

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.3853/Del./2017
Assessment Year 2012-2013

The DCIT, Central Circle-1, Faridabad.	vs.	M/s. Aadyant Education Pvt. Ltd., 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi. PAN AAHCA3067B
(Appellant)		(Respondent)

For Revenue :	Shri Satpal Gulati, CIT-DR
For Assessee :	Shri Gautam Jain, Advocate Shri Lalit Mohan, C.A.

Date of Hearing :	23.03.2021
Date of Pronouncement :	25.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-3, Gurgaon, Dated 31.03.2017, for the A.Y. 2012-2013, on the following grounds :

- (i) *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in law in allowing the appeal of the assessee quashing the assessment*

order ignoring that no addition was made on account of seized documents but u/s 68 on account of bogus share capital introduced.

(ii) Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in law in deleting the addition of Rs. 3,00,00,000/- made on account of bogus share capital u/s 68 of the Income Tax Act, 1961 without going into the merits of the case.”

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that by virtue of authorization of Director of Income Tax (Inv.), Chandigarh under section 132(1)(A) in the case of the assessee, the residential as well as office premises of CHD Developers Group of cases were subjected to search and seizure operations on 23.11.2012. Survey action under section 133A of the I.T. Act, 1961 were also carried-out at the business premises of the assessee. The cases were

centralized. The A.O. issued notice under section 153A r.w.s. 153C of the I.T. Act, 1961 for taking-up the case of the assessee under section 153C of the I.T. Act, 1961. The A.O. after considering the issue in detail, made an addition of Rs.3 crores under section 68 of the I.T. Act, 1961 and passed the assessment order Dated 12.03.2015 under section 153A read with Section 153C of the I.T. Act, 1961.

3.1. The assessee challenged the assumption of jurisdiction and the addition before the Ld. CIT(A). The Ld. CIT(A) noted in the impugned order that A.O. has submitted before him that satisfaction note is appended only with the records of the assessee-company and that there is no such satisfaction appended in the case of CHD Developers Group of Cases i.e., searched-person. The assessee, therefore, submitted before the Ld. CIT(A) that no satisfaction note of the A.O. of the searched-person was recorded before invoking the provisions of Section 153C of the I.T. Act, 1961 and in the absence thereof, the A.O. was not justified in assuming jurisdiction under section 153C of the I.T. Act, 1961. The assessee also relied upon Judgment of the

Hon'ble Delhi High Court in the case of CIT vs., RRJ Securities Ltd., 128 DTR 57 (Del.). The Ld. CIT(A) also referred to Board Circular No.24/2015 in which the clarification was issued regarding recording of satisfaction under sections 153C/158BD of the I.T. Act, 1961. The Ld. CIT(A) in view of the above facts held that proceedings under section 153C of the I.T. Act, 1961 are *abinitio void*. The findings of the Ld. CIT(A) in paras 9 and 10 of the Order are reproduced as under :

“9. In view of the ratio laid down by the Apex Court and the CBDT Circular discussed above the ground of appeal no 2 is allowed as the AO of the searched person has not recorded satisfaction note with regard to the case of appellant where proceedings were initiated u/s 153C of the Act and addition of Rs.3,00,00,000/- made on account of bogus share capital u/s 68 of the Act is not sustained and hence deleted, looking to the position of law and facts of the case.

10. Since the issue has been decided on the legal ground regarding proceedings initiated u/s 153C of the Act being ab-initio void as the satisfaction note was not recorded by the AO of the search person in this case, the other grounds of appeal relating to the merit of this case are not being considered.”

4. The Ld. D.R. relied upon the Order of the A.O.

5. The record reveal that this appeal was heard by ITAT, Delhi Bench on 20.02.2020 and thereafter fixed for clarification many times. Ultimately on 15.01.2021 the Ld. D.R. sought time to file revised grounds of appeal which was allowed and appeal was released and fixed for hearing on 23.03.2021. The above grounds of appeal clearly show that Revenue has challenged the Order of the Ld. CIT(A) in deleting addition of Rs.3 crores on merits. No grounds have been raised by the Revenue to challenge the Order of the Ld. CIT(A) in allowing the appeal of assessee because no satisfaction note have been recorded in the case of the person-searched for invoking jurisdiction under section

153C of the I.T. Act, 1961. Sufficient time was already granted to the Department to revise its grounds of appeal. However, no steps have been taken by the Department. It is, therefore, clear that the findings of the Ld. CIT(A) as produced above, have not been challenged by the Revenue on any of the grounds of appeals. Therefore, the grounds of appeal raised by the Revenue on merit would not arise from the findings of the Ld. CIT(A). Thus, the appeal of the Revenue would not be maintainable in the absence of any challenge to the findings of the Ld. CIT(A) with regard to quashing of proceedings under section 153C of the I.T. Act, 1961, in the absence of any satisfaction note recorded by the A.O. of the person searched. In view of the above, Departmental appeal is dismissed.

6. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 25th March, 2021
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.