

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”, NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI SUDHIR PAREEK, JUDICIAL MEMBER

	I.T.A. No. 1576/DEL/2023 & I.T.A. No. 1577/DEL/2023		
	A.YRS.: 2009-10 & 2010-11		
Dynamic Infraprojects Private Limited, 30/27, 1 st floor, East Patel Nagar, Delhi – 110 008 (PAN: AACCD2246G)	VS	DCIT, Central Circle, Noida, 2 nd floor, ARTO Complex, Noida-201 301	
(APPELLANT)		(RESPONDENT)	

	I.T.A. No. 1578/DEL/2023		
	A.YR.: 2010-11		
Dynamic Infraplanners Private Limited, 30/27, 1 st floor, East Patel Nagar, Delhi – 110 008 (PAN: AACCD2264Q)	VS	DCIT, Central Circle, Noida, 2 nd floor, ARTO Complex, Noida-201 301	
(APPELLANT)		(RESPONDENT)	

AND

	ITA NO. 1715/DeI/2023 & ITA NO. 1716/DEL/2023		
	A.YRS. : 2008-09 & 2009-10		
DCIT, Central Circle-1, Noida, 2 nd floor, ARTO Complex, Noida- 201 301	VS.	Dynamic Infraprojects Private Limited, 30/27, 1 st floor, East Patel Nagar, Delhi – 110 008 (PAN: AACCD2246G)	
(APPELLANT)		(RESPONDENT)	

Assessee by : Shri Shashwat Bajpai, Adv.
Department by : Shri Surender Pal, CIT(DR)

Date of hearing : 16.10.2024
Date of pronouncement : 22.10.2024

ORDER

PER SHAMIM YAHYA, AM :

These appeals filed by the Assessee and Revenue are directed against the respective orders of the Ld. CIT(A).

2. One common issue raised in all the assessee's appeals is that Ld. CIT(A) erred in not quashing the assessment order u/s. 153A/144 of the Act, as the assessment has been framed not based on any incriminating material found during the course of search.

3. We are taking ITA No. 1578/Del/2023 (AY 2010-11) - in the case of Dynamic Infraplanners Pvt. Ltd. as lead case.

4. The brief facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on 12.11.2013 alongwith Eminent Group of Cases. Notice u/s. 153A of the Act was issued on 12.08.2015 and in compliance to the same the assessee filed return of income on 17.11.2015 declaring total income of Rs. 5,148/-. Notice u/s. 143(2) of the Act was issued on 20.11.2015 and duly served upon the assessee. Later on, notices u/s. 142(1) of the Act alongwith questionnaire were issued and AO completed the assessment by making (i) addition of Rs. 15,28,785/- being 10% of the expenses claimed in profit and loss account, (ii) addition of Rs. 53,51,000/- u/s. 68 of the Act on account of unsecured loan and (iii) addition of Rs. 13,00,000/- u/s. 68 of the Act on account of advances from the customers. Against the above action of the AO,

assessee appealed before the Ld. CIT(A), who vide his order dated 23.3.2023 partly allowed the appeal of the assessee. Aggrieved with the Ld. CIT(A)'s order, assessee is in appeal before us.

5. In Revenue's appeals, the Revenue has raised the issue of deletion of addition on merits by the Ld. CIT(A). However, Ld. Counsel for the assessee has argued that in accordance with Rule 27 of the ITAT Rules, 1963, the Ld. CIT(A) erred in not quashing the assessment order u/s. 153A/144 of the Act, as the assessment has been framed not based on any incriminating material found during the course of search.

6. Heard both the parties and perused the records. Ld. Counsel for the assessee reiterated that these are completed assessments and addition has been made *dehors* and not based on any incriminating material found during the course of search. As such, he relied upon the decision of the Hon'ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 vide order dated 24.4.2023 (2024) 2 SCC 433 and submitted that the issue in dispute has to be decided in favour of the assessee against the revenue in view of the aforesaid decision in the case of Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (Supra).

7. Per contra, Ld. DR could not controvert the submissions that the addition in this case are not based on any incriminating material found during the course of search.

8. We have carefully examined the rival contentions and note that Ld. CIT(A) vide his order dated 23.03.2023 in assessment year 2010-11 in the case of Dynamic Infraplanners Pvt. Ltd. has dealt the issue of seized material in a common manner as under:-

“7.1 In the ground of appeal no. (i) the appellant submits that the order passed by AO is illegal and bad in law as the

assessment is framed is not based on material which was found during the search action taken by the department as such the same is liable to be quashed. It is also submitted by the Ld. AR of the appellant that order u/s 143A/143(3) of the Act is invalid in absence of incriminating material found as a result of search. Appellant also placed reliance on the following case laws:-

i) CIT vs. Kabul Chawla [2016] 380 ITR 573 (Delhi),

ii) PCIT vs. Meeta Gutgutia 395 ITR 256 (Delhi).

Appeal against this order of Hon'ble High Court has been dismissed by Hon'ble Supreme Court in PCIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC),

iii) PCIT vs. Kurela Paper Mills Pvt. Ltd. 380 ITR 571 (Delhi),

iv) PCIT vs. Bhadani Financiers Pvt. Ltd. 81/2020 (09.09.2021) (Delhi).

v) CIT vs. Deepak Kumar Agrawal ITA No. 1709/2014 (Mumbai).

vi) CIT vs. Continental Ware Housing Corporation ITA No. 523/2013 (Mumbai).

7.2 *Undersigned has carefully considered the submission and the case laws cited by the appellant. However, considering the express provisions of section 153A of the Act, the undersigned differs with the submission of the appellant, because section 153A of the Act clearly empowers the AO to assess/reassess*

the cases of person searched u/s. 132(1) of the Act for immediately six preceding years. In the cases in which scrutiny assessment u/s. 143(3) of the I.T. Act has not been completed and the earlier assessment proceeding abates due to express provisions of section 153A of the I.T. Act, the provisions of this section inherently cast a duty upon the AO to scrutinize every aspect of the searched case. And even in the cases in which scrutiny assessment proceedings have been completed u/s. 143(3) of the I.T. Act and u/s. 147 of the I.T. Act, if the new issues come up before the AO, the AO is empowered to consider the same as per the provisions of this section. Section 153A of the Act does not provide existence of incriminating material as essential requirement of making addition. In the opinion of the undersigned, the action u/s. 132/132A of the Act would automatically trigger the provisions of section 153A of the Act for computation of total income of the appellant. This provision does not restrict the Assessing Officer to take action in those cases where assessment has already been completed.”

8.1 We find that the aforesaid findings of the Ld. CIT(A) is contrary to the decision of the Hon’ble Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (Supra), wherein the Hon’ble Supreme Court has expounded that no addition can be made when the assessment framed u/s. 153A *dehors* incriminating material found during the search. Accordingly, respectfully following the binding precedent of the Hon’ble Supreme Court, as aforesaid, we hold that no addition can be made in the assessment framed u/s. 153A *dehors* incriminating material found during the search. We hold and direct accordingly.

9. As regards the merits of the case, we find that since assessment is not based on any seized incriminating material, hence, assessment has been quashed and accordingly, adjudication on issue of merit is only on academic, hence, we are not engaging into the same.

10. In the result, all the Assessee's appeals are partly allowed. The ground raised by the assessee under Rule 27 in Revenue's appeals are allowed. Hence, both the revenue's appeals also stand dismissed on the issue of jurisdiction.

Order pronounced on 22/10/2024.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

SRB

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Copy forwarded to: -

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

Assistant Registrar