

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

Before Sh. N. K. Saini, AM And Sh. A. T. Varkey, JM

ITA No. 5184/Del/2014 : Asstt. Year : 2005-06

Smt. Rashmi Wadhwa, 8194, Sector-B, Pocket-XI, Vasant Kunj, New Delhi	Vs	DCIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAGPW6899R		

Assessee by : Dr. Rakesh Gupta, Adv.

Revenue by : Smt. Sunita Kejriwal, CIT DR

Date of Hearing : 18.11.2015	Date of Pronouncement : 18.01.2016
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 16.07.2014 of Id. CIT(A)-XXXII, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the adhoc addition of Rs.2,10,000/- fully as made by Ld. AO and has further erred in sustaining the addition to the extent of Rs.2,10,000/- on account of house hold withdrawals u/s 69C of Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the adhoc addition to the extent of Rs.2,10,000/- fully as made by Ld. AO is bad in law and against the facts and circumstances of the case and in any case impugned addition is beyond the scope and jurisdiction of the impugned assessment order.

3. Without prejudice to the above grounds, additions/disallowances could not have been made in the present appeal because no incriminating material has been found as a result of search.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. From the above grounds it is gathered that the only grievance of the assessee relates to the sustenance of addition of Rs.2,10,000/- made by the AO on account of low house hold withdrawals.

4. Facts of the case in brief are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted at the business/residential premises of the assessee on 19.10.2010. Thereafter, a notice u/s 153A of the Act was issued on 08.01.2013. In response to the said notice, the assessee filed

the return of income declaring an income of Rs.4,02,687/- on 07.08.2005. However, the assessment was performed by the AO at an income of Rs.6,97,690/-. Being aggrieved the assessee carried the matter to the Id. CIT(A) who allowed a partial relief to the assessee and sustained the addition of Rs.2,10,000/-. Now the assessee is in appeal.

5. During the course of hearing the Id. Counsel for the assessee at the very outset stated that the issue under consideration is covered vide order dated 19.10.2015 in ITA Nos. 501 & 502/Del/2015 for the assessment years 2008-09 & 2009-10 respectively in assessee's own case (copy of the said order was furnished which is placed on record).

6. In his rival submissions the Id. DR supported the orders of the authorities below and further submitted that the assessee was one of the assessees on whom the Income Tax Department has conducted a search and multiple government agencies like CBI, Enforcement Directorate, Delhi Police etc. were investigating the alleged fraud done by them during Common Wealth Games, New Delhi, 2010 by getting the contracts directly or indirectly for organizing, construction or conduction or any activity relating to the Common Wealth Games, 2010 and the *Modus Operandi* of

almost all the companies was inflation of expenditures, showing investment and claiming expenditure by taking the help of Accommodation Entry Operators, etc. It was further stated that after considering bank statement found during the course of search, it was noticed by the AO that no withdrawals were made for house hold expenses. Therefore, the addition was rightly made by the AO and the Id. CIT(A) was fully justified sustaining the same. In the rejoinder the Id. Counsel for the assessee submitted that no incriminating material was found during the course of search and the withdrawals were made by the family members for the house hold expenses which were sufficient to meet out the needs of the family. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that a similar issue having identical facts was a subject matter of adjudication in ITA No. 501 & 502/Del/2015 for the assessment years 2008-09 and 2009-10 respectively in assessee's own case wherein vide order dated 19.10.2015, ITAT Delhi Bench SMC-2, New Delhi, by following the order of the jurisdictional High Court in the case of CIT Vs Kabul Chawla passed in ITA Nos. 707, 709,

713/2014 order dated 28.08.2015 deleted the addition and the relevant findings have been given in paras 5 & 6 of the order dated 19.10.2015 which read as under:

*“5. Admittedly no incriminating material was found or seized during the course of search and seizure operation u/s. 132 of the Act in the case of the assessee. It is also not in dispute, that the assessment for both these assessment years have not abated. Under the circumstances, I find that the issue is covered in favour of the assessee and against the Revenue by the decision dated 28.8.2015 of the Hon’ble Delhi High Court in the case of **CIT vs. Kabul Chawla** passed in ITA No. 707, 709 and 713/2014 held as under:-*

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an ITA Nos. 707, 709 and 713 of 2014 of assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment

shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.”

6. Respectfully following the precedent of the Hon’ble Jurisdictional High Court as aforesaid, I allow the appeal of the Assessee, as the assessments in both these cases passed u/s. 153A r.w.s. 143(3) were not made, based on any incriminating material found or seized during the course of search of thereafter. The additions are purely based on the material already available on record. Hence, all the additions in both the cases are deleted and the ground raised by the assessee in both the appeals are allowed.”

8. Since the facts for the year under consideration are identical to the facts involved in assessee's own case for the assessment years 2008-09 and 2009-10 in ITA Nos. 501 & 502/Del/2015 (supra) so respectfully following the order dated 19.10.2015, the impugned addition is deleted.

9. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 18/01/2016)

Sd/-

(A. T. Varkey)

JUDICIAL MEMBER

Dated: 18/01/2016

Subodh

Copy forwarded to:

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

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR