

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

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.881/Del/2018  
(ASSESSMENT YEAR 2015-16)**

M/s Niranjan Buildcon Pvt. Ltd. Pocket No.0, Flat No.200 Near Water Tank Dilshad Garden Delhi-110095 PAN:AACCN1111C	Vs.	Dy.CIT Central Circle Noida
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	DR. Rakesh Gupta, Advocate Sh. Shery Jain, Adv.
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	28/05/2024
Date of Pronouncement	14/08/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), IV, Kanpur ["Ld. CIT(A)", for short], dated 21/11/2017 for Asst. Year 2015-16.
2. The brief facts of the case are, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('the Act' for short) was

conducted on 27/11/2014 in the case of Maconns, Meenu and Yadav Singh Group., Noida covering its business premises and residence of Director, their family members and other business associates concerns and other key persons. During the course of search operation at the residence of Abhay Maheshwari, a Laptop was found and seized. From the scanning of seized data, it was found that Golf Link Hospitality Pvt. Ltd. has obtained unsecured loan, share application money and share capital from various doubtful entities and assessee is one of them.

**3.** For the purposes of assessment, notice u/s 153C of the Act was issued and served on the assessee. In response assessee filed its return of income and requested to treat the same in response to notice u/s 153C of the Act. Subsequently, notice u/s 143(2) and 142(1) were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for. After considering the various information submitted by the assessee, the Assessing Officer observed that assessee has declared receipt of Rs.8,10,000/- from interest income and declared an income of Rs.2,77,770/-. The Assessing Officer observed that the income declared by the assessee constitutes interest on FDR and further observed that assessee is not doing any business, therefore, claim of expenses cannot be allowed. Accordingly, he assessed to tax the total income declared by the assessee Rs.8,10,000/- u/s153C r.w. section 143(3) of the Act.

**4.** Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-4, Kanpur and raised various grounds of appeal against the addition proposed by the Assessing Officer and in such grounds of appeal assessee has raised several jurisdictional issues before the Ld. CIT(A). After considering the submissions of the assessee, the Ld. CIT(A) sustained the additions made by the Assessing Officer.

**5.** Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal:

*“1) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. AO in making disallowance of Rs. 5,32,230/- vide para-7 of the assessment order, more so when there was no incriminating material found as a result of search warranting such disallowance and impugned disallowance has been made by recording incorrect facts and findings and making allegations based on surmises and conjectures and without observing the principles of natural justice.*

*2) That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.5,32,230/- is bad in law and against the facts and circumstances of the case.*

*3) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order and that too without giving adequate opportunity of hearing and without observing the principles of natural justice.*

*4) That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”*

**6.** At the time of hearing, the Ld. AR brought to our notice initiation of re-assessment proceedings u/s 153C of the Act and reasons given for initiation of proceedings u/s 153C from the assessment order. He also brought to our notice nature of additions

made by the Assessing Officer which has no relevance to such proceedings initiated by the Revenue. He submitted that there is no incriminating material found against the assessee and the Assessing Officer has merely disallowed expenditure claimed by the assessee during the course of assessment, which has no relevance to the incriminating material found during the search, therefore, the proceedings initiated u/s 153C has no legs to stand. He prayed that due to non existence of incriminating material the assessment passed u/s 153C r.w. section 143(3) is bad in law.

**7.** On the other hand, the Ld. DR relied on the orders of lower authorities.

**8.** Considered the rival submissions and material placed on record, we observed that the assessment was completed by the Assessing Officer u/s 153C r.w. section 143(3) of the Act by making disallowances of certain expenditure by observing discrepancies in the financial records submitted by the assessee, however, the assessment was completed without their being any reference to any incriminating material found during the search in the case of Maconn's Meenu and Yadav Singh Group, Noida. Therefore, the assessment was completed u/s 153C r.w. section 143(3) is bad in law, since, there is no reference to any incriminating material, therefore, the assessment order passed are not in confirming with the provisions of section 153C of the Act. Accordingly, assessment order is set aside.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 14<sup>th</sup> August, 2024.

Sd/-

**(MS. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 14/08/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI