

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**  
**AND**  
**SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 2148/Del/2023 (A.Y. 2014-15)**

**ITA No. 2159/Del/2023 (A.Y. 2015-16)**

**ITA No. 2160/Del/2023 (A.Y. 2017-18)**

DCIT Central Circle-13 Room No. 247, E-2, ARA Centre, Jhandewalan Extension, New Delhi <b>PAN: AAACP0239M</b>	Vs.	Pioneer Finest Limited C-502, Millennium Apartments, Sector-18 Rohini, Delhi
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Shri R. K. Kapoor, CA, Sh. Ravi Kumar, CA and Sh. Bhupender Singh, CA
Revenue by	Sh. Rajesh Kumar, CIT DR

Date of Hearing	31/12/2024
Date of Pronouncement	31/12/2024

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The above captioned appeals filed by the Revenue challenging the orders of the Ld. CIT(A) dated 12/05/2023, 15/05/2023 and 12/05/2023 for Assessment Years 2014-15, 2015-16 and 2017-18 wherein the Ld. CIT(A) allowed the Appeals of the Assessee by setting

aside the Assessment Orders on the ground that the additions have been made by the A.O. are beyond the scope of Section 153C of the Act.

2. The Department of Revenue though raised multiple grounds of appeal, the Ld. Departmental Representative addressing on the Grounds of appeal contended that the additions have been made based on the original copies of share certificates allotted by the Assessee Company which were found at the premises of J. P. Minda Group Company instead of investor Company premises and the Ld. A.O. made addition based on the share certificate and the statements of the entry operator, which are the incriminating materials, therefore, the Ld. CIT(A) committed error in deleting the addition made by the A.O. in all the Assessment Years.

3. Per contra, the Ld. Assessee's Representative submitted that the incriminating materials are those material which are related to unaccounted transaction which does not form part of books of accounts and no such incriminating materials have been found during the search, therefore, submitted that the ratio laid down in the case of Commissioner of Income Tax (Central-III) v. Kabul Chawla (2016) 380 ITR 573 (Del) and Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399/293 Taxman 141/459 ITR 212 by the Hon'ble Supreme Court are applicable. Thus,

submitted that the Ld. CIT(A) rightly deleted the additions, accordingly sought for dismissal of the Appeal of the Revenue.

4. We have heard both the parties and perused the material available on record. The solitary contention of the Department is that the share certificates found during the search along with statement of entry provider being incriminating nature which have not been appreciated and ignored by the Ld. CIT(A) while deleting the addition. It is found that the Ld. A.O. during the assessment proceedings, has not made any adverse observation with regard to share certificates found during the search. The share certificates are merely records the details of shares issued and allotted which are duly recorded in the books of accounts prior to the date of search. The Ld. CIT(A) while deleting the addition, relied on the order of the Tribunal in ITA No. 765 to 768/Del/2018, wherein the Co-ordinate Bench of the Tribunal held that share certificates found during the course of search cannot be said to be 'incriminating material' to assume jurisdiction u/s 153C of the Act in following manners: -

*"8. On the aforesaid Satisfaction note, the id. Counsel pointed out that the documents mentioned at 'O-2/A-4, Jay Ushin Ltd., the same is an annual report of the assessee company as on 31.03.2012 relevant for the assessment year 2012-13 and document 'O-2/A-11' is original share certificate dated 9.01.2010, which were transferred to assessee company dated 9.02.2010. This document can be said to be pertaining to*

*assessment year 2010-11. However, there is no such document for the assessment years 2009-10 and 2011-12. Apart from that he submitted that the annual report which is a document cannot be treated as an incriminating material so as to assume jurisdiction under Section 153C of the Act. In support, he has strongly relied upon the consolidated decision of the Tribunal in the Minda Group of Companies in the cases of: (i) M/s. Jay Auto Components Ltd.; (ii) M/s. Jay Iron & Steel Ltd.; (iii) M/s. JPM Tools Ltd.; (iv) M/s. Jay Fe Cylinders Ltd., (v) M/s. Jay Ace Technologies Ltd., (vi) M/s. JF Casting Ltd.; & (vii) M/s. Jay Nikki Industries Ltd. (order dated 23.12.2021) wherein the Tribunal vide para Nos. 6 and 18 has categorical held that original share certificates cannot be held to be incriminating material for drawing any adverse inference that any undisclosed income relating to assessee company has been un-earned or found and thus, these documents cannot be at all considered to be incriminating.*

*Thus, most of the additions made by the Assessing Officer cannot be sustained. In support of his contention that only the incriminating material can be the basis of making the addition in the cases where assessments have attained finality and are not abated in terms of second proviso to Section 153A of the Act. He relied upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society (supra) and of Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities (2016) 380 ITR 612(Del.) and ARN Infrastructure India Limited Vs. ACIT (2017) 394 ITR 569 (Del.) as well as in the case of Pr. CIT Vs. Index Securities Pvt. Ltd. (ITA. No. 566/2017)."*

5. The above said order of the Tribunal made in ITA No. 765 to 768/Del/2018 have called in question by the Department before the Hon'ble High Court of Delhi in ITA No. 319/2022 and connected appeals. The Hon'ble High Court of Delhi vide order dated 26/09/2022 dismissed

the appeals filed by the Department wherein the Hon'ble Jurisdictional High Court confirmed the order of the Tribunal and observed as under:-

*“8. With respect to Assessment Years 2010-11 & 2012-13, this Court is of the view that the recovery of the annual report and the share certificate of the Petitioner from premises of Minda Group cannot be considered to be incriminating documents. After all, the Minda Group was not a third party but the issuing authority of the share certificates. In fact, both the appellate authorities below have given a concurrent finding that no incriminating material had been brought on record by the Assessing Officer to sustain the additions on merit. Also, the genuineness of the share capital has been accepted both by CIT (A) and ITAT and also there is no live link between seized material and the additions made. Therefore, this Court is of the view that assumption of jurisdiction in the present cases by the Assessing Officer was erroneous.”*

6. By respectfully following the ratio laid down by the Jurisdictional High Court, we are of the opinion that the Ld. CIT(A) committed no error in observing that merely seizure of share certificate cannot be considered as incriminating material on its own unless other corroborative evidence are found during the search.

7. One more contention of the Ld. Department's Representative that the statement of the entry operator has been also made as base for making the addition by the A.O. and the statement recorded u/s 132 (4) of the Act is an incriminating material, thus, submitted that the Ld. CIT(A) has committed error in deleting the addition. We find no merit in the said contention of the Ld. Department's Representative as it is trite

Law that statement recorded u/s 132(4) of the Act cannot be construed as incriminating material. Reliance is placed on the Judgement of Hon'ble High Court of Delhi reported in CIT v. Harjeev Aggarwal 2016 SCC Online (Del) 1512: 2016 TaxPub(DT) 1836 (Del-HC), wherein the Jurisdictional High Court clarified that statements recorded during a search and seizure operation under Section 132(4) of the Act cannot be the sole basis for computing undisclosed income unless corroborated by evidence found during the search. The Hon'ble High court also held that an assessment or reassessment under the block assessment should be based on evidence found during the search. Thus the above argument advanced by the Ld. DR has no legs to stand when there were no other document/material found which can be said to be incriminating in nature and the additions have been made only based on the share certificates relating to the Assessee Company, which have been found /unearthed during the search.

8. Thus, we affirm the view of the Ld. CIT(A) that the assessments were framed by the A.O. which are beyond the scope of Section 153C of the Act and the Ld. CIT(A) has rightly quashed the assessment orders. Finding no merits in the Grounds of appeal of the revenue, we dismiss the same.

9. In the result, the Appeals of the Revenue in ITA No. 2148/Del/2023, 2159/del/2023 and 2160/Del/2023 are dismissed.

**Order pronounced in the open court on 31<sup>st</sup> December, 2024.**

Sd/-

**(M. BALAGANESH)  
ACCOUNTANT MEMBER**

Date:-31.12.2024

R.N, Sr.P.S\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI