

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.9022 to 9024/Del/2019
Assessment Years: 2011-12 to 2013-14

DCIT,
Central Circle-2,
Noida.

Vs Rudra Buildwell Projects Pvt. Ltd.,
D-53, Okhla Phase-I,
New Delhi – 110 020.

PAN: AAECR9589E

(Appellant)

(Respondent)

Assessee by : Shri Sanjay Kumar, CA &
Shri Akarsh Garg, Advocate
Revenue by : Shri Javed Akhtar, CIT-DR
Date of Hearing : 04.12.2024
Date of Pronouncement : 18.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the Revenue against the orders dated 23.08.2019 of the Commissioner of Income-tax (Appeals)-IV, Kanpur (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeals No. CIT(A)-IV/KNP/10331,10332 & 10333/DCIT-CC/Noida/2016-17 393+395 arising out of the appeal before it against the orders dated 29.08.2016 passed u/s 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred to as

‘the Act’) by the DCIT, Central Circle-2, Noida (hereinafter referred to as the Ld. AO).

2. At the time of hearing, it was brought to the notice of the Bench that the appeal filed by the Revenue, ITA No.9024/Del/2019 (A.Y. 2013-14), admittedly, has a tax effect of below Rs.60 lakhs and the same falls into the category of low tax effect appeals after the enhanced monetary limits of Rs. 60 lacs, for appeals to be filed by the department before this Tribunal, laid by the CBDT vide Circular Nos. 5/2024 dated 15.3.24 and 09/2024 dated 17th September, 2024. We find that the tax effect involved in the appeal of the Revenue is below Rs.60 lakhs and the same is, therefore, liable to be dismissed as not maintainable vide the CBDT Circulars (supra). **In the result, the appeal ITA No.9024/Del/2019 (A.Y. 2013-14) of the Revenue is dismissed.**

3. Now coming to the ITAs No.9022 & 9023/Del/2019 (AYs: 2011-12 & 2012-13). Now the findings of Id. CIT(A) are relevant and same are reproduced below from the impugned order for AY 2011-12:-

i) Assessing Officer has recorded the finding in the satisfaction note that certain documents belonging to the appellant company were seized during the search proceedings. It is imperative to study the nature of document to conclude whether they are incriminating in nature or not. The following table shows the documents seized, its nature and the conclusion drawn by the A.O.

<i>S. No.</i>	<i>Premises of search</i>	<i>Investigation of document</i>	<i>Nature of document</i>	<i>Conclusion of the A.O</i>
<i>1.</i>	<i>M/s. Rudra</i>	<i>Loose Paper/</i>	<i>Memorandum of</i>	<i>After</i>

	<i>Buildwell Pvt Ltd., A-67, Sector-63, Noida</i>	<i>Incriminating document Page-1 & 2 of annexure LP-4</i>	<i>understanding between appellant and Shri Arun Kumar (real estate agent)</i>	<i>verification, no addition made by A.O. based upon the seized document.</i>
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Thus, it is seen that, A.O. has not found any document, which is incriminating in nature, as no addition was made by the A. O on the basis of seized document. A.O. has made various additions for which, no documents were found and seized in search action. Thus, seized document has no co- relation by any of the additions, which is disallowed by Assessing Officer u/s 153C of the Act.

- ii) A.O. has nowhere recorded the finding that, seized document has bearing on the determination of total income of the appellant, which was one of the condition precedent for issue of notice u/s 153C of the Act. In fact, there exist no incriminating seized documents as a result of search u/s 132 of the Act.*
- iii) **It is worthwhile to note that A.O. in his remand report has recorded the categorical finding that no incriminating documents were found as a result of search.** For the sake of clarity relevant portion of remand report of A.O. dated 14.05.2019 is reproduced as under:*

"As page no. 1 & 2 of LP-4 are very general in nature which are mere standard MOU signed between two parties and there is nothing on record or even in the alleged incriminating documents itself relying on which it can be concluded that page no. 1 & 2 of LP-4 are incriminating in nature. It is further submitted that the allegation of the assessee that incriminating matter is related to A.Y. 2013-14 only whereas the assessment was done for A.Y. 2011-12 to 2014-15 is true and there is nothing in the record which shows that there was any incriminating material relying on which satisfaction has been drawn for A.Y. 2011-12, 2012-13 & 2014-15."

- iv) After verification and analysis of documents seized, no adverse inference is drawn and no addition is made in assessment framed by the A.O. As, no incriminating documents are found and seized as a result of search against the appellant, it is concluded that, no incriminating document pertaining to appellant exist, which have bearing on the determination of total income of the appellant. Thus, important jurisdictional precondition for the issue of notice u/s 153C of the Act is not satisfied.*

5.6 The proceedings u/s 153C of the Act are very specific and clearly explained in the Act. For the sake of clarity, relevant provisions of Act is as under:

"133C. [(1)] [Notwithstanding anything contained in section 139, section 147, section 148 section 149, section 151 and section 153, where the Assessing Officer is satisfied that-

(c) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(d) any books of account or documents, seized or requisitioned, pertains or pertain to or any information contained therein, relates to:

“a person other than the person referred to in section 153A then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A. If the assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.”

A plain reading of provision u/s 153C makes it abundantly clear that the some imperative condition need to be satisfied by the AO, prior to the issue notice u/s 153C of the Act. This pre-condition includes:

- i) Existence of undisclosed/unexplained asset or incriminating seized documents against the appellant, as a result of search.*
- ii) This undisclosed assets or incriminating document found as a result of search should "belongs to" or "pertain to" or "relate to" the appellant, for relevant assessment year.*
- iii) Proper satisfaction is to be recorded by the AO for the relevant assessment year for issuance of notice u/s 153C.*

All the above three conditions are to be satisfied cumulatively and simultaneously as per provisions of section 153C of the Act. Non satisfaction of any of the pre-conditions mentioned here in above, would result in notice u/s 153C legally unsustainable or invalid. In the present facts of the case no incriminating documents or undisclosed assets were found as a result of search. In fact, no seized document belongs to the appellant has been recorded by the A.O. in his satisfaction note. Hence, imperative jurisdictional condition for issue of notice 153C of the Act is not satisfied.”

4. Ld. DR has made his efforts to defend the order of AO, but was not able to impress as to how after specific admission in the remand report that no incriminating documents were found as a result of search for relevant AY and the assessment were not based on any incriminating documents, the order of CIT(A), can be interfered when the law now stands crystallized, by the judgment of Hon'ble Supreme Court in the case of Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399/293 Taxman 141/459 ITR 212, that in respect of unabated/ completed assessments, no addition can be made under section 153A in the absence of/ de hors any incriminating material found during the course. The AYs under consideration being unabated, the aforesaid principle is squarely applicable and the order of ld. CIT(A) needs no interference. **Thus ITAs No.9022 & 9023/Del/2019 (AYs: 2011-12 & 2012-13), of revenue are dismissed.**

Order pronounced in the open court on 18.12.2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 18th December, 2024.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi