director of the Company namely Shri Abhay Maheshwari accepting that the company is not engaged in any business activities rather it is a dummy company. Further that, it was admitted by him that he is the paid director and the entire affairs of the company is controlled and managed by Yadav Singh. It has only the rental income. No other activities were carried out. Neither the books of account were found nor was it produced at the assessment stage as of the opinion of the Learned AO. The proceeding culminated in making addition in the hands of the assessee which stood confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. At the time of the hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that it is evident from the records particularly, the assessment order that addition were made by the Learned AO only on the basis of statement made by Shri Abhay Maheshwari being the Director of the Company and not on any incriminating material claimed to have been found and seized during the course of search conducted by the Department. According to him as per the requirement of Section 153C of the Act the satisfaction note has not been recorded by the AO of the searched person. In this regard, he has

drawn our attention to the satisfaction recorded by the AO reproduced at Page 15 of the order passed by the Learned CIT(A) the contents whereof is as follows:

*"During the course of search and seizure action at the residence of Abhay Maheshwari at H.No. S-550, D School block, Shakarpur, New Delhi the statement of Abhay Maheshwari was recorded on oath is 132(4) of Income Tax, Act 1961. Abhay Maheshwari has accepted that he is a working director in the company K. S. Ultratech Private Limited and getting salary from the company and working in the direction of Shri Yadav Singh."*

6. Further that, referring the satisfaction note, the Learned CIT(A) proceeded with the remand report submitted by the Ld. AO wherein the statement recorded under Section 132(4) of the Act of Shri Maheshwari has been considered to this effect that the appellant company was not carrying out any business activities and therefore, the claim of expenses is unjustified. The Learned CIT(A) further reproduced the observation made by the Learned AO in the remand report with the following contents :

*"During the course of search at the office premise of the one of the director of the company shri Abhay Maheshwari at S-550/-D, School Block, Shakarpur, he accepted on oath u's 132(4) of the Act that "the company is not engaged in any business activities rather it is a dummy company. He himself admitted that i am pald director and the entity affairs of the company is controlled and managed by the Yadav Singh. It has only rental Income. No other activities are carried out. No books of account were found. "Assessee was asked to furnish the bills/ vouchers and supporting documents to establish the business activities have been carried out, since, no business activities are carried out by the companies and the professional receipt received is from the related concerns. On query, regarding the evidences of these expenses and justification for payment of directors' salary no satisfactorily*

*explanations have been offered by the assessee. From the Laptop seized from the premise of Abhay Maheshwar, trial Balance of the Assessee-Company (Page 4 to 24) covering period of the FY 2012-13, 2013-14 & 2014-15 was found and seized."*

7. Relying upon the same he concluded as follows:

*"From the above discussion, it is an undisputed that the statement of Shri Abhay Maheshwari recorded during the course of search u/s 132 of the Act, constitutes the incriminating material. Further, on the basis of the incriminating material in the form of statement of Shri Abhay Maheshwari, AO has made the additions of disallowances of expenditure from the receipts received by the appellant company in all these assessment years i.e. A.Y. 2009-10 to A.Y. 2015-16. Thus, it is concluded that, their exists incriminating document in the form of statement of Shri Abhay Maheshwari,. Director of the appellant company, which has a direct bearing on the - determination of total income of the appellant company for all these assessment years under appeals. The decision relied by the appellant for challenging the validity of notice issued u/s 153C of the Act are not applicable to present facts of the case. Therefore, the jurisdictional precondition in the form of existence of the seized document, as a result of search u/s 132 of the Act and having bearing on the determination of the total income of the appellant does exists in the present facts of the case."*

8. Thus it appears from the above that the Authorities below mainly relied upon the statement made by the Shri Abhay Maheshwari, the director of the company and opined that existence of incriminating document in the form of statement of Shri Maheshwari, the Director of the appellant company has a direct bearing on the determination of the total income of the company for all these Assessment Years under appeals. The assessee's Counsel joins issues here. It was vehemently argued by him that the statement recorded under Section 132(4) of the Act cannot be a standalone basis for making assessment. In this regard he has relied upon the judgment passed by the Hon'ble Delhi High Court in

the case of PCIT vs. Pavitra Realcon Pvt. Ltd. and others in ITA No.579/2018 dated 29<sup>th</sup> May, 2024, a copy whereof has duly been submitted before us. While dealing with this particular identical aspect of the matter, the Hon'ble High Court has pleased to observe as follows:

*22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of CIT v. Harjeev Aggarwal, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below: -*

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*23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.*

From the above judgment it appears that the statement made during the course of search cannot be the sole basis of addition against the assessee in the absence of any corroborative documents unearthed during the course of search.

9. On the contrary, the Id. D.R relied upon the judgment passed by the Hon'ble Kerala High Court in the case of CIT Vs. St. Francis Clay Décor Tiles reported in (2016) 70 taxman.com 234 (Kerala) holding that

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any material which was unearthed during search operations or any statement made during course of search by assessee is a valuable piece of evidence in order to invoke Section 153A. In this regard, we would like to observe that this Bench is bound by the judgment passed by the jurisdictional High Court i.e Delhi High Court and not any other High Court. Thus, this particular judgment relied upon by the Ld. D.R has no manner of application in the case in hand.

10. Having regard to this particular aspect that the addition made solely on the basis of the statement u/s 132(4) of the Act by Shri Maheshwari, the Director of the company that too without any corroborative evidences unearthed during the course of search, the same is found to be sustainable and thus deleted.

11. In Assessment Year 2012-13 the further addition to the extent of Rs. 8 lac on account of unexplained advance was made by the ld. AO confirmed by the First Appellate Authority. This is in regard to the advance alleged to have been taken by the assessee from M/s Sanjeev Enterprises for supply of machines. As it appears from the order passed by the Ld. AO that the said addition has been made solely on the basis of the statement made by the assessee of not doing any business and therefore advance for supply of material as found to be not justified. As we have already observed in the previous ground of appeal that statement cannot be the sole basis of making addition without any corroborative evidence unearthed during the course of search, the addition is not sustainable. Apart from that we do not find any incriminating material

referred by the Id. AO while making this particular addition against the assessee save and except the statement of Maheshwari which cannot be considered to be incriminating in nature as already observed by us hereinabove.

Further that the Id. CIT(A) neither made any deliberation on this issue nor assigned any cogent reason while confirming this addition made by the Id. AO. The order passed by the Id. CIT(A) is, thus found to be erroneous. Taking into consideration the entire aspect of the matter, the addition is further found to be not sustainable and therefore, deleted.

**ITA No.8184/Del/2018 (AY: 2015-16)**

12. So far as the addition in respect of assessment year 2015-16 is concerned it is found that the said year is abated year. In that particular year addition of Rs.30,69,283/- on account of trading expenses made by the Id. AO on the basis of the statement recorded u/s 132(4) of the Act made by the assessee is under challenge before us.

13. The assessee has shown turnover/receipt of Rs.3,91,943/-, shown revenue from operation of Rs.19,50,727/- and loss from other income of Rs.15,58,783/- which included the short term capital loss on sale of shares. Against that particular receipt the assessee claimed expenses to the tune of Rs.30,69,283/-. As the director of the company Shri Abhay Maheshwari claimed to have stated that no business is being carried out by the company, the addition to the tune of Rs.30,69,283/- has been made

by the Id. AO which was further confirmed by the First Appellate Authority. Hence, has been challenged before us.

14. In the instant appeal, the Id. Counsel appearing for the assessee submitted before us that Id. AO reproduced the statement made by Shri Maheshwari at page 3 of the assessment order but the entire statement relevant to this particular issue involved in this matter has purportedly been not reproduced/skipped where Shri Maheshwari has categorically, stated that he has never seen loading and uploading of machinery and goods and only received bills and vouchers of the same which may be genuine. It was further stated that he was not involved in the whole process and the said bills produced before him were entered into account books. Further that Shri Yadav Singh and the other directors Shri Kumar Saurabh might be knowing the real functioning of the company and also the reason of high net profit of the company. Instead of taking into consideration the entire statement made by Shri Maheshwari, only a part of the same suitable to the interest of revenue has been reproduced and relied upon by the Id. AO. Drawing inference that no business activities is being carried out by the company and making addition on the basis of such formation of opinion, is thus found to be bad in law and thus liable to be deleted as argued by him.

15. The Id. D.R on the other hands relied upon the order passed by the authorities below.

16. Upon perusal of the order passed by the Id. AO it appears that at page 3 of the statement of Shri Maheshwari is reproduced as under:

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A.Y. 2015-16

Please explain the nature of trading of above mentioned goods and produce relevant documents in favour of it. Also explain so much higher rate of profit from trading of goods. Can you prove the purchase of machinery is actually. Please produce the evidence.

I have never seen loading and unloading of machinery and goods and I only receive bills and vouchers of the same which may be genuine. I am not involved in whole process and only so said bills produced before me are entered in account books. Sh Yadav Singh know about real functioning of the company and other director Sh Kumar Saurabh may know this. Sh Kumar Saurabh and Sh Yadav Singh may know the <sup>reason of</sup> high net profit of  
Contd - 11

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company. I am only a paid director of the company who receives the remuneration in lieu of work done for the company. This is a dummy company of Sh Yadav Singh and he even knows about the functioning of the company. I am only an employee and have no decision making power.

Do you want to say anything else?

No. I don't want to say anything else.

27/11/14

Atty 27/11/14

17. On the other hand, from the copy of the statement made by Shri Maheshwari made available to the assessee by the department speaks otherwise which is as follows:

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As per Balance sheet as on 31/03/2012, 31/03/2013 & 31/03/2014, Under Note 12 Revenue from operations Central sales have been shown as 39298355/-, 15582652/-, 7736221/- and job work receipts have been shown as 5516000/-, NIL and 12133800/-.

Please explain the nature of trading of above mentioned heads and produce relevant documents in favour of it. Also explain so much higher rate of profit from trading of goods. Can you prove the purchase of machinery is actually. Please produce the evidence.

I have never seen loading and unloading of machinery and goods and I only receive bills and vouchers of the same which may be genuine. I am not involved in whole process and only so said bills produced before me are entered in account books. Sh Yadav Singh know about real functioning of the company and other director Sh Kumar Saurabh may know this. Sh Kumar Saurabh and Sh Yadav Singh may know the <sup>reason of</sup> high net profit of

Contd - 11

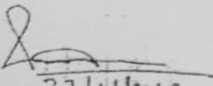
27/11/14

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- 11 -

Company - I am only a paid director of the Company who receives the remuneration in lieu of work done for the Company. This is a dummy company of Sh. Yadav Singh and he even knows about the functioning of the Company. I am only an employee and have no decision making power.

- Do you want to say anything else?  
15. No, I don't want to say anything else.

  
27/11/2014

Atkay 27/11/14

Reading  
I have read over the above statement & is recorded as I have said without any pressure. I have give this without any fear & coercion.

Atkay 27/11/14

उपरोक्त बयान हमारी उपस्थिति में बिना किसी भय रावण दबाव के दिलवाये गये।

Certified True Copy  
A  
DCIT, Circle - 1, Gurgaon

W1 - Muzant 22/11/2014  
W2 - Sunny Baccot

18. Thus, upon comparison of the statement actually made by Shri Maheshwari and the reproduction made by the Ld. AO in the assessment order it appears, that the submission made by the assessee's counsel that though as per statement made by Shri Maheshwari that he has never seen loading and unloading of machinery and goods and only received the bills and vouchers of the same which might have been genuine or that he

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does not know the whole process of real functioning of the company, is found to be true which has not been taking into consideration in its proper perspective by the ld. AO rather inferred in a negative manner so as to make addition in the hands of the assessee. Having regard to this particular aspect of the matter inference drawn by the ld. AO that it has been categorically stated by Shri Maheshwari that the company is not carrying out any business activities and therefore making addition of claim of expenses to the tune of Rs.30,69,283/- is not found to be sustainable in the absence of any corroborative evidence in the hands of the revenue. Hence, the addition to the tune of Rs.30,69,283/- made by the ld. AO is found to have no basis and thus deleted.

19. Assessee's all appeals are allowed.

**This Order pronounced in the Open Court on 27/07/2024**

**Sd/-**

(G. S. PANNU)  
VICE PRESIDENT

**Sd/-**

(Ms. MADHUMITA ROY)  
JUDICIAL MEMBER

Dated 26/07/2024

*Priti Yadav, Sr.PS\**

**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI