

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

	ITA NOS. 3567 & 3568/Del/2018	
	A.YRS. : 2011-12 & 2012-13	
Kalakriti Infrastructure Pvt. Ltd. (now known as M/s Akriti Realtech Ltd.), C/o RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 48 (PAN: AACCK9052H)	VS.	DCIT, CENTRAL CIRCLE II, FARIDABAD
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Somil Agarwal, Adv. & Shri Deepes Garg, Adv.
Respondent by : Shri Dayainder Singh Sidhu, CIT(DR)
Date of hearing : 09.12.2024
Date of pronouncement : 11.12.2024

ORDER

PER SHAMIM YAHYA, AM :

These appeals are filed by the assessee against the common impugned order dated 22.02.2018 relating to assessment year 2011-12 & 2012-13 passed by the Ld. CIT(A)-2, Gurgaon. Since one of the issues involved in both the Assessee appeals is common and identical, except the difference in figure of addition made,

hence, both the appeals of Assessee were heard together and are being disposed of by this common order for the sake of convenience, by only dealing with Assessee's Appeal No. 3567/Del/2018 (AY 2011-12) and the decision thereof will apply *mutatis mutandis* to other Assessee's ITA Nos. 3568/Del/2018 (AY 2012-13).

2. The grounds raised in Assessee's Appeal No. 3567/Del/2018 (AY 2011-12) are reproduced as under:-

1. That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153A r.w.s. 153C of the Act, more so when the notice was issued in the name of non-existing entity.

2. That in any case and in any view of the matter, the assessment framed under section 153A(1) (b) of the Act, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the action of the Ld. A.O. in making a disallowance of Rs. 23,111/- out of expenses u/s. 14A of the Act, that too in the proceedings u/s. 153C of the Act.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the disallowance of Rs. 23,111/- u/s. 14A is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making disallowance of freight charges of Rs. 55,94,302/- u/s 37(1) of the Income Tax Act, 1961, that too in the proceedings u/s 153C of the Act, and more-so by alleging failure of the assessee to produce bills and vouchers.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.

55,94,302/- is bad in law and against the facts and circumstances of the case.

7. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in holding the loss incurred by the assessee as speculative in nature and has further erred in holding that this loss cannot be set off against the future income of the assessee company.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in passing the impugned order without giving adequate opportunity of being heard.

9. That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.

3. The grounds raised in Assessee's Appeal No. 3568/Del/2018 (AY 2012-13) are reproduced as under:-

1. That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153A r.w.s. 153C of the Act, more so when the notice was issued in the name of non-existing entity.

2. That in any case and in any view of the matter, the assessment framed under section 153A(1) (b) of the Act, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making disallowance of freight charges of Rs. 44,77,220/- u/s 37(1) of the Income Tax Act, 1961, that too in the proceedings u/s 153C of the Act, and more-so by alleging failure of the assessee to produce bills and vouchers.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs. 44,77,220/- is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in holding the loss incurred by the assessee as speculative in nature and has further erred in holding that this loss cannot be set off against the future income of the assessee company.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in passing the impugned order without giving adequate opportunity of being heard.

7. That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.

4. Briefly stated facts are that in the case of the assessee, the residential as well as business / office premises of M/s SRS Group of cases were subject to search and seizure operations on 09.5.2012. The assessee was drawing income from business and profession. A notice was served upon the assessee under the provisions of section 153C r.w.s. 153A of the Act on 18.09.2014 and assessee was asked to file the return of income for this specific year. Assessment in the assessment year 2011-12 was completed at loss of Rs. 91,42,648/- by making additions of Rs. 23,111/- and Rs. 55,94,302/- and in assessment year 2012-13 the assessment was completed at loss of Rs. 1,89,91,940/- by making addition of Rs. 44,77,220/- Upon assessee's appeals, Ld. CIT(A) confirmed the action of the AO.

5. At the time of hearing, Ld. Counsel for the assessee submitted that in assessee's own group cases in ITA No. 7421, 7422 & 7423/Del/2017 dated 31.5.2024 relating to assessment years 2010-11, 2011-12 and 2012-13 as well as in ITA Nos. 7347/Del/2017 (AY 2011-12) and 7348/Del/2017 (AY 2012-13), the ITAT has deleted the similar additions on the ground that no incriminating material has been found during the search, which may be followed in the present case. Ld. DR could not controvert the submissions of the assessee.

6. We have heard both the parties and perused the records. We find that the Coordinate Bench of Delhi Tribunal in ITA No. 7421, 7422 & 7423/Del/2017 dated 31.5.2024 in the case of Goldies Trading Co. Ltd. vs. DCIT, Central Circle-II, Faridabad relating to assessment years 2010-11, 2011-12 & 2012-13 on similar facts and circumstances has held as under:-

“9. We have heard the rival contentions and perused the case laws cited by the Ld. AR for the assessee and also perused the impugned orders. On perusal of the assessment order, it is noted that the instant assessment is pursuant to notice u/s. 153C read with 153A of the Act. We note that the additions in dispute are not based upon any incriminating material found during the course of search. Ld. DR could not dispute this proposition. We note that as per the decision of the Hon'ble Supreme Court of India in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd., CA No. 67580/2021 dated 24.4.2023, (2023) SCC Online SC 481, no addition can be made the assessment framed u/s. 153A de hors incriminating material found during the search. We find considerable cogency in the contention of the Ld. AR that the original return of income was filed on 25.09.2010 and notice u/s. 153C is dated 18.09.2014 and in view of the Hon'ble Supreme Court in the case of CIT vs. Jasjit Singh

(2023) 155 taxmann.com 155 (SC), 18.09.2014 should be taken as the date of search in the present case and therefore, the assessment year 2010-11 did not abate on the aforesaid date of search as time limit to issue notice expired on 30.09.2011.

10. It is further noted that identical disallowance on account of freight charges was made in assessee's own case in AY 2007-08 and AY 2009-10 and the Tribunal has deleted the same.

11. Keeping in view the aforesaid discussion and following the precedent of Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (Supra), we set-aside the order of the Ld. CIT(A) and decide the issues in favour of the assessee and accordingly, allow the appeal of the assessee for AY 2010-11.

12. Following the consistent view as taken in AY 2010-11, as aforesaid, the issues raised in Assessee's other ITA Nos. 7422 & 7423/Del/2017 (Ays. 2011-12 & 2012-13) are also decided in favour of the assessee by setting aside the orders of the Ld. CIT(A) in both the years too and accordingly allowed the appeals of the assessee.

13. Since we have decided the aforesaid appeals on merit in favour of the assessee and also impugned orders of the Ld. CIT(A) have been set-aside, therefore, the other Grounds raised by the Assessee have become academic and do not require any adjudication.

14. In the result, all the 03 Assessee Appeals are allowed."

6.1 Respectfully following the aforesaid precedents including the Hon'ble Supreme Court decision in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd., CA No. 67580 / 2021 dated 24.4.2023, (2023) SCC Online SC 481, we set aside the orders of the authorities below and decide the issues in favour of the assessee.

7. Since we have decided the aforesaid appeals on merit in favour of the assessee and also impugned orders of the authorities below have been set-aside,

therefore, the other Grounds raised by the Assessee have become academic and do not require any adjudication.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced on 11/12/2024.

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SR Bhatnagar

Copy forwarded to:-

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

Assistant Registrar