

आयकर अपीलीय अधिकरण
दिल्ली पीठ "जी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
आअसं.5596 & 5597/दिल्ली/2015 (नि.व. 2009-10 & 2010-11)
ITA Nos. 5596 & 5597/DEL/2015 (A.Y. 2009-10 & 2010-11)

Deputy Commissioner of Income Tax,
Central Circle-18, R. No. 102, ARA Centre, E-2,
Jhandewalan Extn, New Delhi

..... अपीलार्थी/Appellant

बनाम Vs.

Sanjeev J Aeren,
Aerens Esates Mall Road, Kisangarh,
Behind Pocket D-III, Vasant Kunj,
New Delhi

PAN: AAGPG 8854 J

..... प्रतिवादी/Respondent

आअसं.5598/दिल्ली/2015 (नि.व. 2010-11)
ITA No. 5598/DEL/2015 (A.Y. 2010-11)

Deputy Commissioner of Income Tax,
Central Circle-18, R. No. 102, ARA Centre, E-2,
Jhandewalan Extn, New Delhi

..... अपीलार्थी/Appellant

बनाम Vs.

Shrey S. Aeren,
Aerens Bimaldeep Complex, Mall Road,
Behind Pocket D-III, Kisangarh, Vasant Kunj,
New Delhi

PAN: AHMPA 6058 K

..... प्रतिवादी/Respondent

आअसं.5594/दिल्ली/2015 (नि.व. 2010-11)

ITA No. 5594/DEL/2015 (A.Y. 2010-11)

Deputy Commissioner of Income Tax,
Central Circle-18, R. No. 102, ARA Centre, E-2,
Jhandewalan Extn, New Delhi

..... अपीलार्थी/Appellant

बनाम Vs.

Sunita S. Aeren,
Aerens Bimaldeep Complex, Mall Road,
Behind Pocket D-III, Kisangarh, Vasant Kunj,
New Delhi

PAN: AAHPG 0477 C

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rajeshwar Painuly, Advocate

प्रतिवादीद्वारा/ Respondent by : Ms. Jaya Choudhary, CIT(DR)

सुनवाई की तिथि/ Date of hearing : 24/09/2024

घोषणा की तिथि/ Date of pronouncement: : 30/10/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These four appeals by different assessee's are taken up together for adjudication as they emanate from same set of facts. The Revenue in all these appeals have raised identical grounds of appeal. For the sake of convenience facts are narrated from ITA No. 5596/Del/2015, for assessment year 2009-10.

ITA No. 5596/Del/2015 for AY 2009-10

2. The facts of the case as emanating from records are briefly encapsuled as under: Search & seizure action u/s. 132 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') and survey operation u/s. 133A of the Act were carried

out in the case of Aeren Group on 17.08.2011. In search & seizure and survey operations various residential and business premises of the Aeren Group were covered. The promoters of AEZ Group (Aeren Group) were purportedly involved in providing accommodation entry in the form of Long Term Capital Gain (LTCG) which is exempt u/s. 10(38) of the Act. The assessee was asked to furnish details of LTCG earned on investments. It is alleged that family members of the assessee (Sanjeev J Aeren) and the assessee have earned profit on sale of shares of listed company M/s. Khaitan Weaving P. Ltd., now known as M/s. Spectacle Infotek Ltd. The details of alleged LTCG earned by the assessee and the family members covered under search are as under:-

Name of Assessee	Investment made (Rs.)	F.Y	Profit (Rs.)
Sh. Sanjeev Aeren	80,61,246	2008-09	2,44,29,107
		2009-10	3,04,87,209
Smt. Sunita Aeren	60,42,943	2008-09	1,39,97,033
		2009-10	3,53,37,816
Sh. Shrey Aeren	60,42,442	2009-10	4,22,17,446
Total			14,64,68,611

During the course of search statement of assessee (Sanjeen J Aeren) was recorded on 17.08.2011. In his statement, he expressed his ignorance about the business carried out by the company.

3. The Assessing Officer (AO) vide order dated 31.03.2014 passed u/s. 153A r.w.s 143(3) of the Act, solely on the basis of statement of Sanjeev J Aeren, made addition of Rs.2,44,29,107/- on account of providing accommodation entry in the impugned assessment year.

4. Aggrieved against the said assessment order, the assessee carried the issue in appeal before the CIT(A) *inter alia* challenging validity of assessment made u/s. 153A of the Act and the addition on merits. The CIT(A) after considering detailed submissions of the assessee and placing reliance on various decisions cited before him, deleted the addition on the ground that the addition has been merely on the basis of statement of appellate during the search. He further observed that addition is based on presumption and surmises by the AO and thus, is against the spirit of law. Against said finding of the CIT(A), Revenue is in appeal before the Tribunal.

5. Shri Rajeshwar Painuly, appearing on behalf of the assessee submitted at the outset that no incriminating document whatsoever was found during search. The assessment made u/s. 153A r.w.s. 143(3) of the Act is merely on the basis of statement without their being any collaborative material. This is a case of non abated assessment, it is a well settled law that without their being any incriminating material found during search, addition cannot be made in the case of completed assessments. To support his contention, he placed reliance on the decision of Hon'ble Apex Court in the case of *PCIT vs. Abhisar Buildwell P. Ltd.*, 149 taxmann.com 399/459 ITR 212.

6. Ms. Jaya Choudhary representing the department vehemently defending the assessment order submitted that during the course of search proceedings the statement of Sanjeev J Aeren was recorded, wherein he was specifically confronted with regard to accommodation entries in the form of LTCG being provided by the group. The AO has recorded the finding of fact that Aeren Group had sold shares of M/s. Khaitan Weaving P. Ltd., formerly known as M/s. Spectacle Infotek Ltd., and had earned profit on sale of said shares. When this fact was confronted to him, he stated that the transactions were coordinated by his ex-employee and his unaware of the business carried out by the company. The value of shares of the company increased ten times within a period of one year in suspicious manner. He submitted that in the back drop of these facts, the AO rightly made addition in the hands of the assessee.

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an un-rebutted fact that the addition has been made by the AO in assessment proceedings u/s. 153A of the Act, where there was no pending assessments. In other words, it is a case of completed assessment. A perusal of assessment order reveals that the AO has made addition merely on the basis of statement of assessee. In the assessment order, the AO has not referred to any incriminating material found during the course of search. The only basis for making addition is the statement. Even before us, the Id. DR has failed to point out any incriminating material unearthed during search. The CIT(A) in the impugned order has recorded finding of fact that entire proof of purchase and sale of shares were found in books of account of the assessee and purchase and sale of shares has been executed through the de-mat account via proper banking

channel. The assessee has paid Security Transaction Tax as well. Hence, addition is made on the basis of presumption and surmises. The Revenue has not been able to rebut the findings of the First Appellate Authority.

8. The Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell P. Ltd., (supra) has held that, *"Completed assessments can be interfered with by the AO while making assessment u/s. 153A of the Act only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

In the instant case, the transaction of sale and purchase of shares has already been recorded by the assessee in its books of account. It is not a case of Revenue that the assessee has not disclosed the transaction of sale and purchase of shares. Thus, in the absence of any incriminating material unearthed during the course of search, the addition made by AO in the year of completed assessment is unsustainable. We find no infirmity, in the order of CIT(A) in deleting the addition. Hence, impugned order is upheld and appeal of Revenue is dismissed being devoid of any merit.

ITA No 5597/Del/2015, for AY 2009-10;
ITA No 5598/Del/2015, for AY 2009-10 &
ITA No 5594/Del/2015, for AY 2009-10

10. Both sides are unanimous in stating that the facts in these three appeals are identical to the facts in ITA No. 5596/Del/2015 for AY 2009-10. Hence, submissions made in the aforesaid appeal would hold good for these three

appeals as well. Undisputedly, there were no pending assessments for the impugned assessment years in the case of assessees in these appeals.

11. In light of the fact that no incriminating material was unearthed during the course of search and the addition has been made merely on the basis of statement, such addition is unsustainable. For the detailed reasons recorded while adjudicating appeal in ITA No. 5596/Del/2015, present appeals by the Revenue are dismissed for parity of reasons.

12. To sum up, appeals of the Revenue in ITA No. 5596/Del/2015, ITA No. 5597/Del/2015, ITA No. 5598/Del/2015 & ITA No. 5594/Del/2015 are dismissed.

Order pronounced in the open court on Wednesday the 30th day of October, 2024.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 30/10/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI