

**THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 44/Del/2021
(Assessment Year 2011-12)**

M/s Genus Apparels Ltd. D-116, Okhla Industrial Area, Phase-1, New Delhi - 110020	Vs.	DCIT, Central Circle, Pilikothi Moradabad-244001 Uttar Pradesh
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No:AABCN8589R		
Appellant	..	Respondent

Appellant by :	Sh. Mayank Patwari, CA & Sh. Akash Ojha, Adv.
Respondent by :	Sh. Mukesh Kumar Jha, CIT, D.R

Date of Hearing	07.11.2024 & 26.11.2024
Date of Pronouncement	26.11.2024

O R D E R

PER MADHUMITA ROY, JM:

The Instant appeal filed by the assessee is directed against the order dated 20.11.2019 passed by the Ld. CIT(A)-III, Lucknow, arising out of the order dated 31.12.2016 passed by the ACIT ,Central Circle, Moradabad under Section 153A r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred to ‘the Act’) for Assessment Year 2011-12.

2. The brief fact leading to the case are that a search and seizure operation under Section 132 of the Act was conducted on 30.07.2015 in Genus Group of cases, Moradabad at the residential and business premises of the directors and partners of the appellant before us. The case was centralized with the ACIT, Moradabad by and under the order dated 07.04.2016 under Section 127 of the Act issued by the Pr.CIT, Moradabad.

3. Accordingly, notice under Section 153A dated 04.09.2017 was issued to the assessee whereupon on 03.12.2017 the assessee filed its return of income declaring total income at Rs.Nil. Subsequently, notice under Section 143(2) dated 05.12.2017 followed by notice under Section 142(1) dated 22.11.2017 was issued along with the questionnaire directing the assessee to make compliance, However, the assessee failed to comply with the same. Further notice under Section 142(1) dated 14.12.2017 was issued and served upon the assessee on 15.12.2017 followed by several notices under Section 142(1) of the Act but without any result. Having no other alternative, the Ld. AO on the basis of the details and documents made available on record, proceeded with the assessment.

3.1 It is the case of the revenue that the assessee accepted the unsecured loan to the tune of Rs.50,00,000/- from each of the 4 parties namely, M/s Gaurav Fashions Pvt. Ltd., M/s Maheshwari Financials Services Pvt. Ltd., M/s Toor Financial Co. Ltd. and M/s Vemuri Finvest Pvt. Ltd. The assessee was directed to file the complete address of the persons given loan and to explain the nature and scope of loan transactions with the above parties. However, no compliance was made and show cause, thereafter, dated 19.12.2017 was issued to the assessee

as to why the loans or share application money accepted during the year under consideration from those parties should not be added as unexplained credit. Again no compliance was made by the assessee.

4. Thereafter the commission under Section 133(1)(d) was issued to the DDIT (Investigation) Unit-1(1), New Delhi by the DDIT(Investigation) Moradabad, for verification of transactions of Rs.50,00,000/-; inspector was deputed by the ADIT(Investigation), Unit-1(1), New Delhi who has reported that the premises was found locked and/or closed and further been informed that the premises was closed for last very many years. Further that, upon inquiry it is found that no PAN was allotted to the company namely M/s Gaurav Fashions Pvt. Ltd., from whom the assessee obtained the unsecured loan of Rs.50,00,000/-. However, the summons on the said party could not be served and thus, the transactions of Rs.50,00,000/-remained unexplained. In the same manner, the inquiries were also conducted in regard to the other 3 parties namely M/s Maheshwari Financials Services Pvt. Ltd., M/s Toor Financial Co. Ltd. and M/s Vemuri Finvest Pvt. Ltd. Relevant to mention that as the summons could not be served upon them, the transactions of Rs.50,00,000/- of loan/share application money remained unexplained. Finally as the assessee could not explain the said loan transaction, during the post search proceeding and during the assessment proceedings too, the entire amount of disputed unsecured loan was added in the hands of the assessee which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that it is an admitted position of law that in the absence of any incriminating material

unearthed during search, addition cannot be made in the hands of the assessee particularly in unabated proceeding. In this regard, he has relied upon very many judgments including the judgment passed by the Hon'ble Delhi High Court in the case of Kabul Chawla reported in 389 ITR 573 (Delhi HC) and PCIT Vs. Abhishar Buildwell reported in 454 ITR 212 (SC) he has particularly relying upon sub-para (iv) of paragraph 14 of the said judgment passed in PCIT Vs. Abhisar Buildwell (supra) where it has been specifically observed as under:

- “14. In view of the above and for the reasons stated above, it is concluded as under:
- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
 - ii) all pending assessments/reassessments shall stand abated;
 - iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
 - iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under [Section 132A](#) of the Act, 1961. However, the completed/unabated assessments can be reopened by the AO in exercise of powers under [Sections 147/148](#) of the Act, subject to fulfilment of the conditions as envisaged/mentioned under [sections 147/148](#) of the Act and those powers are saved.’

6. The assessee’s counsel submitted before us that admittedly while making addition against the assessee the Ld. AO has not made any reference to any incriminating material unearthed during the search conducted in assessee’s premises on 30.07.2015 which is sine quo non in making addition in unabated assessment. Hence, the addition made is

completely dehors the prescribed statutory provisions and thus, liable to be quashed in view of the ratio laid down in the judgment passed by the Hon'ble Apex Court in the case of PCIT Vs. Abhishar Buildwell (supra), found to be acceptable.

The Ld. D.R has not been able to controvert this particular submission by the Ld. A.R.

7. Having heard the Ld. Counsels appearing for the parties and having regard to the facts and circumstances of the case, we find that when admittedly in unabated assessment while making addition the Ld. AO failed to refer any incriminating material unearthed during the course of search conducted in assessee's premises on 30.07.2015, it appears that no incriminating material has been unearthed during the course of search against the assessee. Hence, the addition made is not sustainable in the eyes of law as it violates the basic provision of law and respectfully relying upon the judgment passed by the Hon'ble Apex Court in the case of PCIT Vs. Abhishar Buildwel (supra), the addition is found to be not sustainable, arbitrary, erroneous and therefore, quashed.

8. The appeal preferred by the assessee is thus, allowed.

This order is dictated in the open court in the presence of the Ld. A.R and Ld. D.R and the order pronounced in the open court on 26.11.2024

Sd/-
(Brajesh Kumar Singh)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 26.11.2024

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI