

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1917 /Del/2015
(Assessment Year : 2006-07)

Unified Infrastructure Pvt. Ltd., Unit No.502, Building D Mall, Netaji Subhash Palace, Pitampura, New Delhi-110 034 PAN No. AAACU 7955 Q	Vs.	ACIT Central Circle – Karnal Haryana
(APPELLANT)		(RESPONDENT)

And

ITA No.1918 /Del/2015
(Assessment Year : 2006-07)

Unified Developers Pvt. Ltd., Unit No.502, Building D Mall, Netaji Subhash Palace, Pitampura, New Delhi-110 034 PAN No. AAACU 7955 R	Vs.	ACIT Central Circle – Karnal Haryana
(APPELLANT)		(RESPONDENT)

Assessee by	Shri R. C. Rai, C.A. Ms. Kamal Sharma, C.A.
Revenue by	Shri Ishtiyaque Ahmed, CIT-D.R.

Date of hearing:	27.04.2022
Date of Pronouncement:	23.05.2022

ORDER**PER ANIL CHATURVEDI, AM :**

Both the appeals filed by the assessee are directed against the order dated 27.01.2015 of the Commissioner of Income Tax (Appeals) - 3, Gurgaon relating to Assessment Year 2006-07.

2. At the outset, Learned AR submitted that though these two appeals are of two different assesses but however both the assesseees belong to the same group, the issue involved in both the appeals are identical except amounts involved and therefore the submissions made by him for one year would be applicable to the other year also. Ld DR did not controvert the aforesaid submissions of Ld AR. In view of the aforesaid submissions of the Counsel, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2006-07 in ITA No.1917/Del/2015.

3. The relevant facts as culled from the material on records are as under:

4. Assessee is a company stated to be engaged in the business of dealing in investment and consultancy in Real Estate. AO has noted that the business and residential premises of M/s. Best Food Group of Cases was subjected to search and seizure

operations on 23.11.2010 and the assessee being part of the group was also covered. In view of the provision of Section 153A(1)(a) r.w. Section 132 of the Act, notice u/s 153A of the Act dated 21.09.2012 was issued and served on the assessee on 25.09.2012 asking the assessee to file the return of income for Assessment Year 2006-07, an assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted. In response to the aforesaid notice, assessee filed a letter on 03.10.2012 stating that the return of income filed by it on 30.03.2007 be treated as return of income in response to notice u/s 153A of the Act. The case was thereafter taken up for scrutiny and subsequently assessment was framed u/s 153A(1)(b) of the Act vide order dated 25.03.2013 and the total income was determined at Rs.1,55,00,000/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 27.01.2015 in Appeal No.12K/CIT(A)(C)/GGN/2013-14 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- 1. "On the facts and in the circumstances of the case as well as in law the Ld Commissioner of Income Tax (Appeals) grossly erred in holding that the addition U/s 153A can be made without any incriminating material found and seized as a result of search.*
- 2. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in holding that the Ld. Assessing Officer is empowered U/s 153A of the Income Tax Act, 1961 to disturb the items of regular*

assessment even without any adverse material found, and seized as a result of search.

3. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in upholding the addition of share capital & share premium of 1,55,00,000/- made by Ld. Assessing Officer.*
4. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in holding that:-*
 - (a) *The onus casted on assessee U/s 68 of the Income Tax Act, 1961 was not discharged.*
 - (b) *The share applicants are non existing and paper companies.*
 - (c) *The appellant has introduced its own unaccounted money in the grab of share capital & share premium.*
5. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in holding that the material gather and inquiry conducted at the back and behind of the assessee was confronted to the assessee by Ld. Assessing Officer.*
6. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in capriciously rejecting the assessment order of share applicant and other materials produced before authorities below.*
7. *The appellant crave leave to amend, alter, add/modify any or all grounds of appeal.*

These action of Hon'ble Commissioner of Income Tax (Appeals) - III, Central, Gurgaon, Haryana., and Ld. Assessing officer being Arbitrary, unjust, Illegal and invalid in law are liable to quashed and it is prayed to Your Honor that they please be quashed and/or any other relief just deem fit and proper please be directed."

5. Similar grounds have been raised by assessee in ITA No.1918/Del/2015 for A.Y. 2006-07.

6. Before us, at the outset, Learned AR submitted that vide Ground No. 1 & 2 assessee is challenging the validity of the assessment order passed u/s 153A of the Act and in Ground No.3 to 6 assessee is challenging the additions on merit.

7. With respect to Ground No.1 & 2, before us, Learned AR submitted that for the A.Y. 2006-07 assessee had originally filed its return of income u/s 139(1) of the Act on 30.03.2007 and the return of income was processed u/s 143(1) of the Act. He submitted that the time limit for issuance of notice u/s 143(2) was up to 30.06.2008 but no notice u/s 143(2) of the Act was issued up to 30.06.2008. He submitted that on the expiry of the aforesaid period for issue of notice u/s 143(2) of the Act, the assessment for A.Y 2006-07 is deemed to have been concluded. He further submitted that search in the case of assessee was conducted on 23.11.2010 and during the course of such search no incriminating documents whatsoever was found. In support of his contention of no incriminating documents having been found during the course of search, he submitted that in the assessment order passed by the AO u/s. 153A of the Act, there is no mention about any incriminating document which is the basis for the additions made. He submitted that the scope of the assessment proceedings u/s 153A of the Act in respect of an assessment

which has already been completed is restricted only to making an assessment of income which are based on incriminating material found during the course of search. He submitted that in the case of concluded assessments, the A.O. has no jurisdiction to make additions towards addition to returned income in the absence of any incriminating materials. The Learned A.R. thereafter submitted that in the case of abated assessments and assessments which are pending as on the date of search, the A.O. can assume jurisdiction to assess/reassess total income, which is found during the course of search. In the present case, since the assessment for the assessment year 2006-07 was deemed to have been completed and as no incriminating material was found, the AO has no jurisdiction to make an assessment of income which is not based on material found in the course of search. In support of his aforesaid contentions, he placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of **Kabul Chawla reported in 380 ITR 573**. Learned AR also placed reliance on the order of the Delhi Tribunal in the case of **Best Food Ltd. vs. ACIT (ITA No.1184/Del/2014)** and **Heritage Infracon Pvt. Ltd. vs. ACIT (ITA No.1919/Del/2015)**. He therefore submitted that the assessment be set aside.

8. Learned DR on the other hand supported the order of lower authorities.

9. We have heard the rival submissions and perused the materials available on record. In the present case the assessment has been framed u/s 153A of the Act. Sec.153A of the Act lays down that in respect of searches carried out under section 132 of the Act or requisition of books and other documents made under section 132A of the Act after 31.05.2003, the Assessing Officer shall issue a notice calling upon assessee to furnish return of income in respect of six assessment years immediately preceding assessment year relevant to the assessment year in which search is conducted or requisition is made. The Assessing Officer is empowered to re- assess the total income in respect of each assessment year falling with such six assessment years.

10. As per the second proviso to Sec. 153A(1) of the Act, if any assessment proceedings for any of the six assessment years set out in Sec.153A(1) of the Act is pending as on the date of initiation of search u/s.132 of the Act, then such assessment proceedings would abate and the AO will make one assessment after considering the original return of income as well as materials found in the course of search. The assessment proceedings which have been completed as on the date of search u/s.132 of the Act will however continue to remain valid. Thus the former proceedings are referred to as "abated assessment proceedings" and the latter proceedings are referred to as "unabated assessment proceedings".

11. It is an undisputed fact that in the present case the return of income for A.Y. 2006-07 was filed by the assessee on 31.10.2006 declaring income of Rs.3,99,369/- and the return of income was processed u/s 143(1) of the Act. No notice u/s 143(2) of the Act was issued up to 30.06.2008, being the period laid down in the proviso to section 143(2) of the Act, for making the assessment. Therefore, assessment proceedings stood completed and that in any case on the date of search i.e. on 23.11.2010, the assessment for the impugned assessment year 2006-07 was not pending. Therefore the acceptance of the return of income amounts to an assessment and such assessment did not abate in terms of the Second Proviso to section 153A(1) of the Act.

12. It is the plea of the learned counsel for the Assessee that the impugned additions made by the Assessing Officer could not have been made in the impugned assessment proceedings as they are not based on any material seized or found during the course of search of the assessee. We find force in the aforesaid submissions of Learned AR. We find that the additions which has been made by the AO is with respect to Share Capital and Share premium, and there is no reference in the assessment order that the addition is based on incriminating material.

13. The Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has held that completed assessments can be interfered with by the Assessing Officer while making the assessment under

section 153A 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.

14. In the light of the foregoing, we are of the view that the assessment for AY 2006-07 was already completed prior to the date of search and having not abated, the scope of proceedings u/s.153A of the Act had to be confined only to material found in the course of search. Since no material on the basis of which the impugned addition has been made was found in the course of search, the additions made by the AO in the order of assessment could not have been subject matter of proceedings u/s 153A of the Act. Consequently, the said additions made in the order of Assessment could not be made by the AO. **We thus allow ground No.1 & 2 and hold the assessment order to be bad in law and accordingly quashed.**

15. Since we have quashed the assessment order, the other grounds raised by the assessee require no adjudication.

16. In the result, appeal of the assessee is allowed.

17. As far as ITA No.1918/Del/2015 for A.Y. 2006-07 is concerned, before us, both the parties have submitted that the

issue raised in the aforesaid appeal is identical to that of ITA No.1917/Del/2015. We have hereinabove while deciding the appeal and for the reasons stated have allowed the appeal of the assessee. We therefore for similar reasons allow the appeal of the assessee. **Thus the ground of the assessee are allowed.**

18. In the combined result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 23.05.2022

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.05.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI