

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA Nos. 1355, 1356 & 1357/Del/2023**

**Assessment years: 2010-11, 2011-12 & 2012-13**

M/s Polo Computers & Softwares Pvt. Ltd., S. No. 21, G.F., Opp-Balbhaban, New Delhi-110002.	<u>Vs</u>	ACIT, CC-13. New Delhi.
PAN- AA ECP 4758 K		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>None</b>	
<b>Respondent by</b>	<b>Shri P.N. Barnwal, CIT(DR)</b>	
<b>Date of hearing</b>	<b>04.07.2024</b>	
<b>Date of pronouncement</b>	<b>09.08.2024</b>	

**ORDER**

**PER KUL BHARAT, JM:**

The captioned appeals have been preferred by the assessee against separate orders of learned Commissioner of Income-tax (Appeals)-28, New Delhi, all dated 29.11.2022, pertaining to assessment years 2010-11, 2011-12 & 2012-13. Since common issues are involved for adjudication in all these appeals, the same were

taken up together for hearing and are being disposed of by this common order for the sake of convenience.

2. At the time of hearing no one attended the proceedings on behalf of the assessee. It is seen from the record that on earlier occasion also i.e. 11.03.2024, there was no representation on behalf of the assessee. Notices of hearing sent by the Registry have been returned unserved with postal remarks 'insufficient address'. Under these circumstances appeals of the assessee are taken up for hearing in the absence of the assessee and are being decided on the basis of material available on record.

3. We first take up ITA no. 1355/Del/2023 for A.Y. 2010-11. The assessee has raised following grounds of appeal:

*“1. The Ld. CIT(A) has erred in not appreciating the fact that there is lack of approval in the instant case u/s 153D of the Act and therefore, order of assessment is nullity*

*2. The Ld. CIT(A) has erred in not appreciating the fact that in any case, purported approval under section 153D of the Act have been granted without application of mind and is invalid, bad in law and is liable to be quashed. Consequently, assessment orders are vitiated for want of valid approval under section 153D of the Act*

*3. The Ld. CIT(A) has erred in not appreciating the fact that the assessment records, seized material and appraisal report must be available before approving authority and approval must reflect the application of*

*mind to the facts of the case and in absence thereof approval granted u/s 153D is not in accordance with law.*

4. *The Ld. CIT(A) has erred in not appreciating the fact that the approval was granted in short time on the date the request was made for approval by the AO*

5. *The Ld. CIT(A) has erred in not appreciating the fact that the common approval is invalid*

6. *The Ld. CIT(A) has erred in not appreciating the fact that the validity of assumption of jurisdiction to frame an order of assessment dated 24.12.2018 u/s 153C of the Act*

7. *The Ld. CIT(A) has erred in not appreciating the fact that addition/disallowance the made are not based on incriminating material detected as a result of search on the searched person and therefore addition made/disallowance is apparently the notice issued u/s 153C of the Act and, the order of assessment so framed are without jurisdiction*

8. *The Ld. CIT(A) has erred in not appreciating the fact that the approach adopted by revenue is inconsistent and contradictory.*

9. *The Ld. CIT(A) has erred in not appreciating the fact that the addition tantamounts to double taxation and is therefore, not permissible.*

10. *The Ld. CIT(A) has erred in not appreciating the fact that the disallowance of expenditure is factually and legally misconceived*

11. *The Ld. CIT(A) has erred in not appreciating the fact that the lack of enquiry by the learned assessing officer*

12. *The Ld. CIT(A) has erred in not appreciating the fact that no addition can be made on the basis of surmises, suspicion and conjectures*

13. *The Ld. CIT(A) has erred in not appreciating the fact that any document found from third party premises in absence of any corroborative evidence cannot be relied upon to draw any adverse inference against the appellant*

14. *The Ld. CIT(A) has erred in not appreciating the fact that the computation made is otherwise too arbitrary and wholly untenable.*

15. *The Ld. CIT(A) has erred in not appreciating the fact that the addition cannot be made merely on the basis of statement of third party recorded behind the back of without providing an opportunity to cross examine such witness, is contrary to the principles of natural justice and any inference drawn on basis of such statements be held unsustainable under law.*

16. *The Ld. CIT(A) has erred in not appreciating the fact that the percentage of commission adopted either @ 2.5% or increase on assets and liabilities and 1.5% as revenue items/bank deposits /withdrawals is without any basis and thus untenable*

17. *The Ld. CIT(A) has erred in not appreciating the fact that the addition made on substantive basis in the hands of Mukesh Kumar is also based on no material and grossly untenable.*

18. *The appellant crave leave to add, alter or amend any of the grounds before or at the time of hearing.”*

4. Facts, in brief, are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 (the “Act”) was conducted on 23.07.2015 and subsequent dates in different business and residential premises of “Shri Deepak Agarwal, Shri Mukesh Kumar & others” group of cases, based at Delhi, allegedly entry operators providing accommodation entries to beneficiaries. As per Assessing Officer, during the course of search and seizure operation many incriminating papers/documents, related to the assessee company were found and seized. Therefore, after recording satisfaction, notice u/s 153C of the Act was issued. Thereafter, notice u/s 142(1) was issued. It is noteworthy that in response to notice

u/s 153C of the Act, the assessee filed its return of income at a loss of Rs. 3,682/-. The Authorized Representative of the assessee attended the assessment proceedings. The Assessing Officer after considering the explanation and material placed before him proceeded to make addition of Rs. 3,62,076/- on account of disallowance of bogus expenses and other addition on protective basis of Rs. 21,420/- and on substantive basis of Rs. 5,355/- i.e. 20% of total commission amount. Aggrieved against this the assessee preferred appeal before learned CIT(Appeals), who partly allowed the appeal by confirming the action of AO in disallowing the alleged bogus expenses booked in P & L a/c amounting to Rs. Rs. 3,62,076/-. He, however, deleted the addition made by the AO on account of commission of Rs. 26,775/- being 80% on protective basis and 20% on substantive basis. Aggrieved against the order of learned CIT(A) the assessee is in appeal before this Tribunal.

5. In ground nos. 1 to 7 the assessee has challenged the validity of proceedings u/s 153C of the Act. The learned CIT(A) after discussing the issue in detail, rejected assessee's plea on this issue and upheld the validity of proceedings u/s 153C. After going through the order of learned CIT(A) and there being no supporting material filed by the assessee in support of its claim, we see no reason

to interfere with the finding of learned CIT(A) on this count. Accordingly, grounds taken by the assessee in this respect are rejected.

6. Apropos to the grounds raised by the assessee in relation to disallowance of expenses booked in P & L a/c amounting to Rs. Rs. 3,62,076/-, we find that the learned CIT(A) has rejected the claim of assessee, inter alia, by observing as under:

*“6.4 During the assessment proceedings, the Assessing Officer has disallowed the bogus expenses booked in P & L Account as the assessee is not engaged in any business activities, therefore, the expenses claimed in P & L Account are not genuine but are bogus expenses. Neither the books of accounts including bills and vouchers were found during the course of search nor the appellant had produced any books of account and bills vouchers during the assessment proceedings, therefore, the transactions made in the bank accounts remains unexplained. Further, in the light of the statements given by its director that the company was involved in providing accommodation entry, it has been a matter of fact that the assessee company was not engaged in any business activities but was operated and managed for providing the accommodation entries by Sh. Mukesh Kumar, thus the expenses claimed are not genuine. The appellant has not provided any proper explanation. Considering the facts and evidences in the case of the appellant, I am unable to support the claim of the appellant.”*

7. It is noticed that the authorities below have disallowed the claim of the assessee on the ground that assessee was not found to be engaged in any business activities. Before us also the assessee failed to provide any supporting evidence in support of its claim. Under these circumstances we see no reason to interfere in the finding of learned CIT(A) on the issue in question. Consequently, grounds taken by the assessee on this issue are dismissed.

8. In the result assessee's appeal for A.Y. 2010-11 is hereby dismissed.
9. Identical grounds have been taken by the assessee in ITA no. 1356/Del/2023 for A.Y. 2011-12 and in ITA no. 1357/Del/2023 for A.Y. 2012-13, excepting difference in figure of addition. No change in facts and circumstances has been pointed out by the learned DR for these assessment years. Therefore, respectfully following our decision in A.Y. 2010-11 (supra), mutatis mutandis, we uphold the orders of learned CIT(Appeals) for A.Y. 2011-12 and 2012-13 and dismiss the appeals preferred by the assessee.
10. In the result, all the three appeals of the assessee in ITA no. 1355/Del/2023 for A.Y. 2010-11; in ITA no. 1356/Del/2023 for A.Y. 2011-12; and in ITA no. 1357/Del/2023 for A.Y. 2012-13 are dismissed.

Order pronounced in open court on 9<sup>th</sup> August, 2024.

**Sd/-**  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Dated: 09.08.2024.**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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