

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

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.3494/Del/2024
(ASSESSMENT YEAR: 2011-12)

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| Deputy Commissioner of Income Tax, Circle-13, New Delhi | Vs. | Wismore Equity Pvt. Ltd. House No.242, PKT B PH4, Landmark near Shani Mandir, Ashok Vihar, New Delhi, North West Delhi-110052 PAN:AAPCS2585J |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri Kapil Goel, Advocate |
| Respondent by | Shri Sanjay Pandey, CIT-DR |

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| Date of Hearing | 13/11/2024 |
| Date of Pronouncement | 20/11/2024 |

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by the Department is against order dated 14/05/2024 of Learned Commissioner of Income Tax (Appeals)-26, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of Assessment Order dated 28/12/2018 of Learned Assistant Commissioner of Income Tax, Central Circle-13, New Delhi (herein after referred as 'Ld. AO') u/s 153C r.w.s.143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2011-12.

2. Brief facts are that on 23/07/2015 and subsequent dates, a search & seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter “the Act”) was conducted in different business and residential premises of Sh. Deepak Aggarwal, Mukesh Kumar & Ors at Delhi. During search and seizure operation, it was found to be a group of entry operators providing accommodation entries to beneficiaries. Various incriminating papers/documents were found and seized during the course of search and seizure operation and pre/post search operation confirmed involvement of the group in accommodation entry practices. During the course of search and seizure operation, many incriminating documents relating to assessee company were found. The case was centralized with DCIT/ACIT Central Circle-13, New Delhi vide notification issued by passing order u/s 127 of the Act dated 27/09/2018. After recording satisfaction note, notice u/s 153C of the Act was issued on 08/01/2018. A questionnaire alongwith notice dated 12/11/2018 u/s 142(1) of the Act was issued to the assessee. Notice u/s 142(1) of the Act was issued on 22/11/2018. The assessee did not comply with statutory notice u/s 142(1) of the Act dated 22/11/2018, a penalty notice u/s 271(1)(b) of the Act was issued. In response to notice u/s 153C, the assessee filed return of income for the AY 2011-12 on 27/11/2018 declaring total income at Rs.11,809/-. Statutory notice u/s 143(2) of the Act was issued on 07/12/2018. Final show cause notice dated 12/12/2018 was issued. Assessee company made compliance. On completion of proceedings, Learned AO vide

Assessment Order dated 28/12/2018, assessed income at Rs.20,72,36,950/- u/s 153C r.w.s. 143(3) of the Act.

3. Appellant /assessee preferred appeal before Learned CIT(A), which was allowed vide order dated 14/05/2024.

4. Being aggrieved, Department of Revenue preferred present appeal.

5. Learned Authorized Representative for the Department of Revenue submitted that Ld. CIT(A) erred in deleting addition made on account that no incriminating material was found related to assessee company wherein it is an admitted position that the assessee company was engaged in accommodation entry practices, which has already been accepted at search, pre-search and post search stage as well as submission and statement of Shri Mukesh Kumar, one of the directors of Assessee Company. Learned CIT(A) erred in deleting the addition despite the fact that the subscribers have failed to discharge their primary onus to satisfactorily explain source of investments made by them in the assessee company. Learned CIT(A) also erred in observing that requisite details and evidences were filed by the assessee to prove the genuineness of the claim despite the fact that based on the enquiries conducted it was held that the subscriber companies are paper/ shell companies and not doing any real business. Learned CIT(A) is correct in not appreciating that when the date of search is considered as 03.10.2018 (i.e. post 01.04.2017), then the amendment of Finance Act 2017, ought to apply in this case. The AY 2011-12 in question

here, will be covered with in the relevant Assessment Years' and hence proceedings completed for this year are duly covered within the eligible years of assessment even after applying the ratio of the judgment of the Supreme Court in CIT vs. Jasjit Singh. Learned CIT(A) erred in not considering that there cannot be two different dates as date of search in the same case, i.e. 03/10/2018 as date of search when determining the eligible years for proceedings u/s 153C and considering 23/07/2015 as date of search when determining applicability of amended provisions of section 153C(1).

6. Learned Authorized Representative for respondent/assessee submitted that assessee filed regular return u/s 139 of the Act for the AY 2011-12 on 30/09/2011. As per section 143(2), the time expired on 30/09/2012, so the present year is unabated year. Since present AY is unabated year and admittedly for impugned assessment framed u/s 153C/153A there is no INCRIMINTING material qua stated additions as clearly recorded in impugned CIT(A)'s order (refer above), present case is fully covered by Hon'ble Apex Court decision in case of ABHISAR BUILDWELL in favour of assessee/respondent. Search and seizure operation u/s 132 of the Act was conducted on one Mr. Deepak Aggarwal and Mukesh Kumar on 23/07/2015 and subsequent dates. Satisfaction notes u/s 153C of the Act was recorded on 03/10/2018. The satisfaction note did not refer to any document related to the assessee. Notice u/s 153C was issued to assessee on 08/10/2018. Learned Assessing Officer made addition without referring to any documents. Learned CIT(A) allowed

appeal and quashed the impugned assessment order on issue of total lack of valid/requisite incrementing material emanating from foundational satisfaction note recorded u/s 153C in para 5.2 to 5.2.7 on page No.41 to 48. The satisfaction note recorded did not refer to any document relevant to respondent/assessee; thirdly additions made in assessment order are based on financial transactions part of regular books of accounts; fourthly none of the document referred in satisfaction note has any income "bearing" character for purposes of sec 153C in hands of respondent assessee for AY in question; fifthly nowhere in satisfaction note it is recorded that assessee is in business of providing alleged accommodation entries or assessee is controlled by Deepak Aggarwal /Mukesh kumar etc; sixthly all additions/disallowance made in impugned assessment order u/s 153C (disallowance of share capital; commission income and disallowance of expenses) are totally devoid of relevant /corresponding "incriminating material" mandatory to make additions u/s 153C. So revenue appeal may be dismissed.

7. From examination of record, in light of aforesaid rival contentions, it crystal clear that assessee had filed return of income u/s 139 on 20/10/2011 as per section 143(2) time expires on 30/09/2012. So the assessment year is unabated year. Assessment Order dated 28/12/2018 u/s 153C, 153A did not refer to any incriminating material qua additions. The satisfaction note dated 03/10/2018 did not refer to any document related to the assessee. Notice u/s 153C was issued to assessee on 08/10/2018. Learned AO vide order dated 28/12/2018 made addition without referring to any

incriminating documents. Learned CIT(A) allowed appeal and quashed the assessment order on issue of total lack of valid/requisite incriminating material emanating from foundational satisfaction note recorded u/s 153C. As per ratio of judgment in case of CIT vs. Abhisar Buildwell Pvt. Ltd. 459 ITR 212 it is well settled that no addition can be made in unabated years in assessment u/s 153A/153C of the Act without any incriminating material. In view of the above material facts and as well settled principle of law, the findings of Ld. CIT(A) are sustainable. The arguments on behalf of Department of Revenue are untenable.

8. In the result, the appeal filed by the Department of Revenue is dismissed.

Order pronounced in the open Court on 20th November, 2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated:20/11/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI