

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA**

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

**I.T.A. No. 2221/Kol/2024**

Assessment Year: 2011-12

ITO, Ward-2(1), Kolkata	Vs.	Unicorn Land Developers Pvt. Ltd. 2A, Ganesh Chandra Avenue, 2 <sup>nd</sup> floor, West Bengal-700013. (PAN: AAACU9332Q)
Appellant		Respondent

**&**

**C.O. No. 58/Kol/2024**

**In I.T.A. No. 2221/Kol/2024**

Assessment Year: 2011-12

Unicorn Land Developers Pvt. Ltd.	Vs.	ITO, Ward-2(1), Kolkata
Cross Objector		Respondent

**&**

**I.T.A. No. 2222/Kol/2024**

Assessment Year: 2011-12

ITO, Ward-2(1), Kolkata	Vs.	Unicorn Nirman Pvt. Ltd. Commerce House, 2A, Ganesh Chandra Avenue, Room No. 4, 2 <sup>nd</sup> floor, West Bengal-700013. (PAN: AAACU8960C)
Appellant		Respondent

**&**

**C.O. No. 54/Kol/2024**

**In I.T.A. No. 2222/Kol/2024**

Assessment Year: 2011-12

Unicorn Nirman Pvt. Ltd.	Vs.	ITO, Ward-2(1), Kolkata
Cross Objector		Respondent

Date of conclusion of Hearing	08.01.2025
Date of Pronouncement	15.01.2025

For the Assessee	Shri S. Jhajharia, FCA & Shri Sujoy Sen, AR
For the Revenue	Shri P. N. Barnwal, CIT, DR

### **ORDER**

#### **Per Bench:**

All these appeals filed by the revenue and the Cross Objections filed by the assessee are against the separate orders of Ld. CIT(A), Kolkata-21 dated 20.06.2024 & 18.06.2024 for AY 2011-12 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

#### **ITA No.2221/Kol/2024 A.Y.2011-12.**

2. The revenue has filed appeal before us challenging the deletion of addition to the tune of Rs.70,00,000/- by Ld. CIT(A) as made by the AO u/s. 68 of the Act on account of unexplained cash credit.

3. At the outset we note that the appeal is barred by limitation by 78 days by the revenue for the condonation petition has been filed explaining the delay to be on account of not getting any alert in the office of AO or ld. PCIT and it only came to be noticed orders passed by the ld. CIT(A) were downloaded after sometime. Besides the office of ld. PCIT was under heavy pressure of disposing of the time barring cases/matters. We find the delay for sufficient reasons and accordingly condone the same by admitting the appeal of the assessee for adjudication.

4. The facts in brief are that the assessee filed the return of income u/s. 139(1) of the Act on 15.07.2011 declaring total income of Rs.1,040/-. A search action u/s. 132 of the Act was conducted on 09.09.2015 and subsequent dates on UNIGLOBAL GROUP of which the assessee is a related entity. Accordingly notice u/s. 153A of the Act was issued and was duly served. The assessee complied with the said notice by filing a return of income declaring loss of Rs. 1,040/- on 28.08.2017. Thereafter, statutory notices were issued along with questionnaires which were duly complied and replied by the assessee. Pertinent to state that the impugned assessment is an unabated assessment on the date of search as there were no pending proceeding on the date of search and also the time period prescribed under the Act for issuing notice u/s. 143(2) had also

expired. The AO, after taking into account the contentions and submissions of the assessee, made addition to the income in respect of share capital application money.

4. The Ld. CIT(A) in the appellate proceeding allowed the appeal of the assessee on legal issue that AO has no jurisdiction to make addition in an unabated assessment year without any incriminating materials and directed the AO to delete the addition in respect of share application money on the ground that the addition.

5. After hearing the rival contentions and perusing the material available on record, we find that the return of income was filed u/s 139(1) of the Act on 15.07.2011. A search action u/s 132(1) was conducted on the assessee on 09.09.2015. So, on the date of search there were no pending proceedings before the AO qua this assessment year and also that the time limit for issuing notice u/s 143(2) had already expired. Therefore, the impugned assessment was unabated on the date of search or had attained finality in terms provisions of section 153A of the Act. Now the issue before us for adjudication is whether the AO has jurisdiction to make additions without there being any incriminating materials seized during the search. In our opinion the addition in case of unabated assessment can only be made with reference to incriminating materials seized during search and not otherwise. We note that in the appellate order, Ld. CIT(A) has clearly recorded a finding of fact that AO has not referred to any incriminating materials found during the course of search qua the share application. Accordingly, we are in agreement with the Ld. CIT(A) that addition in case of unabated assessment year can only be made on the basis of search material found and seized during search. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of "*Pr. CIT Vs. Abhisar Buildwell (P) Ltd.*" [2023] 149 *taxmann.com* 399 (SC), wherein the Hon'ble Supreme Court has held that in the case of non-abated/completed assessments, no addition can be made by the Assessing Officer in an assessment carried out u/s.153A of the Act in the absence of any incriminating material found during the search action which has been respectfully followed by the Ld. CIT(A) while deleting the additions. The order passed by the Ld. CIT(A) appears to be correct and therefore the appeal of the revenue is dismissed by upholding the order of Ld. CIT(A).

6. The issues raised in the other appeal in ITA No.2222/Kol/2024 for A.Y. 2011-12 are substantially similar as decided by us in ITA No. 2221/Kol/2024 A.Y. 2011-12, therefore our

decision in ITA No. 2221/Kol/2024 would apply, mutatis mutandis, to other appeal as well. Accordingly, both the appeals of the revenue are dismissed.

7. The Cross Objections Nos. 54 & 58/KOL/2024 AYs 11-12 are filed by the assessee in support of the orders of the Id. CIT(A). Since, we have dismissed the appeals of the Revenue by upholding the orders of the CIT (A) in both these assessment years, therefore, these cross objections become infructuous and dismissed.

8. In the result, both the appeals of the Revenue and cross objections of the assessee are dismissed.

Order is pronounced in the open court on 15.01.2025

**Sd/-**  
(Pradip Kumar Choubey)  
Judicial Member

**Sd/-**  
(Rajesh Kumar)  
Accountant Member

Dated: 15.01.2025

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant-ITO, Ward-2(1), Kolkata
  2. Respondent – i) Unicorn Land Development Pvt. Ltd. (ii) Unicorn Nirman Pvt. Ltd.
  3. CIT(A), Kolkata-21
  4. Pr. CIT
  5. DR, ITAT, Kolkata,
  6. Guard file.
- True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata