

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-3436/Del/2010
(ASSESSMENT YEAR-2002-03)**

Neeta Saha G-22, Sector 27, Noida. AIGPS3023H	vs	ITO, Ward 46(1), New Delhi.
Appellant by	Shri Salil Aggarwal, Adv.	
Respondent by	Shri Dev Joyti Das, CIT - DR	

Date of Hearing	18.02.2016
Date of Pronouncement	24.02.2016

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

The present appeal is filed by the assessee against the order passed by the ld. CIT(A)'s-XXX, New Delhi on 20/05/2010 on the following grounds of appeal:

1. *"On the facts and circumstances of the case, the ld. CIT(A)-XXX, New Delhi is not justified in confirming the addition made by Assessing Officer of Rs. 4 lacs on account of Gift received by the assessee who treated it as bogus one.*
2. *That the ld. Assessing Officer initiated and completed the assessment proceedings wrongly, has crossed his jurisdiction by way of involving himself into reassessment proceedings rather than completing the assessment on the*

basis of seized material. Therefore, the entire proceedings of the Assessing Officer are invalid, beyond the scope of section 153A.

- 3. That the Revenue Authorities completed the assessment and appellate proceedings with pre conceived motion and without affording adequate and reasonable opportunity of being heard to the appellant.*
- 4. That the appellant reserves the right to add, alter, amend or delete any ground of the appeal at the time of hearing.”*

2. Brief facts of the case are as under:

2.1. There was a search and seizure operation that was carried out by the Investigation Wing-Ghaziabad in the case of ATS Group on 15/02/2008. Shri Anil Kumar Saha is a Director of M/s ATS Infrastructure Ltd. and Smt. Neeta Saha is his wife. Accordingly, the residential premises of Shri Anil Kumar Saha and Neeta Saha situated at 922, Sector 27, Noida and lockers in their names were also covered under this operation. Smt. Neeta Saha was assessed by Ward 46(1), New Delhi. Accordingly, punchnama files, photocopies of seized documents relating to assessee were transferred to the AO being ITO, Ward 46(1). Accordingly, notice u/s 153A was issued to the assessee. The assessee had filed her return of income on 26/07/2002 for the year under consideration declaring a total income of Rs. 1,65,215/-. On receipt of the notice u/s 153A the assessee filed her return of income on 18/12/2009 declaring the returned income.

2.2. During the year under consideration, the assessee has derived income from house property, income from salary and income from other sources. The assessee had also received gift from Shri

Sumitra Ghosh amounting to Rs. 4 lacs. On a query being raised, the assessee filed copy of the gift deed, copy of the visa of the donor, and Manager's cheque worth Rs. 4 lacs. The ld. AO made an addition of Rs. 4 lacs in the hands of the assessee on the ground that there is no proof of relationship between the donor and the assessee(done), and the gift deed submitted by the assessee was incomplete.

3. Aggrieved by the order of the ld. AO the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) confirmed the addition made by the ld. AO on the ground that Shri Anil Kumar Saha, the husband of the assessee, had accepted during the search operation and assessment proceedings, in his case, that the gift received by him was bogus, and he had surrendered the amounts for taxation.

4. Aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us now.

4.1 The ld. AR submits that the assessee had received the gift amounting to Rs. 4 lacs from her first cousin. The ld. AR further submitted that assessee had discharged the onus of proving the creditworthiness of the donor by submitting the gift deed passport of the donor and copy of the pay order received from the donor.

4.2 The ld. AR submitted that the AO did not verify the same or investigate upon to disprove these documents. The ld. AR submitted that there was no incriminating material that was relied upon by the ld. AO to make the addition in the hands of the

assessee. He relied upon the decision of the jurisdictional High Court in the case of CIT vs. Kabul Chawla reported in 380 ITR 573.

5. On the contrary the ld. DR submitted that, admittedly though there is no seized documents, the addition has been made based on the statement recorded u/s 132(4) of the Income Tax Act.

5.1 The ld. DR further submitted that the decision of CIT vs. Kabul Chawla (supra) is distinguishable to the facts of the present case. He submitted that the Hon'ble jurisdictional High Court in the case of Kabul Chawla holds that an assessment u/s 153A would be valid if there is an incriminating material that has been unearthed during the search proceedings. He submitted that any statement recorded u/s 132(4) would amount to evidence, that has been found during the search proceedings and, therefore, would have a bearing on the additions made in the assessment proceedings. The ld. DR submitted that there has been a statement recorded u/s 132(4) cannot be overlooked. He relied upon the order of the authorities below.

6. The ld. AR in the rejoinder submitted that there has been no statement of the assessee that was recorded during the search proceedings. It was the statement of her husband, being Anil Kumar Saha that was recorded. Shri Anil Kumar Saha has admitted the gifts to be not genuine and had surrendered the amounts for taxation which is not the case of the assessee. The ld. AR further submitted that it is also not disputed by the Revenue that any assessment was pending in respect of the relevant

assessment year of the assessee. He, therefore, prayed for deletion of the addition made by the ld. AO.

7. We have perused the recorded filed before us, orders passed by the authorities below and the decision relied upon by the ld. AR.

7.1 It is apparent from the order of the ld. CIT(A) that the statement u/s 132(4) has been recorded in the case of the husband of the assessee and not in the assessee's case. The husband of the assessee has admitted the gifts received by him to be bogus. However, there has been no such statement of the assessee that has been recorded during the search proceedings. Further it is observed that the ld. AO had not seized any documents/incriminating material, to substantiate the addition made. The addition was based on the income declared in the return of income filed u/s 153A which is very clear from the questionnaire raised by the ld. AO on 18/12/2009.

7.2. To our mind the ld. AO has completed the assessment and crossed his jurisdiction by way of involving himself into a reassessment proceedings rather than completing the assessment on seized material, if any, thereby making the entire proceedings as invalid and beyond the scope of sec. 153A of the Act.

8. We, therefore, following the jurisdictional High Court in the case of CIT vs. Kabul Chawla set aside the assessment made by the ld. AO u/s 153A of the Act.

8.1 Grounds filed by the assessee is thus, allowed.

9. Accordingly, the appeal filed by the assessee stands allowed.

The order is pronounced in the open court on 24/02/2016

Sd/-

(N.K. SAINI)

ACCOUNTANT MEMBER

Dated: 24/02/2016

**Kavita, P.S.*

Sd/-

(BEENA PILLAI)

JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date
1.	Draft dictated on	18.02.2016
2.	Draft placed before author	22.02.2016
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	

