

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3408/Del/2017
(ASSESSMENT YEAR 2012-13)

M/s Capital Institute of Competition Training (P) Ltd. 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi. PAN: AACCC3132E	Vs.	DCIT Central Circle-1 Faridabad.
(Appellant)		(Respondent)

Assessee by	Sh. Gaurav Jain, Adv., Ms. Bharti Sharma, Adv., Sh. Aditya Gauri, Adv., Sh. Amar Vivek, Adv. and Sh. Anant Jain, Adv.
Department by	Sh. Surender Pal, CIT-DR
Date of Hearing	25/02/2025
Date of Pronouncement	25/02/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals), 3 Gurgaon [CIT(A), in short] in appeal No. 147/CIT(A)(C)/GGN/2014-14, dated 10/03/2017 for

Assessment Year 2012-13, passed under section 250 of the Income Tax Act, 1961 (hereinafter referred as 'the Act').

2. Brief facts of the case are that the assessee is a private limited company. A search and seizure operation was carried out in the case of CHD Developers group of cases on 23.11.2012 to which assessee belonged. The office premises of the assessee was also searched and thus proceedings u/s 153A were initiated in the case of assessee for the block period of six years. The notice u/s 153A for the year under appeal was issued on 20.05.2014, in response to which assessee filed its return of income for AY 2012-13 on 14.08.2014 declaring NIL. The assessment was completed vide order passed u/s 153A(1)(b) by making addition of Rs. 1,50,00,000/- u/s 68 of the Act, by holding the share capital received from various companies as bogus by placing reliance on the statements of the director of the assessee company Shri R.K. Mittal recorded u/s 132(4) wherein he offered this share capital of Rs. 1.50 crores as additional income. Aggrieved by the said order, assessee preferred appeal before the ld. CIT(A) who vide impugned order dt. 10/03/2017 has dismissed the appeal of the assessee.

3. Against the said order of the ld. CIT(A), the assessee is in appeal before the Tribunal.

4. The assessee challenged the appellate order on the strength of following grounds of appeal:-

"1. That notice issued u/s 153A of the Act and, assessment framed u/s 153A(1)(b) of the Act without satisfying the statutory preconditions contained in the Act were without jurisdiction and therefore, deserves to be quashed as such.

1.1 That in absence of any search having been conducted on the appellant company, the conclusion of the learned Commissioner of Income Tax (Appeals) upholding the validity of notice issued u/s 153A of the Act is illegal, invalid and untenable.

1.2 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that warrant drawn in the name of the appellant in respect of the premises of plot no. 10-11, Second Floor, Nelson Mandela Marg, Vasant Kunj, New Delhi could not confer jurisdiction since on the date of drawing of the warrant, the premises of the appellant was at Bhikaji Gama Place, New Delhi.

1.3 That further the learned Commissioner of Income Tax (Appeals) has proceeded to record findings and, observations which are factually incorrect, contrary to record, legally misplaced and in any case, wholly irrelevant to uphold the illegality of initiation of proceedings u/s 153A of the Act.

2 That moreover the learned Commissioner of Income Tax (Appeals) has also failed to comprehend that no warrant of authorization was prepared in the name of the appellant company. Infact, he has failed to appreciate that no valid authorization u/s 132(1) of the Act could have otherwise been prepared, as the conditions precedent for exercising the jurisdiction by Director of Investigation were completely absent and hence, once no valid search either was initiated or could have been initiated, notice u/s 153A of the Act is unsustainable.

3 That addition made and upheld of Rs. 1,50,00,000/- by the learned Commissioner of Income Tax (Appeals) is perse without jurisdiction since the same is not based on any incriminating material detected as a result of search on the appellant company.

4 That the learned Commissioner of Income Tax (Appeals) has even otherwise erred both in law and on facts in confirmation an addition of Rs. 1,50,00,000/- representing share capital received by the appellant company and erroneously held as unexplained cash credit under section 68 of the Act

4.1 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in proceeding to confirm an addition on the basis of statement recorded of Shri R.K. Mittal under section 132(4) of the Act on 24.11.2012 without appreciating that such statement neither in law and nor on fact could have been made a basis to assume that the share capital received by the assessee represented income of the appellant company.

4.2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on fact in overlooking the documentary evidence placed on record to establish that the share capital received by the appellant was from identifiable shareholder who had requisite creditworthiness and also met the test of genuineness of transaction.

5. That the learned Deputy Commissioner of Income Tax has erred both in law and on facts in upholding the levy of interest of Rs. 1,94,670/- under section 234A of the Act and Rs. 17,03,363/- under section 234B of the Act which are not leviable on the facts of the appellant company.

It is therefore prayed that, it be held that, the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in upholding both the notice issued u/s 153A of the Act and assessment framed u/s 153A/ 143(3) of the Act, which were without jurisdiction and thus be quashed as such and, further addition so upheld by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.”

5. In grounds of appeal No. 1 to 2, assessee has challenged the legality of the assessment proceedings initiated u/s 153A and consequent order passed, thus the same are taken up first for consideration.

6. Before us, Ld. AR argued that the warrant issued in the name of assessee company was on different address and thus no search was carried out in the case of the assessee company. According to Ld. AR when no search warrant was issued at the correct address the notice issued u/s 153A is bad in law. He further submits that when no search was carried out in the case of assessee, assumption of

jurisdiction u/s 153A is illegal and he requested to quash the entire proceedings.

7. On the other hand, ld. CIT DR vehemently supported the orders of the lower authorities and submitted that the assessee never intimate the change of address and even filed the returns of income for all the six years falling under the block period with the same address i.e. 10-11, Second Floor, Nelson Mandela Marg, Vasant Kunj, New Delhi where the search was carried out. Ld. CIT-DR further submitted that search warrant was executed in the name of the assessee, thus the proceedings initiated u/s 153A are as per law and he prayed for the confirmation of the orders of the lower authorities on legal aspect.

8. We have heard both the parties and gone through the material available before us. Before dwelling upon the issue, the provisions as contained in section 153A needs to be considered:

“153A. Assessment in case of search or requisition.

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause

(b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—
(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

9. From the plain reading of section 153A, it is clear that the provisions of this section are applicable to cases where a search is initiated u/s 132 of the Act. In the instant case, a search warrant was executed in the name of the assessee company which is also confirmed from the perusal of the copy of search warrant dt.17/11/2012, available in the paper book pages 178-179. Once the search was carried out in the name of the assessee, proceedings u/s 153A has been rightly initiated. It is also a matter of fact that assessee has made due compliance to the notices issued for all the six years falling under the block period and not only filed the returns of income but also never objected the issue of notice u/s 153A. Further before

us also assessee had failed to controvert the findings of the ld. CIT(A) by placing on record any cogent material. Even till today the address of the assessee company is remained as 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi. In view of these facts, we are not interfering in the order of ld. CIT(A) which is hereby upheld on this issue. The grounds of appeal No. 1 to 2 taken by the assessee are dismissed.

10. Grounds of appeal No. 3 & 4 are in relation to the addition of Rs.1,50,00,000/- made u/s 68 on account of share capital received from various companies as the assessee has failed to establish the identity and credit worthiness of the share applicant companies.

11. From the perusal of the order of the lower authorities, we find that the assessee has failed to file any reply to the show cause notice issued by the AO on 02/02/2015. Further before the ld. CIT(A) also no details were filed in order to establish the identity and creditworthiness of the share applicant companies. During the year under appeal, assessee company had received fresh share capital of Rs. 3,99,00,000/- by total Eleven subscribers. From the table at page 5 of the assessment order, it appears that share capital of Rs. 2,49,00,000/- were subscribed by the directors and their family members and remaining amount of Rs. 1,50,00,000/- were subscribed by eight companies, whereabouts of which were not submitted by the assessee company. It is also a matter of fact that Shri R. K. Mittal, director in his statement recorded u/s 132(4) had offered the same as additional income which was not honored. During the course of hearing the ld. AR of the assessee had prayed that one

more opportunity be allowed to the assessee company to file the necessary details in order to establish the genuineness of the shareholders. Thus looking to the fact that assessee company except challenging the validity of the assessment order, had not filed any details with respect to the share subscribing companies, therefore, in the interest of justice we sent back this issue to the file of the AO with the directions to the assessee company to file all the necessary details of the share subscribers to the satisfaction of the AO. The AO is also directed to provide sufficient opportunity to the assessee of being heard. With these directions, grounds of appeal Nos. 3 & 4 taken by the assessee are partly allowed for statistical purposes.

12. Ground of appeal No. 5 is in respect to the levy of interest u/s 234A and 234B. Since levy of interest u/s 234A and 234B are mandatory thus AO is directed to recalculate the same on the income finally determined in terms of the directions given herein above. Thus this ground of appeal partly allowed.

13. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 25.02.2025.

Sd/-

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 25/03/2025

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI