

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER,**

**ITA No:- 4331/Del/2017
(Assessment Year- 2012-13)**

Asstt. Commissioner of Income Tax, Central Circle-1, New Delhi.	Vs.	M/s Amrapali Smart City Developers Pvt. Ltd., 307, 3 rd Floor, Nipur Tower, Community centre, Karkardooma, Delhi-110092.
PAN No: AAICA5988Q		
APPELLANT		RESPONDENT

Revenue by : Mr. Javed Akhtar, CIT(DR)
Assessee by : None

Date of Hearing : 11.12.2024
Date of Pronouncement : 20.12.2024

ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-23, New Delhi, in appeal no.-123,115 & 100-16-17 vide order dated 07.04.2017. The assessment was framed by the ACIT, Central Circle-1, New Delhi

under Section 153C r.w. Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.03.2016 for the Assessment Year 2012-13.

2. No one is present from the assessee's side, but going through the order of the CIT(A), it is noticed that the CIT(A) has quashed the assessment as no incriminating material was found during the course of search on the basis of which assessment is to be framed in the case of abated assessment. We note from the findings of the CIT(A) in para 4.2.6. and 4.2.7, which reads as under:

"4.2.6 However, from the assessment order it is observed that the AO has nowhere referred to any seized material/ document belonging to, or even relating or pertaining to, the assessee company which could be considered to be the basis for assessment u/s 153A of the Act, as mentioned earlier herein above. Nowhere in the assessment order has the AO placed reliance on any seized material mentioned in the satisfaction note relevant to assessment u/s 153A /153C of the Act, leave aside any incriminating document. Even the purchase vouchers/invoices utilized for various enquiries and the findings given by the AO are part of the regular books of account. Thus, it cannot be said that the additions made by the AO emanate from the seized material, and certainly not incriminating material/ document within the meaning of the provisions of Section 153A /153C of the Act. Furthermore, there was no proceeding pending in the case of the assessee company for these 03 assessment years as on the date of search in terms of the provisions of law and the interpretation of the Hon'ble Courts in the judgments mentioned hereinbefore. In these 03 assessment years the return of income were originally e-filed on 26.12.2011, 29.09.2012 & 29.09.2013 u/s 139 and no proceedings were pending at the time of handing over of the seized books of account and documents and recording of satisfaction on 03.11.2015, and therefore, in the light of the above decision in RRJ Securities and Kabul Chawla (supra), and other judgments, the proceedings u/s 153C of the

Act in the case of the assessee company cannot legally be sustained in all the above 03 assessment years.

4.2.7 Under these facts and circumstances, in terms of the decisions of the Hon'ble Delhi High Court in RRJ Securities Ltd., Pepsico India Holdings P. Ltd. (supra) and Pepsi Foods Pvt. Ltd. (supra), as also in Kabul Chawla (supra), the assessment u/s 1530 r.w.s. 143(3) of the Act cannot be sustained. Respectfully following these decisions I hold accordingly and the reassessments in all the above 03 assessment years are quashed.”

When these facts were confronted to the Ld. CIT(DR), that whether any incriminating material is there or not, the Ld. CIT(DR) stated that the addition made was for bogus purchases of Rs.3,48,06,867/- by the AO for the relevant Assessment Year 2012-13. According to the Ld. CIT(DR), the details of these bogus purchases are from the following bogus parties:

S. No.	Name of Party	Amount as claimed by assessee company in its books of amount (to Rs.) (ASSESSMENT YEAR. 2012-13)
1	M/s Shri Balaji Cement & Hardware	42,68,300
2	M/s S.K. Trading Co	98,29,000
3	M/s U Tek Sales Corporation	55,09,591
4	M/s Bhagwan trading Co.	50,23,533
5	M/s Uday enterprises	1,01,76,443
	Total	3,48,06,867/-

The Ld. CIT(DR) pointed out that the assessee has indulged into bogus purchases, but when it was confronted then these are not

emanating from seized material or no incriminating material was found during the course of search. The Ld. CIT(DR) could not elaborate more.

3. We have heard the Ld. CIT(DR) and perused the case records, including the assessment order and the order of the CIT(A). We noted the facts that a search and seizure operation U/s 132 of the Act was carried out in the case of Amrapali Group of cases on 09.09.2010, and again the search operation was conducted U/s 132 of the Act on 07.08.2013 in Amrapali Group of cases. The assessee, for the relevant assessment year 2012-13, filed the original return of income on 29.09.2012, declaring total income at Rs. 6,46,584/-. The assessee company is engaged in the business of building construction and development of residential and commercial projects. The Assessing Officer noted that the assessee was not a search party and, hence, after regarding satisfaction U/s 153C of the Act, a notice U/s 153C of the Act was issued on 05.11.2015 to the assessee. In response to the same, assessee filed a letter dated 18.11.2015 requesting that the assessee treat the return filed U/s 139 of the Act, as return filed in response to notice

U/s 153C of the Act. The Assessing Officer while framing the assessment, noted that this assessment has no connection with the incriminating material found during search conducted but the bogus accommodation entries of bogus purchases came to the notice of the AO on the basis of survey material in connection with the search action conducted u/s 132 of the Act on M/s BSBK Group of cases on 24.05.2012. The entire premise of the Assessing Officer was that one Ajay Kumar Aggarwal, during his statement recorded u/s 132 of the Act, submitted that he has providing accommodation/bogus purchase entry to BSBK group cases through various concerns and these concerns are indulging in providing accommodation entries to assessee also. As noted above in para 2, the details of the bogus entries, the Assessing Officer added the entire bogus purchases, as income of the assessee amounting to Rs. 3,48,06,867.

4. We noted that the Assessing Officer has not referred any seized material in the assessment order, and there is a categorical finding of the CIT(A) that there is no incriminating material in this case and hence quashed the assessment. We find no infirmity in

the order of the CIT(A), and hence, the appeal of the Revenue is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 20.12.2024

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 20/12/24
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	11.12.24
2.	Date on which the typed draft Tribunal Order is placed before the Dictation Member	11.12.24
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9.	Date on which the file goes to the Supervisor (Judicial)	
10.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
11.	Date of Dispatch of the order	