

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No. 3160/DEL/2018
[A.Y 2012-13]

The A.C.I.T
Central Circle - 4
New Delhi

Vs.

Shri Anand Persad Jaiswal
54, Ring Road, Lajpat Nagar -III
New Delhi

PAN: ADRP 2549 M

[Appellant]

[Respondent]

Assessee by : Shri Pradeep Chand, CA

Revenue by : Shri Satpal Gulati, CIT-DR

Date of Hearing : 27.07.2021

Date of Pronouncement : 27.07.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
CIT(A) - 23, New Delhi dated 28.02.2018 pertaining to A.Y 2012-13.

2. The grievances of the Revenue read as under:

1. "The order of the Ld. CIT(A) is not correct in law and facts.
2. On the facts and in the circumstances of the case, the Id.CIT(A) erred in deleting the addition made under section 153A of the Income Tax Act, 1961 by holding that the assessing officer had no power to interfere with a completed assessment in the absence of incriminating seized material, when there is no such restriction placed on the power of the assessing officer under section 153A of the Income-Tax Act, 1961.
3. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in law in quashing the assessment order framed u/s 153A of the Income Tax Act, 1961.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.1,50,00,000/- made by AO on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.
5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

3. Briefly stated, the facts of the case are that a search and seizure operation was conducted on Jaiswal group of cases on 06.05.2014 and accordingly, notice u/s 153A of the Income-tax Act, 1961 [hereinafter

referred to as 'The Act'] was issued and served upon the assessee. Pursuant to the notice, return of income declaring an income of Rs. 5,07,35,650/-was filed.

7. During the course of scrutiny assessment proceedings, on the basis of information received from the Income tax Officer, Ward -5(1), New Delhi, it was brought to the notice of the Assessing Officer that in the company M/s Blossom Investment Pvt Ltd there is only one share holder having more than 10% of share holding. In fact, the share holding was 95% and since the assessee has taken loan/advance of Rs. 1.50 crores, the Assessing Officer treated the same as deemed dividend u/s 2(22)(e) of the Act and made addition accordingly.

8. The assessee agitated the matter before the Id. CIT(A) and vehemently contended that no incriminating material was found during the course of search proceedings qua the addition. Therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 61 Taxmann.com 412 and Meeta Gutgutia 395 ITR 526 squarely apply.

9. The ld. CIT(A) was convinced with the submissions of the assessee and quashed the assessment order.

10. Before us, the ld. DR fairly conceded that qua the addition, no incriminating material was found during the course of search proceedings.

11. Per contra, the ld. DR relied upon the findings of the ld. CIT(A).

12. We have carefully perused the assessment order and the order of the first appellate authority. The undisputed fact is that no incriminating material was found during the search proceedings and addition has been made only on the basis of information received from the Income tax Officer, Ward -5(1), New Delhi. Considering the totality of the facts, we do not find any reason to interfere with the findings of the ld. CIT(A).

13. In the result the appeal of the Revenue in ITA No. 3160/DEL/2018 is dismissed.

The order is pronounced in the open court in the presence of both the rival representative on 27.07.2021.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th July, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
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