

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

**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A. No. 7711/DEL/2018 (A.Y 2006-07)

I.T.A. No. 7712/DEL/2018 (A.Y 2007-08)

DCIT Central Circle, 7 th Floor, HSIIDC Building, Udyog Vihar, Phase-V, Gurgaon, Haryana (APPELLANT)	Vs.	Frost Falcon Distilleries Ltd. C-654, New Friends Colony, New Delhi PAN No. AAACF0434C (RESPONDENT)
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Assessee by :	Sh. V. K. Bindal, CA and Ms. Rinky Sharma, ITP
Department by:	Sh. T James Singson, CIT DR and Sh. Shyam Manohar Singh, Sr. DR

Date of Hearing	14.08.2024
Date of Pronouncement	27.08.2024

ORDER

PER ANUBHAV SHARMA, JM

The above mentioned Appeals are filed by the Revenue for Assessment Years 2006-07 and 2007-08 against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon ("Ld. CIT (A)")

for short), dated 04/09/2018. The two appeals are have common set of facts in backgrounds and identical issues are involved.

2. The facts in brief are that, search operation was conducted in the office premises of Krish Group of Companies and accordingly notice u/s 143A of The Income Tax Act 1961 (hereinafter referred as 'the Act') was issued upon the assessee which is engaged in the business of manufacturing of liquor beverages. Allegedly in the search conducted on 09/11/2011, various incriminating papers were found and seized from the office premises as well as the residential premises of the Directors such as Sh. Amit Katyal. The Assessing Officer records that these documents were duly confronted to the Krish Group during the course of search proceedings. The Assessing Officer records that during the course of search proceeding and also in post search enquiries it was revealed that the Companies of the Krish Group have introduced their own accounted money in the form of share capital and share premium from non-existing companies and concerns. The Assessing Officer relied the Investigation Unit, New Delhi report in the case of Sh. Surendra Kumar Jain Group which were alleged

entry operators and controller of more 100 Companies. It was observed that some of the names of the investor Companies in Assessee are similar to Companies related to Surendra Kumar Jain Group and accordingly as with regard to these Companies the Assessing Officer was of the view that the assessee has failed to establish identity, creditworthiness and genuineness of the persons and the transactions from whom the share capital/share application was received by the assessee and accordingly additions were made u/s 68 of the Act, which have been deleted by the Ld. CIT(A) for which revenue is in Appeal raising following grounds, which are identical in both years except to the amounts involved.

“i) Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in concluding that there was a difference in scope of proceedings under section 153A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment.

(ii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in holding that no addition can be made u/s 153A in respect of completed assessment if no incriminating material is found during search.

(iii) Whether there is any restriction on the powers of the Assessing Officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se.

(iv) Whether on the facts and in the circumstances of the case the Ld. CIT(A) was correct in interpreting section 153A which starts with a non-obstinate clause stating therein that the operation of section 139,147, 148, 149, 151 & 153 was deposed meaning thereby that in search cases the Assessing Officer is duty bound to take up the assessment u/s 153A and that the above-mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if any escaped income or under-assessed income undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceedings u/s 153A in search cases as during the pendency of the proceedings u/s 153A, the proceedings u/s 147 of the Income Tax Act, 1961 cannot be initiated.

v) Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in ignoring the principles of strict interpretation of statute when the words used in the statute i.e. sec 153A(1)(b) of the IT Act, 1961 are assess or reassess the "Total Income".

(vi) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in disregarding the judgments of the Hon'ble Kerala High Court in the case of E.N. Gopakumar v. CIT (2016) 75 taxmann.com 215 and judgment of the Hon'ble Allahabad High Court in the case of CIT, Kanpur v. Raj Kumar Arora (2014) 52 taxmann.com 172 which lay down the correct proposition of law.

(vii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in not deciding the issue of addition of Rs. 1,52,00,000/- as unexplained share application/share application money u/s 68 of the Income Tax Act, 1961 on merits.

(viii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) has failed to appreciate that the information collected during the enquiries conducted by the Investigation Wing/ Assessing Officer pointing towards the finding that the

assessee company has received the said share application/premium through accommodation entries constituted incriminating material which could have been utilized for making the addition of Rs. 1,52,00,000/- as unexplained share application money in the assessment order framed u/s 153A by the Assessing Officer.

(ix) The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing.”

3. On hearing both the sides it comes up that the Ld. Departmental Representative has primarily relied the various observations of Assessing Officer to contend that the Assessing Officer has taken into consideration all the circumstances which had come up during the search and subsequent enquiries to show that from non-existent Company or paper Companies, the assessee had received share premium etc. by way of accommodation entries. It was submitted that the findings of Ld. CIT(A), that they were not incriminating material is incorrect.

4. The Assessee's Representative has however relied the order of CIT(A) and submitted that no incriminating was found during the search was relied.

5. After going thoroughly through the assessment order, we are of the considered view, that not even a single document with its contents and context is mentioned in the assessment order and what is relied is already existing information in the financials about form and source of fresh capital introduced in the assessee Company by various investors. Quite apparently the Assessing Officer has relied the enquires conducted by the Investigation Wing only to connect the transactions of investment in the assessee Company with the information gathered at the time of search in the case of S K. Jain Group of Company. The Assessing Officer also relied the fact of the Enforcement Directorate action on one Pankaj Kapoor and its Companies who were allegedly hawala operators.

6. The Ld. CIT(A) categorically observed in Para 7.3 as follows:-

“7.3 It is an undisputed fact, apparent from the assessment order that no incriminating documents/ records or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the appellant. The only addition made in the assessment order under section 153A read with section 143(3) is on account of unexplained credit u/s 68 amounting Rs.1,52,00,000/-. This addition is not borne out of any incriminating material found during the search action.”

7. The aforesaid observations of the Ld. CIT(A) could not be rebut by the Ld. Departmental Representative by referring to any documents available on record or in the paper book to contend that this factual finding is incorrect. The Ld. Departmental Representative has tried to make out a case on the observations of the Assessing Officer which are merely 'inferences' drawn on the basis of certain investigation reports of the other persons while the assessment in case of the assessee was completed by recourse to Section 153A (1)(b) read with Section 143 (3) of the Act. Thus, we are of the considered view that in the absence of any incriminating evidence, the assessments could not have been completed u/s 153A of the Act and the findings of Ld. CIT(A) requires no interference.

8. The grounds raised by revenue have no substance and the appeals are dismissed.

Order pronounced in the open court on 27th AUGUST, 2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated : 27/08/2024

*R.N, Sr. PS**

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI