

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.1333 to 1335/DEL/2021
[Assessment Years: 2013-14 to 2015-16]**

DCIT, Central Circle, Room No.229, 02 nd Floor, CGO-1, Ghaziabad, Uttar Pradesh-201002	Vs	M/s Solitaire Realinfra Private Limited, Sector-25, Jaypee Green Sport City In front of Buddha Circuit Noida, Uttar Pradesh
		PAN-AACCH4156K
Revenue		Assessee

Revenue by	Ms. Sapna Bhatia, CIT-DR
Assessee by	Dr. Rakesh Gupta, Adv. Sh. Deepesh Garg, Adv. & Sh. Somil Agarwal, Adv.

Date of Hearing	06.12.2023
Date of Pronouncement	08.12.2023

ORDER

PER SHAMIM YAHYA, AM,

These appeals by the Revenue are directed against the respective orders of the ld. CIT (Appeals)-4, Kanpur, all dated 14.07.2021 pertaining to the assessment years 2013-14, 2014-15 and 2015-16 respectively.

ITA No.1333/Del/2021

2. First, we take up the appeal of the Revenue for Assessment Year 2013-14 in ITA No.1333/Del/2021. In this case, the assessment order was framed u/s 143(3) r.w.s. 153A of the Act.

This was pursuant to a search and seizure operation u/s 132 of the Act conducted on 03.11.2016 at the premises of the assessee. The Assessing Officer made addition on account of unsecured loan amounting to Rs.20 lakh on the ground that the assessee was not in position to prove the creditworthiness and genuineness of loan.

3. Similar addition was made on estimate basis for lack of books of account along with bill and vouchers with relationship to the various expenses. The Assessing Officer disallowed 10% of the expenses amounting to Rs.48,53,306/- and added the same to the total income of the assessee.

4. Upon assessee's appeal, the Ld. CIT(A) considered the merits of the addition and deleted the same.

5. Against this order, the Revenue is in appeal before us challenging the aforesaid additions.

6. The assessee has filed a petition under Rule 27 of the ITAT Rules by raising the ground that these additions are not sustainable as there is no incrimination material found, as a result of search and the assessment attained finality.

7. We have heard both the parties and perused the records. A perusal of the assessment order clearly reveals that these additions are not based upon incriminating material found during the search. This aspect was fairly conceded by the Ld. CIT-DR. Accordingly,

these addition made *dehors* incriminating material found during the search which are liable to be deleted on the touchstone of the decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell Pvt. Ltd. (2023) SCC Online SC 481; they are directed to be deleted as such.

8. Since, we have held that these additions are liable to be deleted on account of lack of incriminating material, the ground raised by the Revenue stands dismissed and ground raised by the assessee under Rule 27 of the ITAT Rules, stands allowed.

ITA No.1334/Del/2021

9. In this case the addition was made u/s 143(3) r.w.s. 153A of the Act. The Assessing Officer made addition u/s 68 of the Act for unsecured loan amounting to Rs.16,73,20,000/-. Further, the Assessing Officer made addition on account of deemed dividend amounting to Rs.15,26,05,000/-. The Assessing Officer also made estimated disallowance @ 10% of the expenses amounting to Rs.2,30,14,926/-.

10. Against this order, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) deleted the additions on merits of the issue.

11. Against this order, the Revenue is in appeal before us.

12. The assessee has filed a petition under Rule 27 of the ITAT Rules by raising the ground that these additions are not sustainable as there is no incrimination material found, as a result of search and the assessment attained finality.

13. We have carefully considered the submissions and perused the records. We find that in the assessment order with regard to the addition u/s 68 of the Act of unsecured loan and unexplained expenses, there is no any seized material and these additions are *dehors* any seized material found during the search. This aspect was fairly conceded by the Ld. CIT-DR. Accordingly, these addition made *dehors* incriminating material found during the search which are liable to be deleted on the touchstone of the decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell Pvt. Ltd. (2023) SCC Online SC 481; they are directed to be deleted as such.

14. As regards, the addition on account of deemed dividend is concerned, the assessee during the year, received loan amounting to Rs.15,26,05,000/- from M/s SSG Infratech Pvt. Ltd. The Assessing Officer contended that Sh. Harjeet Singh Sahini is a common director and substantial shareholder in both the companies and therefore the provisions of section 2(22)(e) of the Act get attracted and made addition of Rs.15,26,05,000/-.

15. Upon assessee's appeal, the Ld. CIT(A) on a finding that the nature of Advance was a trade advance. That once it is established the Advance was a 'trade advance', the provisions of section 2(22)(e) of the Act cannot be invoked and deleted the addition.

16. Against this order, the Revenue is in appeal before us.

17. As regards the issue of addition for deemed dividend in concerned, the ld. Counsel for the assessee submitted that the assessee was not a registered shareholder in the concerned company from which the loan was obtained. Hence, the ld. Counsel for the assessee referred to the decision of the Hon'ble Supreme Court in the case of CIT vs Madhur Housing and Development Company reported in 401 ITR 152 (SC) and decision of the Hon'ble Delhi High Court in the case of CIT vs Ankitech (P) Ltd. reported in 340 ITR 0014(Del.) for the proposition that addition for deemed dividend made u/s 2(22)(e) of the Act can be done in the hands of the shareholder only. Since, the assessee is not registered shareholder in the loan given company, the addition on the touchstone of above case laws is not sustainable. Hence, we delete the same.

18. In the result, the appeal of the Revenue stands dismissed.

ITA No.1335/Del/2021

19. In this case, the assessment was framed u/s 143(3) r.w.s. 153 of the Act. The Assessing Officer has made three additions in this case are as under:-

Nature of addition	Amount
Advance payments made without TDS	Rs.2,12,46,170/-
Unexplained unsecured loans	Rs.6,75,00,000/-
Employee benefit and other expenses	Rs.25,50,200

20. Upon assessee's appeal, the ld. CIT(A) deleted these additions on merits.

21. Against the order of the Ld. CIT(A), the Revenue is in appeal before us.

22. The assessee has filed a petition under Rule 27 of the ITAT Rules by raising the ground that these additions are not sustainable as there is no incrimination material found, as a result of search and the assessment attained finality.

23. Upon a perusal of the assessment order and the submissions, we find that the addition on account of unexplained unsecured loan and employee benefit and other expenses are not based upon any incriminating material found during the search. This aspect was fairly accepted by the Ld. CIT-DR. Accordingly, these addition made *dehors* incriminating material found during the search which are liable to be deleted on the touchstone of the decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell Pvt. Ltd. (2023) SCC Online SC 481; they are directed to be deleted as such.

24. As regards the addition of advance payment without TDS is concerned, the Ld. CIT(A) has also deleted the same after carefully analyzing the facts and obtaining the remand report from the Assessing Officer. The decision of the Ld. CIT(A) reads as under:-

"I have considered the submissions of the appellant and also the contention of the AO. From the facts and details reproduced above, It is evident that the AO has not looked into nature of the payments made by the appellant and has made the addition in

a mechanical manner, without application of mind. My remarks emanate from the following facts available on record:

i. Of the total payments of Rs.21246170/-, transactions of Rs.52,00,000/- were never made.

ii. Of the balance amount, payments of only Rs.1039022/- were liable for deduction of tax at source and the appellant had duly complied with the applicable TDS provisions.

iii. The other transactions either did not attract tax deduction at source or were below the applicable threshold limit for tax deduction at source.

iv. The AO also failed to see that during the year under assessment the disallowance u/s 40(ia) was restricted only to 30% of sum paid, though in the current case even that disallowance is not required as the entire compliances have been made.

Thus the addition made by the AO under section 40(a)(ia) is hereby deleted and relief is allowed to the appellant.”

25. Against this order, Revenue is in appeal before us.

26. We have heard both the parties and perused the records. Ld. CIT-DR could not dispute the proposition of the Ld. CIT(A). We find that the reasons provided by the Appellate Authority/Ld. CIT(A) are cogent. Hence, we affirm the same.

27. In the result, the appeal of the Revenue stands dismissed.

28. In the result, all three appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on 08th December, 2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Delhi; 08.12.2023.

Shekhar,

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi