

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**SHRI SANJAY GARG, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 2104/Kol/2024  
Assessment Year 2011-12**

**Income Tax Officer, Kolkata,**  
Aayakar Bhawan, P-7,  
Chowringhee Square,  
Kolkata - 700069 ..... **Appellant**

**vs.**

**Unicorn Buildcon Pvt. Ltd., Kolkata,**  
2A, Ganesh Chandra Avenue,  
4<sup>th</sup> Floor, Kolkata -  
[PAN: AAACU8964G] ..... **Respondent**

**C.O. No. 47/Kol/2024  
Assessment Year 2011-12**

**Unicorn Buildcon Pvt. Ltd., Kolkata,**  
2A, Ganesh Chandra Avenue,  
2<sup>nd</sup> Floor, Room No. 4 Kolkata 700013  
[PAN: AAACU8964G] ..... **Appellant**

**vs.**

**Income Tax Officer, Kolkata,**  
Aayakar Bhawan, P-7,  
Chowringhee Square,  
Kolkata - 700069 ..... **Respondent**

**Appearances by:**

Assessee represented by : S. Jhalaria, FCA

Department represented by : Shri Subhendu Datta, CIT-DR

Date of concluding the hearing : 12.12.2024

Date of pronouncing the order : 03.02.2025

**ORDER****Per Sanjay Garg, Judicial Member:**

The captioned appeal by the Revenue and the corresponding cross objections by the assessee have been directed against the order of the Ld. Commissioner of Income Tax (Appeals) (hereinafter "the Ld. CIT(A)], passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act') dated 18.06.2024.

2. The Revenue in this appeal is aggrieved by the action of Ld. CIT(A) in deleting the addition of Rs. 1,05,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Act and also of Rs. 52,500/- u/s 69C of the Act and of Rs. 71,300/- u/s 14A of the Act. The Revenue has contested the action of the Ld. CIT(A) in deleting the addition on merit, whereas the assessee has filed the cross objections supporting the order of the Ld. CIT(A).

3. The brief facts of the case are that a search action u/s 132 of the Act was conducted on the assessee on 09.09.2015. Accordingly notices u/s 153A was issued for six assessment years from 2010-11 to 2015-16 and which were made compliance thereto by filing a return of income for each of the assessment year for the year under consideration. The AO has made addition of Rs. 1,05,00,000/- towards share capital/ share premium being an unexplained u/s 68 of the Act and Rs. 52,500/- u/s 69C @ 0.5% of the total share capital/share premium towards for arranging entries as commission beside addition of Rs. 71,300/- u/s 14A of the Act.

4. The Ld. CIT(A) however, deleted the addition so made by the AO observed that the assessment for the year under consideration stood completed and not abated on the date search action and no incriminating material was found during the course of search action. He relied upon the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar

Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC) and deleted the addition so made by the AO.

5. We note that in relation to AY 2011-12, wherein, the identical additions have been made by the AO in an assessment carried out u/s 153A of the Act pursuant to the same search action. The matter travelled to the Tribunal, wherein, the Tribunal in the identical facts and circumstances, dismissed the appeal of the Revenue on merits and cross objections of the assessee having become infructuous. The relevant part of the order of the Tribunal is reproduced as under:

*“3. The revenue has challenged the order passed by the Ld. CIT(A) deleting the addition of Rs. 60,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Act and also Rs. 30,000/- u/s 69C and Rs. 15,000/- u/s 14A. The revenue has challenged the deletion of addition on merit and the assessee has filed cross objection supporting the order of Commissioner of Income Tax (Appeal).*

*4. After hearing the rival contentions and perusing the material on record, we find that in this case, a search action u/s 132 of the Act was conducted on the assessee on 09.09.2015. During the course of search proceedings, several incriminating documents were found and seized. Accordingly notices u/s 153A was issued for six assessment years from 2010-11 to 2015-16 and which were made compliance thereto by filing a return of income. The AO has made addition of Rs. 60,00,000/- towards share capital/ share premium being an unexplained u/s 68 of the Act and Rs. 30,000/- u/s 69C @ 0.5% of the total share capital/share premium towards for arranging entries as commission beside addition of Rs. 15,000/- u/s 14A of the Act. We note that the AO has made addition on the basis of information furnished by the assessee meaning thereby that there was no incriminating material seized during search operation as there was no reference in the assessment order to that effect. Since the assessment under consideration is unabated assessment on the date of search, therefore the jurisdiction of the AO to make the addition is limited to those items qua which the incriminating material was found and seized during the course of search. Therefore, in present case the addition was made without any incriminating material and thus the Ld. CIT(A) deleted the same on the ground that there was no incriminating material.*

*5. Considering the above facts and circumstances of the case, we are of the view that 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) as there was no incriminating material found and seized during the course of search and therefore the AO has no jurisdiction to make additions. Consequently, we upheld the order of Ld. CIT(A) by dismissing the appeal of the revenue and the cross objection by the assessee becomes infructuous and is dismissed.*

*6. In the result, the appeal of the revenue as well as the cross objection of the assessee are dismissed.”*

6. The Ld. DR could not point out any distinguishing facts for the year under consideration. Therefore, we do not find any infirmity in the order of

the Ld. CIT(A). Accordingly, same is hereby upheld. Appeal of the Revenue is hereby dismissed.

7. The assessee in his cross objection has simply supported the order of Ld. CIT(A). No grievance has been raised against the order of the Ld. CIT(A). Therefore, the above cross objections do not need any adjudication and the same are also dismissed.

8. In the result, appeal filed by the Revenue and cross objections filed by the assessee are dismissed.

Order pronounced in the court on 03.02.2025

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

Sd/-  
**(Sanjay Garg)**  
**Judicial Member**

Dated: 03.02.2025  
AK, P.S.

*Copy of the order forwarded to:*

1. Unicorn Buildcon Pvt. Ltd., Kolkata
2. Income Tax Officer, Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

