

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NO. 1212/Del/2023 (AY 2009-10); ITA NO. 1213/Del/2023 (AY 2010-11); ITA NO. 1214/Del/2023 (AY 2011-12); ITA NO. 1215/Del/2023 (AY 2012-13); ITA NO. 1216/DEL/2023 (AY 2013-14)' AND ITA NO. 1217/Del/2023 (AY 2014-15)		
SUNIL GARG, C-2/15, 1 ST FLOOR, PRASHANT VIHAR, DELHI - 110 085 (PAN: AIDPG1460H)	VS.	DCIT, CENTRAL CIRCLE-II, FARIDABAD HARYANA
(APPELLANT)		(RESPONDENT)

Appellant by : Shri Deepak Upadhyay, CA &
Shri Amit Rai, CA

Respondent by : Ms. Jaya Chaudhary, CIT(DR)

Date of hearing : 14.01.2025

Date of pronouncement : 16.01.2025

ORDER

PER BENCH :

These are six appeals filed by the assessee against the common order dated 27.02.2023 passed by the Id. CIT(A-3), Gurgaon relating to assessment years 2009-10 to 2014-15 respectively, confirming the action of the AO in

making the following additions of gross profit over and above the gross profit declared by the assessee:-

AY	Addition made by the AO (GP rate declared by the assessee on Turnover declared by the assessee)
2009-10	10,61,090
2010-11	50,44,695
2011-12	1,14,90,458
2012-13	1,95,21,214
2013-14	32,68,357
2014-15	48,42,235

2. Against the above order, assessee is in appeal before us. Since common grounds have been raised in all the appeals, except the difference in figures of additions. Therefore, for the sake of brevity, we are only reproducing the grounds of appeal pertaining to AY 2009-10 as under:-

“1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO under section 153A(1)(b) read with 143(3) of the Act despite the same is illegal and void-ab initio in the absence of any search initiated under section 132 of the Income Tax Act in the name of the assessee.

3. On the facts and circumstances of the case, the notice issued by the AO and proceedings initiated thereto under section 153C of the Act is bad in law, being barred by limitation and hence the

assessment order passed in consequence thereto is liable to be quashed.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and assumption of jurisdiction by AO are illegal and void ab initio.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and the assessment order passed in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of search.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition made by the AO is not emanating from any incriminating material found during the course of search.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C is bad and the consequent assessment order is liable to be quashed in the absence of any satisfaction being recorded by the AO on the searched person that the incriminating material belonging to the assessee was found during the course of the search.*

8. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the*

addition of Rs. 10,61,090/- made by the AO treating the sales/ purchases made by the assessee as not genuine.

(ii) That the above addition has been confirmed despite the same has been made on estimated basis by arbitrarily rejecting the explanations and the evidences brought on record by the assessee.

(iii) Without prejudice to the above, the CIT(A) has erred in rejecting the contention of the assessee that profit on the sale transaction has already been declared by the assessee, and thus, the addition made by the AO will lead to double taxation of income in the hands of the assessee.

9. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the books of accounts of the assessee have been rejected by the AO without pointing out any defect specified under section 145(3) of the Act.*

(ii) That the CIT(A) has erred in rejecting the contention of the assessee that the addition has been made by the AO despite the assessee has been maintaining regular books of accounts and financial statement are audited as per law and nothing adverse has been pointed out by the AO.

10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition has been made by AO relying upon the statement recorded of third party without providing the opportunity of cross examination to the assessee to rebut the same.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that assessment order has been passed*

by AO on the basis of surmises and conjectures, without there being any adverse material on record.

12. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

3. We have heard both the parties and perused the records. Ld. Counsel for the assessee submitted that AO has made the additions of gross profit over and above the gross profit declared by the assessee without detecting even a single defect in the books of accounts. The AO has made the additions in respective assessment years by adding the same gross profit rate on the total turnover over and above the gross profit declared by the assessee. He further submitted in identical situation in verbatim order of the AO, similar addition has been deleted by this Tribunal vide its order dated 24.10.2024 passed in ITA No. 3400/Del/2023 & ITA No. 3402/Del/2023 in the matter of Kamal Sharma vs. DCIT pertaining to assessment 2008-09 & 2014-15, which has been followed in order dated 10.12.2014 passed in ITA 1219/Del/2023, 1220/Del/2023, 1221/Del/2023 and 3401/Del/2023 in the matter of Kamal Sharma pertaining to assessment years 2010-11 to 2013-14. He further submitted that assessment order is framed u/s. 153A and it also refers to notice issued u/s. 153A. However, he submitted that no incriminating material was found from search at assessee's place. Rather it was material gathered at 3rd party which has prompted this assessment. Hence, he submitted that assessment should have been framed u/s. 153C. Further, he relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd., CA No. 67580 / 2021 dated 24.4.2023, (2023) SCC Online SC 481_ for the proposition that addition should be based upon incriminating material found in search.

4. Per contra, Ld. DR relied upon the orders of the authorities below. She submitted that notice was issued u/s. 153C and satisfaction was also recorded u/s. 153C. She further submitted that mentioning of 153A in assessment order

will not be fatal. She further submitted that incriminating material in the form of approval of audit fee, salary was found during search at 3rd party indicating assessee was controlled by them.

5. We have carefully considered the submissions. We note that exactly similar issue has been dealt by the Coordinate Bench vide its order dated 24.10.2024 passed in ITA No. 3400/Del/2023 & ITA No. 3402/Del/2023 passed in the matter of Kamal Sharma vs. DCIT pertaining to assessment 2008-09 & 2014-15, wherein, the Tribunal has deleted the similar addition by observing as under:-

“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.”

5.1 We further note that, following the ratio of the aforesaid decision, the Coordinate Bench vide its order dated 10.12.2014 passed in ITA 1219/Del/2023, 1220/Del/2023, 1221/Del/2023 and 3401/Del/2023 in the matter of Kamal Sharma pertaining to assessment years 2010-11 to 2013-14 has held as under:-

“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.

6. Considering the fact that the Co-ordinate Bench of the Tribunal has deleted the similar additions on the same set of facts for Assessment Years 2008-09 and 2014-15, which has also been followed in assessment years 2010-11 to 2013-14, as aforesaid. In the absence of any change of facts or circumstances, by respectfully following the orders of the Coordinate Bench, as aforesaid, we set aside the additions made by the AO which have been confirmed by the Id. CIT(A) in the present appeals relating to assessment years 2009-10 to 2014-15 and allow the grounds raised in all the appeals of the assessee.

7. Since we have set aside the additions made by the AO, which was confirmed by Ld. CIT(A), hence, other aspects for arguments/ grounds need not be adjudicated.

8. In the result, all the 06 Assessee's appeals are allowed in the aforesaid manner.

Order pronounced on 16/01/2025.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

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

Assistant Registrar