

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIALMEMBER**

**ITA No.367/DEL/2023  
(Assessment Year : 2016-17**

**Brindavan Enterprises Pvt. Ltd., Vs. ACIT, Central circle-14,  
318, 2<sup>nd</sup> Floor, New Delhi.  
DLF South Court Mall, Saket,  
New Delhi-110017.  
(PAN: AAACB 0067 D)**

**AND**

**ITA no. 1183/Del/2023  
Assessment year: 2016-17**

**ACIT, Central circle-14, Vs. Brindavan Enterprises Pvt. Ltd.,  
New Delhi. 318, 2<sup>nd</sup> Floor,  
DLF South Court Mall, Saket,  
New Delhi-110017.  
(PAN: AAACB 0067 D)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Rajkumar,CA &  
Shri J.P. Sharma, CA  
REVENUE BY : Shri Javed Akhtar, CIT (DR)**

**Date of Hearing : 16.10.2024  
Date of Order : 18.12.2024**

**ORDER**

**PER S. RIFAUR RAHMAN, AM :**

1. These are cross appeals filed by the assessee as well as the Revenue against

the order of Id. Commissioner of Income-tax (Appeals)-28, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 06.02.2023 u/s 153A read with section 143(3) of the Income-tax Act, 1961 (for short 'the Act) for Assessment Year 2006-07 relating to their respective grievances.

2. Brief facts of the case are, a search and seizure operation u/s 132 of the Act was carried out on 28.11.2017 and on subsequent date at different business/residential premises of Brindavan group of cases. The case of the group was centralized with the ACIT, Central Circle-14, New Delhi. The Assessing Officer observed that various incriminating papers/documents were found and seized during the course of search and seizure operation in the Brindavan group. Accordingly, notice u/s 153A of the Act was issued to the assessee on 30.04.2019 and in response the assessee filed its return of income for assessment year 2016-17 on 16.07.2019 declaring total income at Rs. 5,44,11,690/-. Accordingly, notice u/s 143(2)/142(1) were issued and served. In response the assessee attended and submitted the relevant information as called for. The Assessing Officer observed from the documents that assessee had shown sales of Rs. 4,01,00,081/- to M/s Faith Jewellers and received the payment on the same date from Mr. Naval Kishore Goyal, proprietor of M/s Faith Jewellers. Subsequently a search was conducted on Faith jewelers and after extensive inquiries it was found that jewelers were not doing any actual business and providing only accommodation entries.

The Assessing Officer reproduced the findings of the investigation on Faith Jewellers that-

- (i) No bills/invoices and other documents were found in the premises which can demonstrate that it is doing real business;
- (ii) No physical stock of bullion/jewellery was present at the premises during the course of survey & search;
- (iii) As per the statement of proprietor, all the books were kept at the registered office. However, during the search and seizure operation the assessee could not produce the books and it was not found at the registered premises;
- (iv) Further, it was clearly stated that Mr. Mohit Bansal used to look after the day to day activities of the business. However, he was not produced during any proceedings.

3. When the assessee was asked to submit the relevant documents, in response the assessee had submitted as under:

**“1. Transactions with Naval Kishore Goel (Prop. Faith Jewellers)**

**Q. No.2, 3 & 4 - Notice Dtd.04.12.19**

*There are no purchases from this party.*

*There are two sales to this party by the assessee in this year.*

*In support of the sales, the following documents are attached:-*

*Copy of ledger A/c of Faith Jewellers in books of assessee*

*-A.Y.16-17*

*Confirmation from the party*  
*Details of sales in the format as given in Q. No.4 of the notice*  
*Copy of sale bills (02 Nos.)*  
*The payment has been received through RTGS.*

*The above transaction stands properly recorded in the books of assessee.”*

4. Further, assessee has submitted another reply vide letter dated 28.12.2019. The Assessing Officer rejected the submissions and observed that Mr. Mohit Bansal had already confirmed on oath that they were merely providing entries and not doing any real business.

5. The Assessing Officer relying on the various statements recorded by Mr. Mohit Bansal u/s 132(4) and also statement of Mr. Sanjay Kumar Bansal, director of Bilasa & Sons, recorded after survey and search u/s 133A of the Act, came to the conclusion that M/s Faith Jewellers had given only accommodation entries to the assessee and, therefore, the amount received from M/s Faith Jewellers was treated as unaccounted income of the assessee which was routed through M/s Faith Jewellers by RTGS and proceeded to make the above said addition.

6. Aggrieved with the above order assessee preferred appeal before the learned Commissioner of Income-tax (Appeals)-28, New Delhi and filed detailed submission in this regard.

7. In the grounds of appeal assessee has raised jurisdictional issue; for not giving them proper opportunity of hearing; and approval granted by Addl.

Commissioner is mechanical and without application of mind and further raised the ground on the issue of no incriminating material and also not providing cross-examination of the parties upon which addition was sustained and raising the issue on merit.

8. After considering the submissions of the assessee, learned CIT(A) dismissed the jurisdictional issue raised before him and on merit he treated the transaction of sale of bullion amounting to Rs. 4,01,00,081/- and held that the assessee might have purchased from the grey market in cash in order to make higher profit margin. Accordingly, he proceeded to treat the transaction as bogus and proceeded to sustain 2% of the sale value as profit. Accordingly, he sustained the addition of Rs. 8,02,002/-. Aggrieved with the above order, both, the assessee as well as Revenue, are in appeal before us raising following grounds of appeal:

**Assessee's appeal (ITA no. 367/Del/2023):**

*“1. That in the absence of any incriminating material found and seized relating to the issue of addition of Rs.4,01,00,081/- in impugned un-abated asstt. as per 2nd proviso to Sec.153A, this issue and consequentially this addition is out rightly outside the scope of Sec.153A in view of law laid down by Hon'ble Delhi High Court in the case of Kabul Chawla.*

*2. That without prejudice under the facts and circumstances the issue of addition could had been examined only in proceedings U/s.153C and not U/s.153A since the relevant information relating to said issue is not on the basis of material found and seized in the case of search on assessee but it is on the basis of information/material found and seized in the case of 3rd party namely M/s Faith Jewellers.*

3. *That under the facts and circumstances and in view of un-rebutted clinching evidences, Ld. CIT(A) grossly erred in law and on merits, while accepting the transaction of sales of bullion, however, not made to M/s Faith Jewellers as declared but in the grey market and thereafter further erred in holding that assessee earned assumed extra profit @2% on declared sale value @4,01,00,081/- thereby earning of alleged extra undisclosed profit of Rs.8,02,002/- against undisputed purchase cost of Rs.3,61,33,183/- (without GST).”*

**Revenue’s appeal (ITA no. 1183/Del/2023):**

*“i. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in restricting the addition from Rs.4,01,00,081/- to Rs.8,02,002/- by ignoring the facts that during the assessment proceedings, the assessee had failed to offer any satisfactory explanation on the issue regarding addition of Rs.4,01,00,081/- on account of unexplained money u/s 69A of the Act.*

*ii. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in not appreciating the fact that the AO made the addition on the ground that the assessee had made sale of Rs.4,01,00,081/- to M/s Faith Jewellers were totally bogus because M/s Faith Jewellers was indulged in providing accommodation entries in the garb of bullion business.*

*iii. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in ignoring the facts that the assessee provided unaccounted cash to M/s Faith Jewellers, who deposited the cash into its bank account and issued RTGS to the assessee in the guise of payment against sales and no actual transfer/delivery of gold took place.*

*iv. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in presuming that bullion was sold in the grey market without any evidences in this regard.*

*v. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in adjudicating the issue of facts that was neither before the assessing officer nor the assessee has raised those during the appellate*

*proceedings.*

*vi. (a) Whether on law and facts of the case the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of the hearing of the appeal.”*

9. At the time of hearing learned AR of the assessee submitted that the search was conducted on 28.11.2017 and the addition made by the Assessing Officer is not based on any incriminating material found during the search conducted in the case of the assessee. He submitted that the present assessment year under consideration is unabated year considering the fact 143(2) notice should have been issued latest by 30<sup>th</sup> September 2017, therefore, he submitted that the assessment year under consideration is unabated and any addition that can be made in unabated year is only out of incriminating material found during the search. In this regard he referred on the decision of PCIT v. Abhisar Buildwell (P) Ltd. (2023) 149 taxmann.com 399 (SC). He submitted that ground no. 1 raised by assessee is only on this aspect and further, he submitted that the Assessing Officer has merely relied on the findings made in survey operation in third party's premises. Therefore, he relied merely on statement made by Mr. Mohit Bansal. He submitted that the mere statements from 3<sup>rd</sup> parties cannot be termed as incriminating material.

10. With regard to ground no. 2 raised by the assessee on without prejudice basis he submitted that the issue under consideration is addition made by the Assessing Officer by relying on the information collected from third party and he could have proceeded to revision proceedings u/s 153C and not under section 153A of the Act. In this regard he submitted as under:

- *The impugned addition is only on the basis of information/material found in independent search on M/s Faith Jewellers (Prop. Naval Kishore) on 20.12.16 i.e. in search of a 3rd party.*
- *The material/information found in search on a 3rd party can be examined only in proceedings U/s.153C and not U/s.153A.*
- *The issues which can be examined in unabated asstts. U/s.153A and 153C are mutually exclusive.*
- *Even if assessee has been searched and his asstt. is to be framed U/s.153A also, the material/information found in search of a 3rd party cannot be used in asstt. U/s.153A.*
- *Hence the addition of Rs.4,01,00,081/- made U/s.153A is outside the scope of Sec.153A.*

Case Laws-

- *Bijender Singh Lohia Vs. JCIT (OSD) ITAS No.1528 & 1529/Del/2022 (Delhi ITAT) Dtd.16.04.24;*
- *Trilok Chand Chaudhary Vs. ACIT (Delhi ITAT order dtd.20.08.19 in ITA No. 5870/Del/2017)*
- *DCIT Vs. Smt. Shivani Mahajan [ITA No.5585/Del/2015] (pronounced on 19.03.2019)*
- *DCIT Vs. Vikas Jain [ITA No.4075/Del/2014] (pronounced on 19.03.2019)*
- *Pavitra Realcon (P) Ltd. Vs. ACIT [2017] 87 taxmann.com 142 (Del. - Trib.)*
- *Krishna Kr. Singhania Vs. DCIT [2017] 88 taxmann.com 259*

*(Kol.Trib)*

- *CIT Vs. Pinaki Misra [2017] 88 taxmann.com 521 (DHC)*

11. On the other hand, learned DR submitted that date of search is in fact 28.11.2017 and the relevant searched assessment year is 2018-19. He brought to our notice findings of the Assessing Officer and submitted that it was found that M/s Faith Jewellers were providing accommodation entries and based on the information collected and statement recorded from the above said party it was established that the transactions are bogus. He submitted that concept of incriminating material is subjective and we have to consider the relevant facts and findings brought on record after search proceedings. Therefore, the information collected by the Revenue during search and post search had to be analyzed and should be treated as incriminating material. In this regard he brought to our notice the detailed findings of search and survey carried on in the case of M/s Faith Jewellers which were conducted on 20.12.2016. He submitted that these findings might have been made subsequently, however it gives sufficient material relating to the transaction under consideration. Further, he objected to the finding of the learned CIT(A) that learned CIT(A) has accepted the above transactions as bogus, however he proceeded to substantiate only the additional income with the observation that assessee might have earned only additional profit even though

there are sufficient material to indicate that whole transactions are bogus. He prayed that addition may be sustained as made in the assessment order.

12. In rejoinder learned AR of the assessee submitted that in MA no. 418/Del/2023, preferred by Brijwasi Jewellers, in which the ITAT adjudicated similar issue and held that the transaction of purchase and sale of bullion to M/s Faith Jewellers by Brijwasi Jewellers are not accommodation entries and given clear finding and in that case they have sustained the addition of 7% of such sales. Therefore, the finding of the Hon'ble ITAT on M/s Faith Jewellers holds good in the present case under consideration and further submitted that case of the assessee may be decided on the jurisdictional issue raised by the assessee.

13. Considered the rival submissions and material placed on record, we observe that the search was conducted on the premises of the assessee on 28.11.2017 and as per the information available on record, the Assessing Officer made the inquiry post search and based on the information submitted by the assessee in response to notice issued u/s 153A of the Act and search and survey was conducted in the case of M/s Faith Jewellers on 20.12.2016, which is prior to the search conducted in the case of the assessee. We observe that the Assessing Officer heavily relied on the statement and findings in the case of M/s Faith Jewellers in order to make the addition in the case of the assessee and there is no material available linking to the

search conducted in the case of M/s Faith Jewellers and the search conducted in the case of the assessee. There is only a common thread between M/s Faith Jewellers and the assessee that assessee has sold certain jewellery to M/s Faith Jewellers and assessee has received the sale proceeds from them on the same day. Apart from that the findings in the case of M/s Faith Jewellers are that they are providing accommodation entries and if we accept that assessee has provided accommodation entries to M/s Faith Jewellers then we might have to treat the sales declared by the assessee as bogus and since the assessee has already declared the sales we cannot proceed to make separate addition which was already declared as income in the books of the assessee. Leave apart the above, we notice that the impugned assessment year is unabated, as per the facts brought on record by the assessee and we observe that there is no link to the proceedings initiated in Faith Jewellers and the assessee. Further there is no incriminating material found during the search in this case and Assessing Officer has proceeded to complete the assessment merely on the basis of statement recorded in the case of third party in post search proceedings. Even otherwise the statements were recorded prior to the search. These findings in third party cannot be treated as incriminating material. Therefore, we are inclined to agree with the assessee that there is no incriminating material found during the search qua making addition in the assessment year which is unabated, by relying on *Abhisar Buildwell (P) Ltd.* (supra), no addition can be

made without there being any incriminating material in an unabated assessment year. In the result, ground no. 1 raised by the assessee is allowed in favour of the assessee.

14. The other grounds raised by the assessee are not adjudicated at this stage. Accordingly, appeal filed by the assessee is partly allowed as indicated above.

15. Since we have already adjudicated the appeal preferred by the assessee on jurisdictional issue, therefore, the assessment itself is bad in law. Therefore, the appeal preferred by the Revenue is also dismissed.

17. In the result, appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

**Order pronounced in the open court on this 18<sup>th</sup> day of December, 2024.**

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Dated : 18.12.2024**

**MP**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

