

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

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.5522 & 5523/Del./2015
(ASSESSMENT YEAR : 2006-07 & 2007-08)**

M/s. Jaipuria Infrastructure Developers P. Limited, S – 25, Green Park Main Market, New Delhi – 110 016.	vs.	ACIT, Central Circle 7 New Delhi.
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(PAN : AACCB1286C)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri P.C. Yadav, Advocate
Shri Ravi Gupta, Advocate
REVENUE BY : Shri Sunil Chander Sharma, CIT DR**

Date of Hearing : 09.06.2016

Date of Order : 27.06.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

To avoid repetition of discussion, both the aforesaid appeals bearing identical question of fact and law except the assessment amount are being disposed off with consolidated order.

2. Appellant, Jaipuria Infrastructure Developers P. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeals sought to set aside the impugned order dated 29.07.2015

passed by the Commissioner of Income-tax (Appeals)-24, New Delhi qua the assessment years 2006-07 and 2007-08 on the grounds inter alia that :-

ITA No.5522/Del/2015 (AY 2006-07)

- “1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.
2. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts as the assessment order passed u/s 153A itself is invalid and liable to be quashed as there was no incriminating material found during search and no proceedings were abated.
3. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs.2,34,50,000/- by disallowing the genuine business expenditure.
4. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs.2,34,50,000/- by disallowing the genuine business expenditure despite the fact that no material is found during search and seizure, suggesting escapement of income and no proceedings were abated.
5. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.
6. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.”

ITA No.5523/Del/2015 (AY 2006-07)

- “1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.

2. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts as the assessment order passed u/s 153A itself is invalid and liable to be quashed as there was no incriminating material found during search and no proceedings were abated.
3. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs.7,12,00,000/- by disallowing the genuine business expenditure.
4. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs.7,12,00,000/- by disallowing the genuine business expenditure despite the fact that no material is found during search and seizure, suggesting escapement of income and no proceedings were abated.
5. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.
6. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.”

FACTS OF ITA NO.5522/Del/2015

3. Briefly stated, the facts of this case are : on the basis of search and seizure operation conducted under section 132 of the Income-tax Act, 1961 (for short ‘the Act’) on M/s. Jaipuria Group of cases on 27.03.2012, the assessee filed return of income for Assessment Year 2006-07 declaring an income of Rs.2,58,59,845/- on 29.08.2013 in response to the notice u/s 153 of the Act.

Assessee, however, declared deemed dividend income u/s 115JB to Rs.9,29,23,809/- and tax payable at Rs.78,19,539/-.

4. In response to the notice u/s 142(1) and 143(2) along with questionnaire, Shri V.K. Jain and Shri Sanjeev Aggarwal, AR of the assessee attended proceedings. Assessee company is into the business of builders and developers of residential and commercial projects and filed the detail on record. From the pre-search/post-search enquiry, it has come on record that assessee company is involved in the real estate business of S.K. Jaipuria group and is indulged into inflating the cost of project by debiting bogus expenses by raising bill from non-existing parties or entry providers, namely:-

i.	M/s. Matrix Buildcon Pvt. Ltd., D-6, Gali No.4, Ganga Vihar, Delhi.
ii.	M/s. Anupam Buildmart Pvt. Ltd., E-7A, 1 st Floor, Friends Complex, Jawahar Park, Laxmi Nagar, Delhi.
iii.	M/s. B.P. Buildtech Pvt. Ltd., 9/1934, Gali No.2, Kailash Nagar, Delhi
iv.	M/s. Naman Buildtech Pvt. Ltd., H-3, 2 nd Floor, Shivaji Park, Punjabi Bagh, Delhi.
v.	M/s. Roshan Buildtech Pvt. Ltd., 19/20-1, Moti Bagh, Sarai Rohilla, Delhi.
vi.	M/s. Gautam Buddha Buildtech Pvt. Ltd., 203, 2 nd Floor, Laxmi Nagar, Delhi.
vii.	M/s. Rupayan Developers Pvt. Ltd., C – 383, Health Club, Bank Street, Munirka, Delhi.
viii.	M/s. Lotus Buildwell Pvt. Ltd., WZ-14, Janak Puri A-2, New Delhi.

5. Assessee was called upon to furnish the details of the transactions with the aforesaid parties along with supporting documents viz. agreements, copies of bills, details of site and nature of work executed, etc. to prove the genuineness of the transactions and the assessee accordingly filed the details of transactions as under :-

Sl. No.	Name of concern	Amount claimed by Jaipuria Infrastructure Developers Pvt. Ltd. as expense	
		F.Y.2005-06	F.Y.2006-07
i.	M/s. Matrix Buildcon Pvt. Ltd.	-	1,51,00,000
ii.	M/s. Anupam Buildmart Pvt. Ltd.,	-	1,21,00,000
iii.	M/s. B.P. Buildtech Pvt. Ltd.	-	1,20,00,000
iv.	M/s. Naman Buildtech Pvt. Ltd.	-	1,60,00,000
v.	M/s. Roshan Buildtech Pvt. Ltd.	93,75,000	57,50,000
vi.	M/s. Gautam Buddha Buildtech Pvt. Ltd.	1,40,79,000	30,00,000
vii.	M/s. Rupayan Developers Pvt. Ltd.	-	25,00,000
viii.	M/s. Lotus Buildwell Pvt. Ltd.	-	47,50,000
	Total	2,34,54,000	7,12,00,000

6. In order to verify the genuineness of the transactions, summons were issued to the aforesaid parties to produce the details of the transactions, value and TDS with the assessee company for

the last six years along with their ledger account and copies of agreement, however summons issued to M/s. Roshan Buildtech Pvt. Ltd. and M/s. Gautam Buddha Buildtech Pvt. Ltd. received back unserved. Despite directions, the assessee has failed to produce the aforesaid parties. Even the notices issued u/s 133(6) to the aforesaid parties received back unserved with remarks “incomplete address, without house number”. During assessment proceedings, Shri Surya Kant Jaipuria, one of the Directors of the assessee company got recorded the statement and failed to produce the parties for examining to prove the genuineness of the transactions. Consequently, the amount of Rs.2,34,54,000/- is treated as bogus expenses and added to the total income of the assessee.

FACTS OF ITA NO.5523/Del/2015

7. Briefly stated, the facts of this case are : on the basis of search and seizure operation conducted under section 132 of the Acton M/s. Jaipuria Group of cases on 27.03.2012, the assessee filed return of income for Assessment Year 2007-08 declaring an income of Rs.21,23,62,060/- on 29.08.2013 in response to the notice u/s 153 of the Act. Assessee, however, declared deemed

dividend income u/s 115JB to Rs.21,19,53,090/- and tax payable at Rs.2,11,95,309/-.

8. However, during the year under consideration, assessment was completed u/s 143(3) on 29.12.2009 making an addition of Rs.1,18,81,368/- on account of trading addition and Rs.5,78,78,830/- on account of disallowance of compound fee paid to GDA, which are stated to have been deleted by CIT (A). However, revenue has filed appeal before the ITAT on 15.03.2012 and as such, both the additions of Rs.6,97,60,198/- is retained in this order.

9. In response to the notice u/s 142(1) and 143(2) along with questionnaire, Shri V.K. Jain and Shri Sanjeev Aggarwal, AR of the assessee attended proceedings. Assessee company is into the business of builders and developers of residential and commercial projects and filed the detail on record. From the pre-search/post-search enquiry, it has come on record that assessee company is involved in the real estate business of S.K. Jaipuria group and is indulged inflating the cost of project by debiting bogus expenses by raising bill from non-existing parties or entry providers, namely:-

i.	M/s. Matrix Buildcon Pvt. Ltd., D-6, Gali No.4, Ganga Vihar, Delhi.
ii.	M/s. Anupam Buildmart Pvt. Ltd., E-7A, 1 st Floor, Friends Complex, Jawahar Park, Laxmi Nagar, Delhi.
iii.	M/s. B.P. Buildtech Pvt. Ltd., 9/1934, Gali No.2, Kailash Nagar, Delhi
iv.	M/s. Naman Buildtech Pvt. Ltd., H-3, 2 nd Floor, Shivaji Park, Punjabi Bagh, Delhi.
v.	M/s. Roshan Buildtech Pvt. Ltd., 19/20-1, Moti Bagh, Sarai Rohilla, Delhi.
vi.	M/s. Gautam Buddha Buildtech Pvt. Ltd., 203, 2 nd Floor, Laxmi Nagar, Delhi.
vii.	M/s. Rupayan Developers Pvt. Ltd., C – 383, Health Club, Bank Street, Munirka, Delhi.
viii.	M/s. Lotus Buildwell Pvt. Ltd., WZ-14, Janak Puri A-2, New Delhi.

10. Assessee was called upon to furnish the details of the transactions with the aforesaid parties along with supporting documents viz. agreements, copies of bills, details of site and nature of work executed, etc. to prove the genuineness of the transactions and the assessee accordingly filed the details of transactions as under :-

Sl. No.	Name of concern	Amount claimed by Jaipuria Infrastructure Developers Pvt. Ltd. as expense	
		F.Y.2005-06	F.Y.2006-07
i.	M/s. Matrix Buildcon Pvt. Ltd.	-	1,51,00,000
ii.	M/s. Anupam Buildmart Pvt. Ltd.,	-	1,21,00,000
iii.	M/s. B.P. Buildtech Pvt. Ltd.	-	1,20,00,000
iv.	M/s. Naman Buildtech Pvt. Ltd.	-	1,60,00,000

v.	M/s. Roshan Buildtech Pvt. Ltd.	93,75,000	57,50,000
vi.	M/s. Gautam Buddha Buildtech Pvt. Ltd.	1,40,79,000	30,00,000
vii.	M/s. Rupayan Developers Pvt. Ltd.	-	25,00,000
viii.	M/s. Lotus Buildwell Pvt. Ltd.	-	47,50,000
	Total	2,34,54,000	7,12,00,000

11. However, summons issued to the aforesaid parties except M/s. Rupayan Developers Pvt. Ltd. and M/s. Matrix Buildcon Pvt. Ltd. received back unserved and consequently was asked to show cause as to why the transactions with aforesaid parties be treated as bogus one. Even, the summons issued u/s 133 (6) of the Act to the aforesaid 8 parties to furnish the details of their transactions with the assessee company were neither received back unserved nor any reply has been sent by the parties. During assessment proceedings, Shri Surya Kant Jaipuria, one of the Directors of the assessee company got recorded the statement on 18.02.2014 and due to failure of the assessee company to produce the aforesaid parties for examination, an amount of Rs.7,12,00,000/- is treated as bogus expenses and added to the total income of the assessee.

12. Assessee carried the matter before the Id. CIT (A) challenging the assessment order dated 28.03.2014 qua the Assessment Years 2006-07 & 2007-08 who have partly allowed the

appeal. Feeling aggrieved, the assessee has come up in appeal before the Tribunal by way of filing the present appeal.

13. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

14. Ld. AR for the assessee challenging the impugned order contended inter alia that the Assessing Officer has no seized material to reassess the total income on the basis of search operation conducted on 27.03.2012; that since on the date of search, assessment already stood completed and no fresh material was unearthed to make reassessment, the assessment order is not sustainable and relied upon the judgment cited as **CIT vs. Kabul Chawla - 380 ITR 173 (Del.)**.

15. However, on the other hand, Id. DR to repel the contentions raised by the Id. AR also relied upon **Kabul Chawla** (supra) by specifically emphasizing its paras 37 (iv), (vi) and (vii), reproduced for ready reference at para no.18 of this order, and also contended that provisions contained u/s 153A is enabling provisions having inherent powers with the AO to make an assessment on the basis of post-search material or information already available with him which could be related to the evidence found.

16. Undisputed facts necessary to adjudicate upon the controversy at hand, are inter alia that the return of income was filed by the assessee company qua the AY 2006-07 on 28.11.2006, which was processed u/s 143(1) and no notice u/s 143(2) was issued till the date of search i.e. 27.03.2012; that assessment qua the AY 2007-08 was completed u/s 143(3) on 29.12.2009; that the assessment orders under challenge bear no reference of material, if any, unearthed during the search operation.

17. In the backdrop of the aforesaid undisputed facts, the first question arises for determination in this case is *as to whether the AO is justified to complete the assessment u/s 153A by making an addition of Rs.2,34,54,000/- for AY 2006-07 and Rs.7,12,00,000/- for AY 2007-08 even in the absence of any incriminating material deemed found during the search conducted u/s 132 of the Act?*

18. Identical issue has come up before the Hon'ble jurisdictional High Court in the case cited as **Kabul Chawla** (supra) wherein all the earlier decisions delivered by the Hon'ble High Courts have been considered and legal position decided by the Hon'ble jurisdictional High Court is summarized for ready reference as under :-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law

explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. **Obviously an assessment has to be made under this Section only on the basis of seized material.**"*
- v. In absence of any incriminating material, **the completed assessment can be reiterated and the abated assessment or reassessment can be made.** The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date*

of search) and the word 'reassess' to completed assessment proceedings.

vi. *Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. **Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.***

vii. *Completed assessments can be interfered with by the AO while making the assessment under **Section 153 A 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.***

38. *The present appeals concern AYs 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. **Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.***

19. Now, adverting to the case at hand, so far as assessment for the AY 2006-07 is concerned, the assessment was though completed u/s 143(1) but undisputedly no notice was issued u/s 143(2) within the period of limitation on the date of search, meaning thereby no assessment was pending in this case as on date of search i.e. 27.03.2012 and question of abatement does not arise and in these circumstances, addition could be made on the basis of

incriminating material unearthed during the search only. However, assessment qua AY 2007-08 was admittedly completed u/s 143(3) prior to the date of search i.e. 27.03.2012.

20. Ld. DR for the revenue by laying emphasis on paras 37 (iv), (vi) and (vii) vehemently contended that section 153 does not mandate to make an addition strictly on the basis of evidence found during the course of search rather assessment can be made on the basis of evidence found in the course of search or other post-search material or information available with the AO which can be related to the evidence found. Ld. DR further emphasized that even completed assessment can be interfered with by the AO u/s 153A on the basis of requisition of documents or undisclosed income or property discovered in the course of search which was not produced or not already disclosed or made known in the course of original assessment.

21. However, in the backdrop of aforesaid undisputed facts discussed in the preceding paras and law laid down by Hon'ble jurisdictional High Court in the case cited as **Kabul Chawla** (supra), we are of the considered view that completed assessment interfered with by the AO u/s 153A and confirmed by the Id. CIT (A) are not sustainable in the eyes of law for the following reasons:-

- (i) that in the instant case, undisputedly the AO has not made assessment on the basis of incriminating material unearthed during search and seizure operation conducted u/s 132 rather proceeded u/s 153A of the Act on the basis of some pre-search enquiries to make an addition as has specifically been recorded in para 6 of the assessment order that, *“Pre search enquiries revealed that M/s Jaipuria Infrastructure Developers Pvt. Ltd., the flagship company involved in the real estate business of the S.K. Jaipuria group is indulged in inflating the cost of the project by debiting bogus expenses by raising bills from the non-existing parties or the entry providers.”*
- (ii) that the ratio of the judgment in case of **Kabul Chawla** (supra) is required to be extracted by perusing the judgment in entirety and not by picking up the favourable sentences and by ignoring the unfavourable one. Highlighted portion of para 37 (iv), (v), (vi) & (vii) of **Kabul Chawla** (supra) is crux of the issue involved which is applicable to the facts and circumstances of the case;

- (iii) that the ratio of the judgment **Kabul Chawla** (supra) is that in all circumstances, completed assessment can be interfered with by the AO u/s 153A only on the basis of incriminating material unearthed during the course of search;
- (iv) that not only this, the addition in this case has been made by the AO u/s 153A on the sole ground that assessee has failed to produce the parties with whom the assessee company has transacted during the year under assessment who have failed to turn up despite the issue of notice u/s 133 (6) of the Act;
- (v) that the contention of the Id. DR that the assessment qua the AY 2006-07 was pending as on date of search as mere issuances of acknowledgement by the ministerial staff does not imply that assessment has been completed, is not tenable in the face of undisputed fact that when within the prescribed period, no notice u/s 143 (2) has been issued prior to the date of search, assessment is deemed to be completed;

- (vi) that there is not an iota of material with the AO to initiate proceedings u/s 153A what to talk of incriminating seized material;
- (vii) that the Id. CIT (A) affirmed the assessment order by relying upon the decisions relied upon by Hon'ble jurisdictional High Court in the case cited as **Filatex India Ltd. vs. CIT-IV – (2014) 49 Taxmann.com 465 (Delhi)** which has been distinguished in the **Kabul Chawla** (supra) on the ground that in the said case, there was some material unearthed during the search whereas in the instant case there is admittedly no incriminating material unearthed during the search to proceed u/s 153A.

22. In view of what has been discussed above, we are of the considered view that without entering into the merits of this case, addition made in both the cases u/s 153A read with section 143(3) is not sustainable in the eyes of law, hence deleted. Consequently, both the appeals filed by the assessee are hereby allowed.

Order pronounced in open court on this 27th day of June, 2016.

**Sd/-
(G.D. AGRAWAL)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 27th day of June, 2016/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-24, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.