

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1219/Del/2023 (A.Y 2010-11)

ITA No. 1220/Del/2023 (A.Y 2011-12)

ITA No. 1221/Del/2023 (A.Y 2012-13)

ITA No. 3401/Del/2023 (A.Y 2013-14)

Kamal Sharma Gate No. 693, Khasra No. 37/43, Village Bakoli, Delhi- 415112 PAN No: AWSPS7332M	Vs.	DCIT Central Circe-II Faridabad
(Appellant)		(Respondent)

Appellant by	Sh. Ved Jain, Adv and Sh. Ayush Garg, CA
Respondent by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of Hearing	09/12/2024
Date of Pronouncement	10/12/2024

ORDER

PER BENCH:

All the above captioned appeals have been filed by the Assessee for Assessment Years 2010-11 to 2013-14 respectively aggrieved by the common order dated 27/02/2023 passed by the Commissioner of Income Tax (appeals)-3, ('Ld. CIT(A) for short) Gurgaon.

2. The Assessee raised several grounds of appeal, however, the Assessee's Representative argued that an identical assessment order came to be passed u/s 143(3) of the Act for Assessment Years 2008-09 and 2014-15 in the case of Kamal Trading Company which were upheld by the Ld. CIT(A) and the orders of the CIT(A) was subject to challenge before the Tribunal in ITA No. 3400/Del/2023 (A.Y 2008-09) and 3402/Del/2023 (A.Y 2014-15) and the Co-ordinate Bench of the Tribunal has deleted the addition on its merit, therefore, relying on the order of the Co-ordinate Bench dated 24/10/2024, sought for allowing the above captioned Appeals.

3. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities and sought for dismissal of the appeal filed by the Assessee.

4. We have heard both the parties and perused the material available on record. It is found that assessment orders for the Assessment Year 2008-09 and 2014-15 in Assessee's own case came to be passed on 30/03/2016. We have compared the Assessment Orders for Assessment Year 2008-09 and 2014-15 and the Assessment Orders under consideration in the captioned Appeal which are verbatim identical except various changed in the amount.

5. The assessment orders passed in the case of the Assessee for Assessment Year 2008-09 and 2014-15 which has been upheld by the Ld. CIT(A) vide order dated 30/06/2018. Aggrieved by the orders of the Ld. CIT(A) for Assessment Year 2008-09 and 2014-15, the Assessee preferred Appeal before the Tribunal in ITA No. 3400/Del/2023(A.Y 2008-09) and ITA No. 3402/Del/2023(A.Y 2014-15), wherein the Co-ordinate Bench of the Tribunal vide order dated 24/10/2014 deleted the addition on the merits in following manners:

"9.2 On merit, we find that Assessing Officer has made addition of Rs. 12,86,416/- treating the sales/purchase made by the assessee as not genuine. It is seen that the Assessing Officer rejecting the books of account maintained by the assessee u/s 145(3) of the Act, made the impugned addition of Rs. 12,86,416/-, inter alia, by observing as under:

"3.4 The assessee neither has filed any evidence in response to the query given in the questionnaire nor in response to the show cause letter dated 21.03.2016 in support of his claim of sale/purchase as discussed. In view of the discussion above I am satisfied that the books are not reliable and are hereby rejected u/s 145(3) of the Act, therefore, I hold the purchases/sale claimed to have been made by M/s Kamal Trading Company amounting to Rs. 54,14,14,119/- as bogus. The assessee has adopted GP rate of 0.24% in this year, therefore, applying the said GP rate of 0.24%, an addition of Rs. 12,86,416/- (541414119 x 0.24% is made to the total income of the assessee. The assessee had not disclosed this income suo-moto and without the search operation, this income would not have been unearthed had there been no search on the premises of the assessee. Hence, I am satisfied that the assessee has concealed income or filed inaccurate particulars to the extent as discussed above and thereby liable to be initiated the penalty u/s 271 AAB of the Act."

9.3 In appeal the learned CIT(A) affirmed the addition made by the AO. Aggrieved against it, now the assessee is in appeal before this Tribunal.

9.4 Learned counsel for the assessee reiterated the submissions as made in the synopsis filed on behalf of the assessee and submitted that all relevant details in the form of books of accounts, copy invoices, GR, bilties etc. were filed before the Assessing Officer. The AO without detecting any defect in the books of accounts, rejected the same u/s 145(3) of the Act and made addition of Rs.12,86,416/- by applying the GP rate of 0.24% (declared in its books of accounts) on the total turnover accounted by it in its books of accounts. Learned counsel submitted that the AO has made addition of Gross Profit which has already been considered by the assessee for computing its tax liability. He submitted that the AO by adding gross profit again to the income of the assessee has made double taxation which is unsustainable and unjust in the eyes of law. He submitted that the AO has made the addition by relying on the statements recorded on the back of the assessee without providing an opportunity of cross-examine the same. Relying upon the decision of Hon'ble Supreme Court in the case of [Andaman Timber Industries v. CCE](#) 2015 SCC Online SC 1051 he submitted that no adverse inference could be drawn against the assessee on the basis of statement recorded without giving assessee to cross examine the same. In support of his contention learned counsel also placed reliance on following judgments:

- ITAT Delhi in the case of *Mis. Maple Destinations And Dreambuild Pvt. Ltd. Versus DCIT, Circle - 16 (1), New Delhi, 2024 (3) TMI 1071, dated:21-3-2024*

- ITAT Delhi in the case of *M/S. Rswn Ltd. Versus DCIT, Central Circle-31, New Delhi, 2024 (2) TMI 278, dated: 31-1-2024*

- ITAT Delhi in the case of *Divya Exim Pvt. Ltd. C/O. Kapil Goel, Adv., Renu Jain C/O. Kapil Goel, Adv., Nisha Jain C/O. Kapil Goel, Adv. Versus DCIT Central Circle 25 New Delhi 2024 (1) TMI 750, dated:-15-1-2024*

9.5 On the other hand, learned DR supported the orders of authorities below.

9.6 We have heard rival submissions and perused the material available on record. The stand of assessee is that all details in the form of books of accounts, copy invoices, GR, bilties etc. were filed before the Assessing Officer and the AO without pointing out any

specific defect therein rejected the books of account u/s 145(3) and made the impugned addition of Rs. Rs.12,86,416/- by applying the GP rate of 0.24% on the total turnover accounted by the assessee in its books of accounts. We fail to understand the reasoning of AO as at one hand he stated sale/purchase claimed to have been made by M/s Kamal Trading Company amounting to Rs. 54,14,14,119/- as bogus then he proceeds to make addition on the basis of GP disclosed by the assessee without any justification and explanation. Such order, on merit as well, fails to meet the test of law and deserves to be quashed. The grounds raised by the assessee are allowed. Appeal of the assessee is allowed.”

6. Considering the fact that the Co-ordinate Bench of the Tribunal deleted the similar addition on the same set of facts for Assessment Year 2008-09 and 2014-15 and in the absence of any change of facts or circumstances pointed out by the Department, by respectfully following the order of the Co-ordinate Bench in ITA No. 3400 and 3402/Del/2023 (supra), we set aside the addition made by the A.O. which have been confirmed by the Ld. CIT(A) in so far as Assessment Year 2010-11 to 2013-14.

7. In the result, the Appeals filed by the Assessee in ITA Nos. 1219/Del/2023, 1220/Del/2023, 1221/Del/2023 & 3401/Del/2023 are allowed.

Order pronounced in open Court on 10th December, 2024

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 10/12/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI