IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH, NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER AND SHRI KULDIP SINGH, JUDICIAL MEMBER.

ITA No. 5308/DEL/2014 [A.Y. 2008-09]
ITA No. 5309/DEL/2014 [A.Y. 2009-10]
ITA No. 5310/DEL/2014 [A.Y. 2010-11]

Sh. Ravinder Kumar, E-1A, Maharani Bagh, New Delhi	Vs.	The DCIT Central Circle – 4 New Delhi

PAN : AAAPK4245M

[Appellant] [Respondent]

Date of Hearing : 31.08.2017
Date of Pronouncement : 19.09.2017

Assessee by : ShriAshok Kumar, CA
Revenue by : Shri Naveen Chandra, CIT-DR

ORDER

PER B.P. JAIN, ACCOUNTANT MEMBER:

The above three appeals filed by the assessee arise from the common order of the ld. CIT(A)-XXXII, New Delhi vide order dated 23.05.2014 for assessment years 2008-09 to 2010-11. Since the appeals pertain to same assessee and were heard together involving identical issues, these are being disposed of by this consolidated order for the sake of convenience and brevity.

2. In assessment year 2008-09, the assessee has raised the following grounds of appeal:

> *"1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law in confirming the impugned addition of Rs. 5,07,316.00 in the salary income earned in a foreign domain and which is only addition made vide order passed u/s 153 is bad in law, without jurisdiction and void ab initio and deserve to be quashed as such, as the same is in respect of a closed assessment which has not abated and is made not on the basis of any incriminating material unearthed during the course of search (i.e. not on the basis of any concealed material which was either not disclosed or was intended not to be disclosed). Rather the addition is made to the normal income already assessed/disclosed and not in respect of any undisclosed income detected based on any incriminating material seized as a result of the search but by misinterpreting the provisions of law and ignoring the real income test and subjecting the impugned amounts to double taxation.*
>
> *2. That, without prejudice to the above ground of appeal in any manner whatsoever, the learned CIT (A) has erred in law in not allowing the deletion of the impugned additions of Rs. 5,07,316.00 to the salary income of the assessee on the merits of the case.*

3. That without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case,

a) the learned CIT (A), has erred in law in not deleting the charging of interest u/s 234A and,

b) is not justified in law in not deleting interest u/s 234B and

c) is not justified in law in confirming charge of interest u/s 234D and 244A".

3. In assessment year 2009-10, the assessee has raised the following grounds of appeal:

"1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law in confirming the impugned addition of Rs. 5,19,866.00 in the salary income earned in a foreign domain and which is only addition made vide order passed u/s 153 is bad in law, without jurisdiction and void ab initio and deserve to be quashed as such, as the same is in respect of a closed assessment which has not abated and is made not on the basis of any incriminating material unearthed during the course of search (i.e. not on the basis of any concealed material which was either not disclosed or was intended not to be disclosed). Rather the addition is made to the normal income already assessed/disclosed and not in respect of any undisclosed income detected based on any incriminating material seized

as a result of the search but by misinterpreting the provisions of law and ignoring the real income test and subjecting the impugned amounts to double taxation.

2. That, without prejudice to the above ground of appeal in any manner whatsoever, the learned CIT (A) has erred in law in not allowing the deletion of the impugned additions of Rs. 5,19,866.00 to the salary income of the assessee on the merits of the case.

3. That without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case,

a) the learned CIT (A), has erred in law in not deleting the charging of interest u/s 234A and,

b) is not justified in law in not deleting interest u/s 234B and

c) is not justified in law in confirming charge of interest u/s 234D and 244A".

4. In assessment year 2010-11, the assessee has raised the following grounds of appeal:

"1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law on merits in confirming the impugned addition of Rs. 5,73,112.00 in the salary income earned in a foreign domain in respects of various

statutory non refundable deductions from the salary which are diversions at source ignoring the real income test and subjecting the impugned amounts to double taxation.

2. That without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case,

a) *the learned CIT (A) has erred in law in not deleting the charging of interest u/s 234A and,*
b) *is not justified in law in not deleting interest u/s 234B,*
c) *is not justified in law in confirming charge of interest 244A."*

5. As regards the legal issue in assessment years 2008-09 and 2009-10, we find that the issue is identical to the legal issue raised in assessment years 2007-08 and 2009-10 which has been decided by the ITAT Delhi 'C' Bench vide order dated 04.08.2017 for assessment years 2007-08 and 2010-11 in ITA Nos. 5303, 5306 & 5307/DEL/2014. Therefore, the order of the ITAT DEL 'C' bench in assessee's own case decided on 04.08.2017 shall be identically applicable in the present cases also. For the sake of convenience, the order of the ITAT 'C' Bench in assessee's own case is reproduced hereinbelow:

2. First, we take up the appeal of the assessee in ITA No. 5303/Del/2014 for assessment year 2007-08. The grounds raised are reproduced as under:

"1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law in confirming the impugned addition of Rs. 2,35,951.00 in the salary income earned in a foreign domain and which is only addition made vide order passed u/s 153 is bad in law, without jurisdiction and void ab initio and deserve to be quashed as such, as the same is in respect of a closed assessment which has not abated and is made not on the basis of any incriminating material unearthed during the course of search (i.e. not on the basis of any concealed material which was either not disclosed or was intended not to be disclosed). Rather the addition is made to the normal income already assessed/disclosed and not in respect of any undisclosed income detected based on any incriminating material seized as a result of the search but by misinterpreting the provisions of law and ignoring the real income test and subjecting the impugned amounts to double taxation.

2 *That without prejudice to the above ground of appeal in any manner whatsoever the learned CIT(A) has erred in law in not allowing the deletion of the impugned additions of Rs 2,35.951 00 to the salary income of the assessee on the merits of the case*

3. That without prejudice to the above grounds of appeal on the facts and in the circumstances of the case, the learned CIT (A) is not justified in law in confirming the charge of interest u/s 234B.

The appellant craves leave to add, alter, amend: or vary from the grounds of appeal at or before the time of hearing.

3. The facts in brief of the case as culled out from the order of the lower authorities are that a search and seizure action under section 132 of the Income-tax Act, 1961 (in short "the Act") was carried out at the premises of the assessee on 21/01/2011 and notice under section 153A of the Act was issued on 09/01/2012, in response, the assessee filed return of income on 24/01/2012, declaring total taxable income of Rs.70,86,640/- including income from salary. In the scrutiny proceedings, the Assessing Officer observed that, the assessee received gross salary of CHF 46,144/- from M/s San Lorenzo AG, Switzerland and the employer made deduction of federal pension, Social Security charges, accidental insurance, group health insurance, cantonal pension, personal tax and fixed annual cantonal tax aggregating to CHF 6518/-. The assessee declared net salary of CHF 39,626/- for tax in the return of income filed in India. In response to the query of the Assessing Officer as why the gross salary might not be taxed, the assessee submitted that the deductions were diversions at the source itself. The assessee submitted that the deductions had not been included in the salary income because they were never part of salaries and also the fact that pension was separately taxable as salary income at the time of receipt thereof as salary income, which would amount to taxing the same amount twice. According to the Assessing Officer, the salary due from the employer in the previous year was chargeable to tax in terms of section 15 of the Act and deductions specifically provided under section 16 of the Act were only allowable. The Assessing Officer held that the salary income accrued to the assessee and deduction made therefrom were in the nature of application of ncome. The

Assessing Officer relied on the .decision of the Rajasthan High Court in the case of CIT Vs. Dr K L. Parekh 208 'ITR 695 wherein is held that contributions by the assessee to health scheme are not deductible from salary income: Accordingly the Assessing Officer added the deduction amount of CHF 6518/-, which amounted to Rs.2,35,951/- on the basis of conversion rate of Rs. 36.20 per CHF

3.1 Before the Ld. CIT-A, the assessee challenged the jurisdiction of the Assessing Officer in making addition under section 153A of the Act as well as merit of the addition.

3.2 The Ld. CIT-A, rejected the objection of the assessee that no search was conducted on the premises of the assessee and held that the fact of search conducted on 21/01/2011 at E-1A, Maharani Bagh, New Delhi i.e residence of the assessee was evident from the assessment order for AY 2011-12 . As a result of search, jewellery worth Rs,6,65,43,710/- was found and jewellery worth Rs.3,32,04,460/-was seized and the notice under section 153A issued in the year under consideration was in consequence of search action dated 21/01/2011.

3.3 Further, the assessee contested that as on date of search, no assessment was pending for year under consideration and no incriminating material was found in respect of the year under consideration and therefore, no addition could have been made under 153A proceedings for the year under consideration. However, the Ld. CIT-A held that if there is incriminating evidence for one assessment year covered under search

assessment, the Assessing Officer has power to assess total income under section 153A in respect of all assessment years covered under search assessment, following the decision of the Hon'ble Delhi High Court in the case of Anil Kumar Bhatia in ITA No. 1626, 1632, 1998,2006, 2019 & 2020 of 2010 dated 07/08/2011.

3.4 As far as merit of the issue is concerned, the Ld. CIT-A followed his finding in assessment year 2011-12 wherein it is held as under:

"The case laws relied upon by the learned AR is in respect of social insurance deduction in case of all French National in the case Gallotti Raoul and Citizen tax in the case of NHKT Japan Broadcasting corporation. Both the deductions, are made for the benefit of all the citizen of the respective country. No benefit accrues to the employee from these deductions directly. In those circumstances, it has been held that it is diversion at source, therefore, not taxable. In present case, first narration for deduction is contribution for pension fund. Contribution for pension fund in my view will give direct benefit to the employee through regulated by the Government Law. Hence, such deduction cannot be called diversion of Income. Second deduction mentioned in the certificate is fixed cantonal tax if this deduction does not provide direct benefit to the appellant but made for the benefit of citizen at large, then it will constitute diversion of income. Similarly, in the case of insurance whether it is made for the direct benefit of the employee. In view of the above, I direct the Assessing Officer to

examine whether cantonal tax, insurance and other deduction will directly benefit the employee if so, it is not diversion of income, if not then it is diversion of income. In case, it is diversion of income, addition should be deleted. As a result, this ground of appeal is partly allowed. ”

3.5 Aggrieved, the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

4. In ground No. 1, the assessee challenged the validity of the assessment under section 153A of the Act. Before us, the learned counsel of the assessee submitted that on the date of search the assessment was already completed under section 143 (3) of the Act on 18/12/2009 and no assessment was pending for the year under consideration. He further submitted that no addition has been made on the basis of any incriminating material unearthed during the search. The learned counsel accordingly submitted that in view of the decision of the Hon’ble High Court in the case of CIT(Central)-III Vs. Kabul Chawla, [2015] 361.Taxman.com 412 (Delhi), no addition could have been made in the year under consideration.

5. The ld. CIT-DR on. The other hand, relied on the decision of the Hon’ble Delhi High Court in the case of Anil Bhatia (supra), Filatex India Ltd. Vs. CIT-IV [2014] 49'taxmann.com 465 (Delhi). According to the Ld. CIT(DR) incriminating material in the form of jewellery was seized during the course of search. He submitted that incriminating material would be such, which can change state of mind of the Assessing Officer and which may be

intangible. According to the learned CIT(DR) benefit of pension was not disclosed prior to search and it was known subsequent to search thus, it was in the nature of incriminating material.

6. In rejoinder, the Ld. counsel referred to the order of the Ld. CIT-A and the ITAT for assessment year 2011-12 and submitted that the Ld. CIT-A deleted the addition for unexplained investment in jewellery and sustained 10% of the unexplained investment towards making charges, which has also been deleted by the Tribunal and now no addition stands towards unexplained jewellery.

7. We have heard the rival submission and perused the relevant material on record. We note that decision of the Hon'ble Delhi High Court in the cases of Anil Bhatia (supra) and Filatex India (supra) were considered by the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) and after considering other cases on the issue in dispute, the Hon'ble Delhi High Court summarizes the legal position as under:

"Para 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 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(l) 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 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."

8. Thus, we find that in case of completed assessments addition can only be made on the basis of some incriminating material unearthed during the course of search.

9. In the instant case, the fact that no assessment was pending has not been disputed by the Ld. CIT(DR). The only dispute is with regard to incriminating material. We find that no addition in respect of unexplained jewellery was made during the year and the addition made in respect of assessment year 2011-12 has already been deleted by the Tribunal in para-No. 8.3 of order in ITA No. 5296 and 5369/Del/2013 for assessment year 2011-12 . The Ld. CIT(DR), however, contested that fact of benefit in respect of pension was unearthed during search proceedings, however he could not substantiate his statement with documentary evidence. The Assessing Officer has also not mentioned any document found during the course of search evidencing that assessee obtained benefit of pension out of the salary income. We observe that the fact of deduction reduced out of the gross salary was came to the notice of the Assessing Officer in assessment proceeding only and thus it cannot be said that addition made in respect of deductions claimed by the assessee, was on the basis of any incriminating material unearthed during the course of search. Thus, respectfully following the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla, no addition could have been made in the year under consideration. The ground No. 1 of the appeal is accordingly allowed.

10. Since we have already held that no addition could have been made in the year under consideration, the other grounds raised by the assessee are merely rendered infructuous and accordingly dismissed".

6. In the facts and circumstances of the present case which are identical to the assessment years 2007-08 and 2010-11 decided on 04.08.2017 that no assessment was pending has not been disputed by the ld. CIT-DR and the only dispute is with regard to the incriminating material and no addition in respect of unexplained jewellery has been made during the year and addition so made has already been deleted by the Tribunal for assessment year 2011-12 and accordingly, following the decision of the Hon'ble Delhi High Court in the case Kabul Chawla [supra] no addition could have been made in the year under consideration. Accordingly, the legal ground of the assessee in both the assessment years is allowed.

7. Since the legal ground is held to be in favour of the assessee that no addition could have been made during the year under consideration, the other grounds are held to be infructuous. Thus the appeals of the assessee in ITA Nos. 5308 & 5309/DEL/2014 are allowed.

8. As regards appeal in ITA No. 5310/DEL/2014 for assessment year 2010-11 is concerned, on identical issue, the appeal of the assessee has been decided in favour of the Revenue and the relevant decision in ITA No. 5306/DEL/2014 decided by the ITAT Delhi 'C' Bench vide order

dated 04.08.2017 from pages 9 to 14 is reproduced hereinbelow for ready reference:

"13. The facts in the year under consideration are identical to facts narrated in ITA No. 5303/Del/2014 except that for the year under consideration, as on the date of search, the period for issuing notice under section 143(2) of the Act for selection of the case was not expired and therefore assessment being pending, it was abetted and thus the ratio of the decision of the Kabul Chawla (supra) was not applicable in the year under consideration and thus the assessee challenged addition on merit.

14. In ground No. 1, the assessee challenged addition of Rs.4,22,648/- for various deductions claimed by the assessee out of gross salary, on merit.

14.1 The Ld. counsel of the assessee relied on the submission made before the Ld. CIT-A and submitted that deductions made out of the gross salary were in respect of federal pension, Canton pension, Social Security charges etc. which are overriding charges and diversion at source and not application of income. He further submitted that the pension, whenever received, would be taxable and thus taxing of the pension contribution in the year under consideration would amount to double taxation.

14.2 The Ld. CIT(DR), on the other hand, relied on the order of the Ld. CIT-A.

14.3 We have heard the rival submission and perused the relevant material on record. On the issue in dispute in the year under consideration , the Ld. CIT-A has followed his finding in assessment year 2011-12 . The Ld. CIT-A in assessment year 2011-12, after considering the submission of the assessee in the cases relied upon has decided the issue in dispute as under:

"33 Findings:-

I have considered the assessment order, written submissions and oral arguments of Ld. AR. He has argued that the deductions are on account of federal pension, social security charges, accidental insurance, group health scheme, cantonal pension, personal and fixed annual cantonal tax. These charges are overriding charges and diversion at source and not application of Income. He argued that these statutory levies are non returnable. In support of his arguments, he relied upon the decision of Galloti Roul Vs ACIT 61 ITD 453 (Prom) and NHK-Japan Broad Casting Corporation Vs. CIT 101 TTJ 292 (Del) approved by Hon'ble Delhi High Court by judgment cited 291 ITR 331 (Del). A perusal of decisions in the case of Gallotti Raoul reveals that the nature of deduction was in respect of social security contribution to social security organization formed under the statute for all French national regardless of type of remuneration. There is overriding title at the stage of earning point itself.. Similarly, in the case of NHK-Japan Broad Casting Vs. CIT 101 TTJ 292 (Delhi)-citizen tax paid

never comes in the hands of the assesses and does not form part of the total income.

Now, the type of deduction made by the employer in appellant's case are examined. As per salary certificate issued by M/s.

SANLORENZOAG which is part of the paper book, the details are as under: -

Gross Salary .	*97499.95*
Less: Statutory Liabilities includes Pension fund, fixed cantonal Tax and insurance	*12525.55*
	84974.00

A perusal of the certificate issued by the employee reveals that the deductions are on following accounts.]

1. Pension fund

2. Fixed Cantonal Tax and

3. Insurance

The case laws relied upon by the Ld. AR is in respect of social insurance deduction in case of all French National in the case Galloth Raoul and Citizen tax in the case of NHK Japan Broadcasting corporation. Both the deductions are made for the benefit of all the citizen of the respective country. No benefit accrues to the employee from these deductions directly. In those circumstances, it has been held that it is diversion at source, therefore, not taxable. In present case, first narration for deduction is contribution for pension fund. Contribution for pension fund in my view will give direct benefit to the employee

through regulated by the Government Law. Hence, such deduction cannot be called diversion of Income. Second deduction mentioned in .the certificate is fixed cantonal tax if this deduction does not provide direct benefit to the appellant but made for the benefit of citizen at large, then it will constitute diversion of income. Similarly in the case of insurance whether it is made for the direct benefit of the employee. In view of above, I direct the Assessing Officer to examine whether cantonal tax, insurance and other deduction will directly benefit the employee if so, it is not diversion of income, if not then it is diversion of income. In case, it is diversion of income, addition should be deleted. As a result, this ground of appeal is partly allowed."

14.4 In the year under consideration, the Ld. CIT-A also considered other arguments of the assessee and held as under:

"I have given the findings that if the appellant derives benefit from such statutory deduction, then the same is not diversion of income. The Ld. AR has argued for reconsideration of the decision mainly on the ground that such deduction are in voluntary, non returnable and go to foreign government and not for exclusive advantage of the assessee. I do not think that there is any scope for reconsideration of my earlier decision. In my view if the appellant derives any benefit from such deduction which may be in future as per the plan of foreign government, then such deduction cannot be said diversion of income. Ld. AR's argument of double taxation once now and other time at the

time of availing such benefit is also misplaced as term of such benefit and quantum is not known. Accordingly, I direct the ld. Assessing Officer to follow my decision on this issue as decided in appellant's case for A.Y. 2011-12. This ground is partly allowed for all assessment years."

14.5 We find that the Ld. CIT-A has considered both the deduction in respect of pension and other deductions like Cantonal tax, insurance etc. Regarding the pension, the Ld. CIT-A held that it will give direct benefit to the employee as deduction cannot be called as diversion of income, accordingly upheld the addition in respect of deduction towards pension. Regarding the other deductions like cantonal tax, insurance etc, the Ld. CIT-A has directed the Assessing Officer to examine whether those deductions will directly benefit the employee and decide accordingly whether it is diversion of income. The ld. CIT-A has laid benefit test to determine the diversion of income and directed the AO to verify the facts and decide the matter accordingly.

14.6 In our opinion, finding of the Ld. CIT-A on the issue in dispute is well reasoned and no further interference on our part is required. Moreover, the finding of the Ld. CIT-A on the issue in dispute in assessment year 2011-12 has not been challenged by the assessee before the Tribunal. Thus, the rule of consistency also demands that assessee should not contest this issue on merit in other years.

14.7 In view of above discussion, we do not find any error in the order of the Ld. CIT-A on the issue in dispute and accordingly the ground of the appeal is dismissed.

15. In ground No. 2, the assessee challenged charging of interest under section 234B of the Act.

15.1 The Ld. counsel relied on the submission made before the Ld. CITA.

15.2 On the contrary, learned CIT(DR) relied on the findings of the Ld. CIT-A on the issue in dispute.

15.3 We have heard the rival submission and perused the relevant material on record. The issue in dispute has been decided by the Ld. CIT-A as under:

"5. Ground no. 3 for all assessment years are against charging of interest u/s 234B of I.T. Act while assessing income u/s 153A. The ld. AR has argued that the appellant was on bonafide belief that such income was not liable for advance. He relied upon the decision of hon'ble ITAT Delhi in the case of Haryana Warehousing Corporation Vs. DCIT(2000) 69 TTJ TM Del 859. I have perused the judgement. In the said case the fact was disallowing exemption u/s 10(29) which was allowed upto High Court in favour of assessee and the same was reversed by hon'ble Supreme Court. In that perspective, the decision was delivered. In present case, the facts are not similar as the issue

of addition on account of statutory deduction has not proven to be on the basis of change of opinion.

Second arguments of Ld. AR is that as per section 234B(3) interest cannot be charged in view of the decision of Hon'ble ITAT has given the verdict in view of provisions of section 234B(3) i.e. interest is chargeable from the date of regular assessment while completing the assessment u/s 153A or 147. With great respect , in my view, where the reassessment is made u/s 147 or u/s 153A is made for the first time, the interest u/s 234B is covered by 234B(1), the same should be regarded as regular assessment. This vies is supported by Explanation 2 to section 234B(1) reproduced as under:

"Explanation 2- Where, in relation to an assessment year, an assessment is made for the first time under section 14710 [or section 153A], the assessment so made shall be regarded as a regular assessment for the purpose of this section."

Accordingly, the interest u/s 234B(1) is to be charged from first day of April next following such Financial Year. In present case, the assessment u/s 153A is made for the first time, and the assessee has not proven that she has taken due diligence and care and has not anticipated the enhancement of income. Accordingly, this ground of appeal /argument is dismissed.

The assessing officer is directed to charge interest u/s 234B(1) on revised income after giving effect to this order as per law."

15.4 In our opinion, the finding of the Ld. CIT-(A) are in accordance with the provisions of section 234B(1) of the Act and accordingly, he has directed the Assessing Officer to charge the interest under section 234B(1) of the Act on the revised income after giving effect of his order.

We do not find any infirmity in the order of the Ld. CIT-(A) on the issue in dispute and accordingly, ground of the appeal is dismissed.

16. In result, the appeal of the assessee is dismissed."

9. Accordingly, since the facts and circumstances of the present case in hand are identical to those of the ITAT order dated 04.08.2017 [supra] respectfully following the same, we dismiss the grounds raised by the assessee. Therefore, the appeal of the assessee is dismissed.

10. In the result, the appeals of the assessee in ITA Nos. 5308 & 5309/DEL/2014 are allowed whereas the appeal in ITA No. 5310/DEL/2014 for assessment year 2010-11 stands dismissed.

The order is pronounced in the open court on 19.09.2017.

Sd/- **Sd/-**

[KULDIP SINGH] **[B.P. JAIN]**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Dated: 19th September, 2017

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi