

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.1902/Del./2018
Assessment Year: 2009-10

And

ITA No.1903/Del./2018
Assessment Year: 2011-12

And

ITA No.1904/Del./2018
Assessment Year: 2012-13

And

ITA No.1905/Del./2018
Assessment Year: 2013-14

Shri Atul Agarwal, 1059, Gali Tabela, Hathras, Aligarh	Vs.	DCIT, Central Circle, Dehradun
PAN :ACRPA6924E		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Satpal Gulati, CIT(DR)

Date of hearing	22.02.2021
Date of pronouncement	02.03.2021

ORDER

PER O.P. KANT, AM:

These appeals by the assessee are directed against common order dated 25th January, 2018 passed by the learned CIT(A)-IV,

Kanpur [in short 'the learned CIT(A)] for assessment years 2009-10, 2011-12, 2012-13 & 2013-14 respectively. As common issues are involved in these appeals, same were heard together and disposed of by this consolidated order for the sake of convenience. Since identical grounds have been raised in all the appeals, except change of amount, for the sake of brevity, grounds of appeal raised for assessment year 2009-10 are reproduced as under:

1. *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an assessment made under section 153A/143(3) of the Act at an income of Rs. 16, 75, 300/ as against returned income of Rs. 9,25,300/-.*
2. *That learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining the initiation of proceedings under section 153A of the Act which was without satisfying the statutory preconditions envisaged under the Act person and thus, the proceedings initiated under section 153A of the Act should have been quashed as such.*
 - 2.1 *That further the learned Commissioner of Income Tax (Appeals) ignored the basic fact that additions made by learned assessing officer during the impugned assessment year were beyond the scope of proceedings initiated under section 153A of the Act and thus, the addition so made were liable to be deleted as such.*
3. *That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in sustaining addition of Rs. 7, 50, 000/- on account of disallowance under section 40A(3) of the Act.*
 - 3.1 *That in doing so, the learned CIT (A) has failed to appreciate the fact that payment of Rs, 7, 50, 000/- was covered by the exceptions as envisaged under Rule 6DD of I.T. Rules and was made during the regular business of assessee - appellant and as such, the addition so sustained needed to be deleted.*
 - 3.2 *That the adverse findings recorded by the learned CIT (A) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material*

produced on record and hence such findings are vitiated and the disallowance so sustained needs to be deleted, as such.

4. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining additions in the hands of assessee company, without giving any fair and proper opportunity of being heard to the appellant company, thereby, violating the principles of natural justice.*

2. Briefly stated facts of the case are that in the case of the assessee, a search and seizure operation was carried out on 31.10.2014 and consequently, notice under Section 153A of the Income-tax Act, 1961 (in short 'the Act'). In response, the assessee filed return of income, declaring income of Rs. 9,25,300/-, Rs. 8,28,770/-, Rs. 6,55,650/- and Rs. 3,99,960/- for assessment years 2009-10, 2011-12, 2012-13 and 2013-14 respectively. The assessments in these cases were completed after making disallowance of expenses under Section 40A(3) of the Act of Rs.7,50,000/-, Rs. 2,30,000/-, Rs. 10,80,000/- and Rs. 8,00,000/- for assessment years 2009-10, 2011-12, 2012-13 and 2013-14 respectively.

2.1 Before the learned CIT(A), the assessee challenged the validity of the additions made under Section 153A of the Act as well as merits of the additions. The learned CIT(A) rejected the arguments of the assessee and held that the additions were made validly under Section 153A of the Act and also upheld the merit of the additions.

2.2 Being aggrieved, the assessee is before the Tribunal, raising the grounds as reproduced above.

3. Before us, none appeared on behalf of the assessee.

4. On the other hand, learned DR appeared through Video Conferencing facility and relied on the orders of the lower authorities.

5. We have heard the submission of learned DR and perused the relevant material available on record, including the impugned order of the lower authorities. We find that in these appeals, mainly following two issues are involved:-

- (i) *Whether the addition can be made in 153A proceedings in absence of incriminating material, where assessments are already completed?*
- (ii) *Whether the payments in cash made by the assessee for purchase of the plot can be allowed under Section 40A(3) r.w.r. 6DD of the Income-tax Rules, 1962 (in short 'the Rules').*

5.1 On perusal of the order of the lower authorities, we find that the additions have been made without reference of any incriminating material. Before the learned CIT(A), the assessee cited the decisions of the CIT vs. Kabul Chawla reported in 380 ITR 573. On perusal of the record, we find that all the assessments in all the years were completed before the date of search and seizure and no notice under Section 143(2) of the Act was issued prior to the date of the search. As the search, in the case of the assessee, conducted on 31st October, 2014, the limitation for issue of notice under Section 143(2) of the Act for the assessment year 2013-14 expired on or before the 30th September, 2014. As no notice under Section 143(2) of the Act has been issued for the assessment year 2013-14, the assessment is treated as completed. As in all the assessment years, the assessments are unabated and no additions have been

made based on the incriminating material, therefore, in view of the decisions of the Hon'ble Delhi Court in the case of Kabul Chawla (supra), no additions could have been made. Accordingly, the legal grounds raised in all the four appeals are allowed. As we have already held that the Assessing Officer was not having jurisdiction to make addition, other than based on incriminating material, the issue of merit of addition is rendered academic and correspondingly, the grounds are dismissed as infructuous.

6. In result, all the four appeals of the assessee are allowed.

Order pronounced in the open court on 2nd March, 2021

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 2nd March, 2021.

RK/-(DTPDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi