

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'SMC' NEW DELHI  
BEFORE MS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 1567/DEL/2024  
Assessment Year: 2014-15**

SHEEL TRADING COMPANY, 2612-13, NAYA BAZAR, DELHI-110006	<b>Vs.</b>	ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-13, NEW DELHI
<b>PAN :AAOFS9078A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 1566/DEL/2024  
Assessment Year: 2013-14**

Assessee by	Shri Baldev Raj, CA and Shri Manish Upneja, CA
Department by	Shri Sanjay Kumar, SR, DR

Date of hearing	23.10.2024
Date of pronouncement	20.11.2024

**ORDER**

**PER MADHUMITA ROY, JUDICIAL MEMBER**

The instant appeal filed by the assessee is directed against the order dated 22.02.2024 passed by the Commissioner of Income-Tax, Appeal-26, New Delhi, arising out of the order dated 19.03.2022 passed by the ACIT, Central Circle-13 under Section

143(3) r.w.s. 147 of the Income-tax Act, 1961(hereinafter referred to as the “Act”) for Assessment Year 2013-14.

2. By way of an application dated 22.10.2024 the assessee has raised additional ground of appeal mainly challenging the assumption of jurisdiction by the Learned AO under Section 148 r.w.s 147 of the Act based on incriminating materials unearthed during the search of M/s. Dhanuka Group. The case of the assessee is that the assessment could have been initiated in facts and circumstances of the matter, only invoking the provision Section 148 of the Act. Hence initiation of proceedings is bad in law and is liable to be quashed. Prayer has been made for admission of such additional ground at this stage before us relying upon the judgment passed by the Hon’ble Supreme Court in the matter of *NTPC Limited Vs CIT, reported in 229 ITR 383(SC)*.

3. In view of the question of law as mentioned herein above raised before us for the first time and there is no new fact to be considered, having regard to the judgment passed by the Hon’ble Apex Court as mentioned herein above, the legal ground is admitted.

4. Brief facts leading to the case is this that a search and seizure action under Section 132 of the Act was conducted upon M/s. Dhanuka Group, Neemuch on 13.02.2019. During search action the assessee before us was covered under Section 133A of the Act as one of the predominant parties with M/s. Dhanuka Group was the assessee before us. It was found that the assessee has made purchase with some entities which have been identified as bogus entities. Reasons was recorded by the Assessing Officer and notice under Section 148 of the Act dated 30.03.2021 was issued to the assessee. The re-assessment proceedings was finalized upon making addition of Rs.9,75,301/- which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. At the time of hearing of the appeal the Learned Counsel appearing for assessee submitted before us that on the basis of search conducted in the case of M/s. Dhanuka Group, Neemuch on 13.02.2019 and based on incriminating materials unearthed during the course of search, the re-assessment has been initiated under Section 148 of the Act. In fact the same ought to have been initiated under Section 153C of the Act in the case of the assessee and not invoking the provision of Section 148 of the Act

and initiation of the re-assessment proceedings, therefore, is not in terms of statutory provisions. In support of his argument he has relied upon the judgment in the matter of *ITO Vs Arun Kumar Kapoor reported in 2011 16 taxmann.com 373*. He has further relied upon the judgment passed by the Coordinate Bench in the case of *M/s. ASG Developers Private Limited in ITA No. 2185/Del/2024* copies whereof have been duly furnished before us. Further that he has relied upon the judgment passed in the case of *Shyam Sunder Khandelwar Vs Assistant Commissioner of Income-tax reported in 2024 161 taxmann.com 255* and judgment in the case of *Pr.CIT Vs Abhisar Buildwell(P) Limited, reported in (2023) 149 taxmann.com 399/293 taxmann 141/454 ITR 212(SC)*.

6. The Learned DR has not been able to controvert such submissions made by the Learned AR. The submission made by the Learned AR in the facts and circumstances of the case is acceptable since admittedly re-opening has been done under Section 148 of the Act though on the basis of the incriminating materials unearthed during the course of search conducted on M/s. Dhanuka Group on 13.03.2019. In fact the proper course of action in such case of re-opening of the assessment of the assessee before us could have been invoking the provision of

Section 153C of the Act. The judgment relied upon the Learned AR as mentioned hereinabove are also taken into consideration as those are on the identical facts and thus the re-opening of the assessment under Section 148 of the Act is found to be *illegal and void ab initio* and liable to be quashed.

5. Hence, assessee's appeal is, thus, allowed.

***Order pronounced in the open court on 20<sup>th</sup> November, 2024.***

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

Dated: 20<sup>th</sup> November, 2024

**DP/SPS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi