

| आयकर अपीलीय अधिकरण न्यायपीठ, गुवाहाटी।
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI
(Heard from Kolkata Benches through web-based video conferencing platform)
BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 03/GTY/2023
Assessment Year: 2014-15

DCIT, Central Circle-1, Guwahati	Vs	Bengal Brahmaputra Realty Limited 402, Trinity Tower 83, Topsia Road South Kolkata, Kolkata Gobinda Khatick Road S.O. West Bengal - 700046 [PAN: AADCB5015E]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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C.O. No. 25/GTY/2023
Assessment Year: 2014-15

Bengal Brahmaputra Realty Limited 402, Trinity Tower 83, Topsia Road South Kolkata, Kolkata Gobinda Khatick Road S.O. West Bengal - 700046 [PAN: AADCB5015E]	Vs	DCIT, Central Circle-1, Guwahati
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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I.T.A. No. 04/GTY/2023
Assessment Year: 2015-16

DCIT, Central Circle-1, Guwahati	Vs	Bengal Brahmaputra Realty Limited 402, Trinity Tower 83, Topsia Road South Kolkata, Kolkata Gobinda Khatick Road S.O.
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I.T.A. No. 03/GTY/2023; C.O. No. 25/GTY/2023; Assessment Year: 2014-15
I.T.A. No. 04/GTY/2023; C.O. No. 26/GTY/2023; Assessment Year: 2015-16
Bengal Brahma Putra Realty Limited

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		West Bengal - 700046 [PAN: AADCB5015E]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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C.O. No. 26/GTY/2023
Assessment Year: 2015-16

Bengal Brahma Putra Realty Limited 402, Trinity Tower 83, Topsia Road South Kolkata, Kolkata Gobinda Khatick Road S.O. West Bengal - 700046 [PAN: AADCB5015E]	Vs	DCIT, Central Circle-1, Guwahati
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Vivek Malhotra, FCA
Revenue by :	Shri Arun Bhowmick, JCIT & Shri Soumendu Sekhar Das, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 29/01/2024
घोषणा की तारीख /Date of Pronouncement: 07/03/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The captioned appeals are filed at the instance of the revenue are directed against the order of the Learned Commissioner of Income Tax (Appeals) – Central, North-East Region, Guwahati, passed u/s 250 of the Income Tax Act, 1961 (in short ‘the Act’) even dt. 15/09/2022, for Assessment Year 2014-15 and 2015-16. The assessee has filed cross-objections for both the Assessment Years.

2. The revenue has raised the following grounds of appeal for Assessment Year 2014-15:-

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"1. That on the facts of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,63,39,605/- made u/s 68 of the IT Act, 1961 on account of unexplained cash credit received from shell/paper companies under the garb of unsecured loan.

2. That on the facts of the case and in law, Ld. CIT(A) has erred in deleting the addition/disallowance of Rs.9,10,027/- claimed by the assessee as interest expense incurred on bogus unsecured loan.

3. The appellant craves the leave to add/modify/alter any or all the grounds during the course of hearing/pendency of appeal."

2(a) The revenue has raised the following grounds of appeal for Assessment Year 2015-16:-

"1. That on the facts of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.90,00,000/- made u/s 68 of the IT Act, 1961 on account of unexplained cash credit received from shell/paper companies under the garb of unsecured loan.

2. That on the facts of the case and in law, Ld. CIT(A) has erred in deleting the addition/disallowance of Rs.30,34,700/- claimed by the assessee as interest expense incurred on bogus unsecured loan.

3. The appellant craves the leave to add/modify/alter any or all the grounds during the course of hearing/pendency of appeal."

3. The Id. Counsel for the assessee at the outset submitted that the cross-objections filed, are not being pressed. Hence we dismiss both the cross-objections as not pressed.

4. As regards the revenue's appeal, at the outset, the Id. Counsel for the assessee submitted that subsequent to the search conducted at assessee and group premises on 29/01/2021, the assessment proceeding for Assessment Year 2014-15 and 2015-16 were carried out.

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However, the additions made by the Assessing Officer are not based on any incriminating material found during the course of search and since these two assessment years are completed and unabated, additions, if any, can be made only on the basis of incriminating material found during the course of search and, therefore, the judgment of the Hon'ble Supreme Court in the case of *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.* reported in [2023] 149 taxmann.com 399 (SC), is squarely applicable and, therefore, the additions made in the assessment framed u/s 153A/143(3) of the Act for Assessment Year 2014-15 and 2015-16, has rightly been deleted by Id. CIT(A).

4.1. On the other hand, the Id. D/R, vehemently argued supporting the orders of the Id. Assessing Officer for both the Assessment Year and prayed that the additions be upheld.

5. We have heard rival contentions and perused the material available on record. We find that the assessee is a limited company and was subject to search u/s 132 of the Act on 29/01/2021. Subsequently, assessment year 2014-15 and 2015-16 were also selected for scrutiny as per the scheme of assessment applicable to the search cases. The assessee has been regularly filing the income tax return and for Assessment Year 2014-15 and 2015-16, regular return u/s 139(1) of the Act has been filed within the statutory time limit provided u/s 139(1) of the Act. However, both the assessment years were not selected for scrutiny as no notice u/s 143(2) of the Act was issued. As on the date of search i.e., 29/01/2021, Assessment Years 2014-15 and

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2015-16 fall under the category of completed/unabated assessment years and addition for such assessment years could have been made only if any incriminating material has been found by the search team indicating that the assessee had any unaccounted income/investment/unaccounted money. Perusal of the assessment order shows that the Id. Assessing Officer has not referred to any incriminating material. He has merely acted upon the informations available in the audited balance sheet relating to unsecured loans taken and based on the post search enquiry/information from third parties have made the alleged additions. Hon'ble Apex Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)* has laid down the principles which is applicable on the assessments carried out subsequent to the search and additions have been made for the completed/unabated assessment years without any reference to incriminating material and the same reads as under:-

"As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the

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completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfillment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

In view of the above and for the reasons stated above, it is concluded as under:

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- (i) *that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- (ii) *all pending assessments/reassessments shall stand abated;*
- (iii) *In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No Costs".

6. Examining the facts of the instant case, we find that the ratio laid down by the Hon'ble Apex Court in *Abhisar Buildwell (supra)* is squarely applicable on the facts of the instant case and, therefore, since the Assessment Year 2014-15 & 2015-16 are completed and unabated Assessment Years and no incriminating material was found for the alleged Assessment Years during the course of search and the Id. Assessing Officer has made the addition without referring to any incriminating material, the addition has been rightly deleted by the Id. CIT(A). We thus fail to find any infirmity in the finding of the Id.

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CIT(A). Accordingly, the grounds of appeal raised by the revenue for both the Assessment Years are dismissed.

7. In the result, **I.T.A. No. 03/GTY/2023; C.O. No. 25/GTY/2023; Assessment Year: 2014-15** **I.T.A. No. 04/GTY/2023; C.O. No. 26/GTY/2023; Assessment Year: 2015-16**, are dismissed.

Order pronounced in the Court on 7th March, 2024.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 07/03/2024

SP

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, गुवाहाटी / DR, ITAT, Guwahati,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati