

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1392/Del./2016
(ASSESSMENT YEAR : 2006-07)**

ACIT, Central Circle 18,
New Delhi. vs. M/s. Paramount Probuild Pvt. Ltd.,
208, Sikka Mansion, LSC,
Sarita Vihar,
New Delhi.
(PAN : AADCP5228P)

**CO No.159/Del/2016
(in ITA No.1392/Del./2016)
(ASSESSMENT YEAR : 2006-07)**

M/s. Paramount Probuild Pvt. Ltd.,
208, Sikka Mansion, LSC,
Sarita Vihar,
New Delhi. vs. ACIT, Central Circle 18,
New Delhi.
(PAN : AADCP5228P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri T. Kipgen, CIT DR

Date of Hearing : 26.12.2022
Date of Order : 03.01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue and cross objections by the assessee arise out of the order of Id. CIT (A)-25, Delhi dated 31.12.2015 pertains to assessment year 2006-07.

2. The grounds of appeal taken by the Revenue read as under :-

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition u/s 68 made on account of unexplained share capital received from 21 persons amounting to Rs.1,61,00,000/- Without appreciating the fact that neither the creditworthiness of these creditors nor the genuineness of transactions were established as submitted by the AO in Assessment Order and Remand Report.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the onus of the assessee is discharged without appreciating the judgement of the jurisdictional High Court given in case of CIT v. Nova Promoters (2012) 342 ITR 169 (Delhi) wherein the Hon'ble Court has held that by merely filing confirmations, ITRs etc. the identity, creditworthiness and genuineness of transaction are not established and the evidences adduced by the assessee has to be examined not superficially but in depth and having regard to the test of human probabilities and normal course of human conduct.

3. That on the facts and in circumstances of the case, the Ld. CIT(A) erred in holding that the no proper enquiry was conducted without appreciating the fact that powers of the first appellate authority are co-terminus, with those of the AO, and he has not only the jurisdiction but also duty to conduct relevant inquiries wherever required as held by the Hon'ble Courts including the jurisdictional High Court in case of Commissioner of Income-tax-II v. Jansampark Advertising Marketing (P.) Ltd [2015] 56 taxmann.com 286 (Delhi).

4. That the Ld. CIT(A) failed to appreciate that during the remand proceedings notices/summons were issued to all 21 share applicants but in case of 10 persons these

notices/summons came back unserved and despite that the above 10 persons filed their replies/confirmations which established the fact that the above transactions were not genuine.

4. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.”

3. The grounds of cross objections raised by the assessee read as under :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not quashing the impugned assessment order framed by Ld. AO on the ground that no notice u/s 143(2) was issued after the return filed in response to notice u/s 153A of the Act.

2. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not deleting the additions made by Ld. AO in the impugned order, more so when there was no incriminating material found as a result of search.”

4. In the cross objections, assessee has raised jurisdictional issue vide ground no.2, hence we adjudicate the same in the beginning.

5. Brief facts of the case are that there was a search under section 132 of the Income-tax Act, 1961 (for short 'the Act') on 11.03.2011 in M/s. Paramount, Gulshan & Ajnara group of cases. Notice under section 153A was issued. AO observed that during the course of assessment, it

was noticed that during the FY 2004-05, assessee company has issued share capital worth Rs.1,61,00,000/- AO noted that to ascertain the genuineness of the share capital, summons u/s 131 of the Act were issued to the alleged share applicants. In respect of outstation, share applicants' information was called u/s 133 (6) of the Act. That none of the share applicants have responded. However, for some of the outstation share applicants, information was received in dak. AO analyzed the response and was of the opinion that information submitted by the share applicants did not inspire any confidence regarding creditworthiness and genuineness. He proceeded to hold that assessee has failed to establish the genuineness of the transaction of share application money/share capital, hence he added the sum of Rs.1,61,00,000/- u/s 68 of the Act.

6. Upon assessee's appeal, Id. CIT (A) dealt with merits of the case and decided the same in favour of the assessee.

7. The assessee has also raised a ground before the Id. CIT (A) vide ground no.4 that there is no incriminating material seized or found during the course of search, hence the addition was not possible u/s 153A of the Act. However, this aspect was not dealt with by the Id. CIT (A). Hence, by way of cross objection ground no.2, Id. Counsel for the assessee raised this point. Id. Counsel for the assessee reiterated that as it is evident

from the orders of AO and Id. CIT (A), there is no whisper of incriminating material found during search. AO has made an adverse comment regarding share applicants money by only mentioning that he has noticed the same during assessment proceedings and in the said details, no incriminating material is mentioned to have been found during search. Ld. CIT (A)'s though deleted the addition on merit has also given a finding that no incriminating material was found during search. Para 8.9 of Id. CIT (A)'s order in this regard may gainfully refer as under :-

“Perusal of the Assessment Order shows that a Search & Seizure operation u/s 132(1) of the Income Tax Act, 1961 had been carried out on 11.03.11 in the Paramount Group (of which the Assessee Company is a part) along with Gulshan Group and Ajnara Group. Once a Search had been conducted, it was to be expected that some incriminating material could have been found or at least some indication towards the evasion could have been found. However, perusal of Para 4 on Page 1 of the Assessment Order dated 28.03.13 shows that it was only during the Assessment proceedings, the matter relating to receipt of Share Capital was taken up. The Assessing Officer has not relied upon any evidence, material or even any indication found in the Search & Seizure operation regarding bogus Share Capital by the Assessee.”

8. Thus this is an undisputed fact that addition is made *de hors* any incriminating material found during the search. This is a case of unabated assessment. The original return was duly filed in this case on 25.06.2006. Hence it is a completed assessment. Ld. Counsel for the assessee in this regard has placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 173

(Del.) where it was expounded that no addition can be made u/s 153A in case of an unabated assessment *de hors* incriminating material found during search. Facts in the present case clearly show that there was no incriminating material found.

9. Ld. DR for the Revenue, on the other hand, did not dispute that no incriminating material was found during search. However, he has tried to submit that the address of the assessee is at Noida, hence decision of Hon'ble Allahabad High Court in the case of CIT vs. Rajkumar Arora (2014) 52 taxmann.com 172 (All.) would apply. That in this case, it has been expounded that for assessment u/s 153A, incriminating material is not required.

10. However, in rejoinder, ld. Counsel for the assessee submitted that AO as well as ld. CIT (A) in this case is under New Delhi jurisdiction, as the case was centralized. Hence, the decision of Hon'ble Delhi High Court would be applicable.

11. Upon careful consideration, we are of the considered opinion that the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) is applicable in the facts and circumstances of the case. It is undisputed that no incriminating material was found during search and this is an unabated assessment. Hence, respectfully following the

precedent, we hold that the addition is not sustainable on jurisdiction ground.

12. As regard the Revenue's appeal on merits, the same is having only academic interest since we have allowed the assessee's cross objection on jurisdiction ground. Hence, we are not engaging the grounds of Revenue's appeal on merits, the same are treated as infructuous.

13. In the result, the cross objection filed by the assessee stands allowed and the Revenue's appeal is treated as infructuous.

Order pronounced in the open court on this 3rd day of January, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 3rd day of January, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-25, Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**