

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA NO. 2929/Del/2023 (AY 2013-14) ITA NO. 2930/Del/2023 (A.Y. 2014-15) AND ITA NO. 2931/Del/2023(A.Y. 2015-16)		
DCIT, Central Circle-16, Delhi E-2, Jhandewalan Extension, ARA Centre, New Delhi – 55	VS.	Kohli Tent House, 2753, Main Patel Nagar Road, Opposite West Patel Nagar, New Delhi – 110 008 (PAN: AAAFK4094N)
(APPELLANT)		(RESPONDENT)

Department by : Shri Dayainder Singh Sidhu,
CIT(DR)
Assessee by : Shri Neeraj Jain, CA & Shri P.K.
Mishra, CA
Date of hearing : 07.11.2024
Date of pronouncement : 13.11.2024

ORDER

PER SHAMIM YAHYA, AM :

These 03 appeals filed by the Revenue are directed against the separate orders, all dated 30.6.2023 of the Ld. CIT(A)-26, New Delhi passed in Appeals No. 10055/2012-13; 11405/2013-14 & 10565/2014-15 relating to assessment years 2013-14, 2014-15 & 2015-16 respectively.

2. Since following identical / common grounds have been raised in all the 03 appeals, hence, these appeals were heard together and disposed of by this common order for the sake of convenience.

1. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s. 153C of the Act by relying on the judgement of Hon'ble Supreme Court in the case of Pr. CIT (Central)-3, Delhi vs. Abhisar Buildwell Pvt. Ltd. while holding that there was no incriminating material for the year under consideration found during the search whereas the said decision of Hon'ble Supreme Court is not applicable in this case as the additions have been made based on the incriminating material seized during the search?

2. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s. 153C of the Act while not appreciating that the appeals in the case of the assessee for AYs. 2016-17, 2017-18 and 2018-19, having the same facts and circumstances, have been decided by the Ld. CIT(A) himself wherein he has restricted the addition to 10% of total addition on account of suppressed business receipts?

3. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s. 153C of the Act while not appreciating that it is modus operandi of the assessee wherein a portion of the total receipts is received by him in cash which remains unaccounted?

4. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s. 153C of the Act while not appreciating that when the modus operandi of the assessee of receiving unaccounted cash been established for AYs 2016-17, 2017-18 and 2018-19 based on incriminating material, it is clear that, as per principle of preponderance of probability, the assessee adopted the same modus operandi in the year under consideration also and judgment of Hon'ble Supreme Court in the case of Abhisar Buildwell in this case?

5. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s. 153C of the Act while not appreciating that the decision of the Hon'ble Supreme Court in the case of Pr. CIT (Central-3), Delhi vs. Abhisar Buildwell Pvt. Ltd. has upheld the decision of Hon'ble Delhi High

Court in the case of Smt. Dayawanti vs. CIT in Civil Appeal No. 15617/2017, 10267/2017, 10266/2017 & 10268/2017, wherein it has been held that the assessing authority can draw inference in respect of activities carried on by the assessee in other years of activities carried out by the assessee in other years as well if it has some reasonable nexus with the statements recorded and documents seized.

6. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the AO may be restored to the above extent.

3. We are taking ITA No. 2929/Del/2023 (AY 2013-14) - in the case of DCIT, CC-16, New Delhi vs. Kohli Tent House, Delhi, as lead case.

4. The brief facts of the case are that a search and seizure operation u/s. 132 of the Act was carried out in the case of Kohli Tent Group of cases by the Investigation Wing, New Delhi on 03.05.2018. The cases of Shri Sanjeev Kohli and Shri Sunit Goel were also covered during search on Kohli Tent Group. During the assessment proceedings in the case of above said persons, the AO recorded his satisfaction that certain information contained on the material seized in the cases of searched persons pertain to M/s Kohli Tent House, the person other than the searched person. The AO of the searched persons has recorded his satisfaction dated 09.02.2021 and handed over the seized material to the AO of the other person i.e. M/s Kohli Tent House. AO made the addition on account of suppressed business receipts of Rs. 2,57,57,240/- and thereafter completed the assessment at an income of Rs. 2,62,84,080/- u/s. 153C of the Act dated 08.10.2021.

4.1 Against the above action of the AO, assessee appealed before the Ld. CIT(A), who vide his order dated 30.6.2023 has allowed the jurisdictional issue in favour of the assessee by holding that addition made by the AO is without incriminating material / evidence found during the search proceedings relating to the relevant assessment year and the additions have been made on the basis of

certain documents pertaining to AY 2016-17 & 2017-18, based on which estimation of sales considering the suppression factor was made and there is neither any reference to any seized material nor to any statement recorded during the search or during assessment proceedings for the assessment year under consideration.

5. Aggrieved with the aforesaid findings of the Id. CIT(A)'s, the Revenue is in appeal before us.

6. Heard both the parties and perused the records. Ld. Counsel for the assessee relied upon the order passed by the CIT(A) quashing the assessment order framed u/s. 153C of the Act. She relied on the following case laws for the proposition that there is no evidence in the seized material for the said assessment year showing any sales outside the books, assessment has to be made only on the basis of the seized material, qua each of assessment year :

- CIT vs. Kabul Chawla 380 ITR 573 (Del) confirmed by the Hon'ble Apex court in the case of Abhisar Buildwell P. Ltd. 454 ITR 212 (SC).
- PCIT vs., Meeta Gutgutia Prp. Ferns and Petals 395 ITR 526 (Del).
- Dev. Techno Fab Ltd. vs. DCIT 471 ITR 423 (Del)

As such, she 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 relied upon the order of the Assessing Officer and reiterated the grounds of appeal raised by the revenue.

8. We have carefully examined the rival contentions and note that Ld. CIT(A) vide his order dated 30.06.2023 in assessment year 2013-14 has dealt the issue of seized material as under:-

“5.2 I have considered the facts of the case and the material available on record. The appellant is engaged in the business of providing banquet services. A search and seizure operation u/s 132 of the Act was conducted on 03.05.2018 on the business and residential premises of the appellant. The cases of Sh. Sanjeev Kohli and Sh. Sunit Goel were also covered during the search on Kohli Tent Group. During assessment proceedings in the case of above said persons, the AO recorded his satisfaction that certain information contained on the material seized in the cases of searched persons pertain to M/s Kohli Tent House, the person other than the searched person. The AO of the searched persons has recorded his satisfaction and handed over the seized material to the AO of the other person i.e. M/s Kohli Tent House.

On perusal of the assessment record, it has been found that the unaccounted sales as per the booking details retrieved from the laptop impounded as Annexure A-5 from Velvet, Rajouri Garden, named as Document set-7, there are entries from 30.01.2016 to 05.07.2016 which are relevant to AY 2016-17 and 2017-18. Other seized/impounded Document pertains to AY 2016-17 and AY 2019-20.

5.2.1 The assessing officer in the assessment order has nowhere mentioned that the impounded material belongs/ pertains to AY 2013-14. The assessing officer relying on seized/impounded documents as mentioned in Para 5.1.1 has calculated the sale suppression factor of 2.9217 and estimated the suppressed income of Rs. 2,57,57,2401- as against the sales of Rs.88,15,840/- as booked in the regular books of accounts. From the above, it is evident that, there was no incriminating material/ documents was found seized pertaining to AY 2013-14. The appellant has placed reliance of the following cases :-

i) CIT Vs. Kabul Chawla [2016] 380 ITR 573 (Del) (the case of Kabul Chawla has been affirmed by the Hon'ble Supreme Court in the lead case being Abhisar Buildwell vide judgment dated 24.04.2023 (2023) 149 taxmann.com 399 and has affirmed that if

there is no incriminating material found during search proceedings no addition under section 153A could be made in case of completed/unabated assessment years.)

ii) AMQ Agro India Pvt. Ltd. Vs. ACIT [2020] 19 ITR (Trib)-OL 409 (ITAT[Del])

iii) Pr. CIT Vs. Meeta Gutgutia reported in 257 taxman 441 (SC) (Wherein Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court)

iv) The Hon'ble ITAT , Delhi 'D' Bench in the case of DCIT Vs. M/s. S.R. Credits Pvt. Ltd. in ITA No. 5216/Del/2015 has held in Paragraph 6.2 & 6.3 as under:

"6.2 Further, the Hon'ble Delhi High Court in the case of Pr. CIT vs. Meeta Gutsutia reported in 395 ITR 526 (Del.) has held that the invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year. The Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court in the case of Pr.CIT vs. Meeta Gutsutia reported in 257 Taxman 441 (SC). Apparently, in the present case, no incriminating material was found qua the assessment year in question. Therefore, the assessment framed by the Assessing Officer in violation of the procedure provided in the Act is bad in law and void ab initio and cannot be sustained. Therefore, placing reliance on the above mentioned judicial precedents, we quash the impugned assessment order. Accordingly, the Cross Objection of the assessee stands allowed.

6.3 Since, we have allowed the Cross Objection of the assessee and have quashed the assessment, the appeal of the Department does not survive and it is dismissed as in fructuous. "

5.2.2 In view of the above, it has been seen that the addition made by the assessing officer is without incriminating material/evidence found during the search proceedings relating to the relevant assessment year. The additions have been made on the basis of certain documents pertaining to A.Y. 2016-17 & 2017-18, based on which estimation of sales considering the suppression factor was made. There is neither any reference to any seized material nor to any statement recorded during the search or during assessment proceedings for the AY under consideration. In view of the facts of the case and various decisions including CIT Vs. Kabul Chawla [2016]

380 ITR 573 (Del) (the case of Kabul Chawla has been affirmed by the Hon'ble Supreme Court in the lead case being Abhisar Buildwell vide judgment dated 24.04.2023 (2023) 149 taxmann.com 399 and has affirmed that if there is no incriminating material found during search proceedings no addition under section 153A could be made in case of completed/unabated assessment years.) and Pr. CIT Vs. Meeta Gutgutia reported in 257 taxman 441 (SC) (Wherein Revenue's SLP against this order of the Hon'ble Delhi High Court was dismissed by the Hon'ble Apex Court), it is held that in absence of any incriminating material found during search, the AO was not justified in assuming jurisdiction U/s 153C of the Act so as to proceed against the appellant and hence the proceedings initiated u/s 153C of the Act is treated as void ab-initio and the order passed U/s 153C of the Act is quashed."

8.1 We find that the aforesaid findings of the Ld. CIT(A) is similar 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 held that in absence of any incriminating material found during search, the AO was not justified in assuming jurisdiction U/s 153C of the Act so as to proceed against the appellant and hence the proceedings initiated u/s 153C of the Act is treated as void ab-initio and the order passed U/s 153C of the Act is quashed. Accordingly, respectfully following the binding precedent of the Hon'ble Supreme Court, as aforesaid, we uphold the findings of the Ld. CIT(A) wherein the Ld. CIT(A) has quashed the assessment and accordingly, reject the Ground No. 1 raised in the Revenue's Appeal.

9. As regards other grounds are concerned, we have already quashed the assessment by upholding the decision of the Ld. CIT(A), hence, adjudication on other issues are academic, therefore, we are not engaging into the same. In the result, the Revenue's Appeal being ITA No. 2929/Del/2023 (AY 2013-14) is dismissed in the aforesaid manner.

10. As regards, other two appeals of the revenue are concerned, following the consistent view, as taken in AY 2013-14, as aforesaid, the other two appeals of

the Revenue being ITA No. 2930/Del/2023 & 2931/Del/2023 (Aysr. 2014-15 & 2015-16) also stand dismissed.

11. In the result, all the 03 appeals of the Revenue stand dismissed in the aforesaid manner.

Order pronounced on 13/11/2024.

Sd/-

(YOGERSH KUMAR US)
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