

IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH "B", NEW DELHI  
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
 AND  
 SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. Nos.4666 & 4667/DEL/2016		
A.Yrs. : 2009-10 & 2010-11		
ACIT, CC-8, NEW DELHI ROOM NO. 333, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	VS.	M/S DINGLE BUILDCONS PVT. LTD., B-2/5, PLOT NO. 2, ASHOK NAGAR, DB GUPTA ROAD, NEAR FAIZ CHOWK, KAROL BAGH, NEW DELHI - 110 005 (PAN: AACCD4382P)
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

AND

CROSS OBJECTION NOS. 351 & 352/DEL/2016		
IN		
(I.T.A. Nos. 4666 & 4667/DEL/2016)		
A.Yrs. 2009-10 & 2010-11		
M/S DINGLE BUILDCONS PVT. LTD., B-2/5, PLOT NO. 2, ASHOK NAGAR, DB GUPTA ROAD, NEAR FAIZ CHOWK, KAROL BAGH, NEW DELHI - 110 005 (PAN: AACCD4382P)	VS.	ACIT, CC-8, NEW DELHI ROOM NO. 333, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

Revenue by : Ms. Rachna Singh, CIT(DR)  
 Assessee by : Dr. Shashwat Bajpai, Adv. &  
 Sh. Sharad Agarwal, Adv.

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed these Appeals and Assessee has filed the Cross Objections against the respective Orders of the Ld. CIT(A)-24, New Delhi relevant to assessment years 2009-10 & 2010-11 respectively.

Since the issues involved in these appeals and cross objections are common, hence, the appeals and cross objections were heard together and are being disposed of by this common order for the sake of brevity, by dealing with Revenue's Appeal for AY 2009-10 and Assessee's Cross Objection for AY 2009-10.

2. The grounds raised by the Revenue in ITA No. 4666/Del/2016 (2009-10) read as under:-

1. The order of Ld. CIT(A) is not correct in law and facts.
2. On the facts and circumstances of the case, the CIT(A) has erred in quashing the order u/s. 153A of the Act.
3. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon'ble Delhi High Court in case of Mr. Kabul Chawla as Section 153A does not restrict the assessment to incriminating documents.
4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that the assessee has not been able to establish the genuineness of execution of contract and the expenses.

5. The appellant craves leave to add, amend any / all the ground of appeal before or during the course of hearing of the appeal.
3. In other appeal of the Revenue, the grounds are identical, hence, the grounds of other appeal are not reproduced for the sake of brevity.
4. The grounds raised by the Assessee in Cross Objection 351/Del/2016 in ITA No. 4666/Del/2016 (AY 2009-10) read as under:-

*"1. That ground no. 2 & 3 taken by the revenue are contrary to the facts and circumstances:*

*a) Because the disallowance does not arise from any incriminating material unearthed during the search either by way of undisclosed assets or documentary evidence against the assessee.*

*b) Because the Hon'ble Delhi High Court has clearly laid down the law that additions made in assessment u/s. 153A of the Act should be based on incriminating material found during the course of search.*

*2. That Ground No. 4 taken by the revenue in connection with the genuineness of*

*execution of contract and the expenses is also contrary to the facts on record:*

- a) Because AO had given irrelevant reasons and grounds despite finding the fact that the assessee has not carried out any work in its own therefore, no question of unverifiable expense arise.*
- b) Because the addition was made merely on the basis of statement of Sh. Pankaj Jain, GM (Marketing and Administration), whereas the transactions mentioned in the statement are not relevant for the proceedings of the current assessment year.*
- c) Because AO has ignored the fact that the assessee had discharged the onus placed on it in respect of identity of contractee, genuineness of the transaction by way of deduction of TDS and payment made through banking channels.*

*It is, therefore, prayed that the CO be allowed and revenue's appeal be dismissed."*

5. In other Cross Objection of the Assessee, the grounds are exactly identical, hence, the grounds of other Cross Objection are not reproduced for the sake of brevity.

### **REVENUE'S APPEAL – AY 2009-10**

6. The brief facts of the case are that a search and seizure action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred as the Act) was conducted on K-World group of cases on 05.04.2012. The Assessing Officer held that the assessee company has acted as facilitator for a contractor name M/s PACL India Pvt. Ltd. as a subcontractor by further subcontracting the work to M/s Becon Construction Pvt. Ltd. (sister concern of the assessee company). During the year under consideration, the assessee received contract work of Rs. 5,83,93,000/- from M/s PACL India Pvt. Ltd. The entire work was sub-contracted to M/s Becon Construction Pvt. Ltd. Relying on the statement of Sh. Pankaj Jain, G.M. (Marketing and Administration) of the K-world group, wherein he admitted that M/s Becon Construction P. Ltd has facilitated PACL India Ltd. by subcontracting work to M/s Quest Infrastructure Pvt. Ltd., the A.O. held that the assessee too (on similar lines) has also acted as a facilitator to M/s PACL India Ltd. Relying on the decision of Hon'ble Punjab & Haryana High Court in CIT vs. Prabhat Kumar, he held that net profit of the assessee is to be adopted at 12% of the receipts instead of 3.3% reflected by the assessee and accordingly added a sum of Rs. 70,07,160/- to the income of the assessee by assessing the total income of the

assessee at Rs. 85,10,470/- u/s. 153A r.w.s. 143(3) of the Act vide order dated 30.3.2015.

7. Against the aforesaid assessment order dated 30.3.2015, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 28.6.2016 has partly allowed the appeal of the assessee.

8. Aggrieved with the order of the Ld. CIT(A), Revenue is in appeal and assessee is in Cross Objection before the Tribunal.

9. During the hearing, Ld. CIT(DR) relied upon the order of the AO and stated that the action of the Ld. CIT(A) for quashing the order u/s. 153A of the Act was not tenable. She further stated that Ld. CIT(A) has erred in relying on the order of the Hon'ble Delhi High Court in case of 'Kabul Chawla' as Section 153A does not restrict the assessment to incriminating documents. She further stated that Ld. CIT(A) also ignored the fact that the assessee has not been able to establish the genuineness of execution of contract and the expenses.

10. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and stated that the disallowance in dispute does not arise from any incriminating material unearthed during the search either by way of undisclosed assets or documentary evidence against the assessee. He further stated that the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla has clearly laid down the law that additions made in assessment u/s. 153A of the Act should be based on incriminating material found during the course of search. It was further

stated that with regard to genuineness of execution of contract and the expenses is also contrary to the facts on record because AO had given irrelevant reasons and grounds despite finding the fact that the assessee has not carried out any work in its own therefore, no question of unverifiable expense arise and the addition was made merely on the basis of statement of Sh. Pankaj Jain, GM (Marketing and Administration), whereas the transactions mentioned in the statement are not relevant for the proceedings of the current assessment year; AO has ignored the fact that the assessee had discharged the onus placed on it in respect of identity of contractee, genuineness of the transaction by way of deduction of TDS and payment made through banking channels. He relied upon the decisions of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380 ITR 573 (Del.) and Principal CIT, Delhi-2 vs. Best Infrastructure (India) P. Ltd. 397 ITR 82 (Delhi) wherein, the Hon'ble High Court has held that if the additions are made, but not based on any incriminating material found during search operation, then these additions are not sustainable in the eyes of law. He further stated in the present case the AO has made the addition in dispute in a proceeding under section 153C of the Act without there being any incriminating material found during the course of the search in respect of such addition.

11. We have heard both the counsel and perused the relevant records available with us, especially the orders of the revenue authorities and the cases referred hereinabove. We find that the additions made by the AO

are beyond the scope of section 153C of the Income Tax Act, 1961, because no incriminating material or evidence had been found during the course of search so as to doubt the transactions. It was noted that in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having been found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal. Therefore, in our considered opinion, the action of the AO is based upon conjectures and surmises and hence, the additions made is not sustainable in the eyes of law, because this issue in dispute is now no more res-integra, in view of the decision of the Hon'ble Delhi High Court passed in the case Commissioner of Income Tax vs. Kabul Chawla reported (2016) 380 ITR 573 (Del.) wherein, the Hon'ble High Court has held as under:-

*"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.*



*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an ITA Nos. 707, 709 and 713 of 2014 of assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*

*38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."*

12. Respectfully following the precedent as aforesaid, we affirm the action of the Ld. CIT(A) in deleting the addition in dispute made u/s. 153(C)/143(3) of the I.T. Act, 1961 and decide the issues in dispute in favour of the Assessee and accordingly dismiss the Revenue's appeal.

13. Following the consistent view taken in assessment year 2009-10 in the Revenue's Appeal, as aforesaid, the other Appeal of the Revenue relating to assessment year 2010-11 also stand dismissed.

14. As regards, the Assessee's Cross Objections are concerned, since we have already dismissed the appeals of the Revenue, as aforesaid, hence, the Assessee's Cross Objections have become infructuous and dismissed as such.

15. In the result, both the Revenue's Appeals as well as Assessee's Cross Objections stand dismissed.

Order pronounced on 01/02/2018.

**Sd/-**  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 01/02/2018*

**SRBHATNAGAR**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

