

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B": NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3407/Del./2017  
Assessment Year 2011-2012

M/s. Empire Realtech (P) Ltd., SF-16-17, 1 <sup>st</sup> Floor, Madame Bhikaji Cama Place, New Delhi. PAN AACCE4651J	vs.	The DCIT, Central Circle-1, Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain and Shri Lalit Mohan Singh, Advocates
For Revenue :	Shri Arun Kumar Yadav, Sr. D.R.

Date of Hearing :	20.11.2017
Date of Pronouncement :	21.11.2017

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the order of the Ld. CIT(A)-3, Gurgaon, dated 31<sup>st</sup> March, 2017, for the A.Y. 2011-2012.

2. Briefly the facts of the case are that a search and seizure action was conducted under section 132 of the I.T. Act in the case of the assessee as well as the premises of CHD Developers Group of cases on 23.11.2012. Survey action under section 133A were also

carried-out at the business premises of the group. The A.O. issued notice under section 153A to the assessee on 22<sup>nd</sup> August, 2013 requiring to file return of income. The assessee filed return of income on 13<sup>th</sup> May, 2014. The A.O. during assessment proceedings noticed that assessee-company has received fresh share capital/share application money amounting to Rs.6,50,00,000. The assessee was asked to provide details of the persons/companies from whom the above share capital/share application money was received. The assessee filed the details to show share application money have been received from Prashan Commotrade in a sum of Rs.4,50,00,000 and from Rangoli International Pvt. Ltd., Rs.2,00,00,000. Share capital of Rs.50,000 each was also received from Ajay Goyal and Rohtas Janghu. The A.O. issued notice under section 133(6) of the I.T. Act. M/s. Prashan Commotrade filed reply. However, no reply was received from Rangoli International Pvt. Ltd., The A.O. accordingly, treated Rs.2 crore as unexplained share application money and made the addition accordingly by completing the assessment under section 153A of the I.T. Act vide order dated 11<sup>th</sup> March, 2015.

3. The assessee challenged the above addition before Ld. CIT(A). The claim of the assessee is reproduced in the appellate order. The assessee submitted before Ld. CIT(A) that addition is wholly unjustified because it is not based on any incriminating material detected as a result of search. It was submitted that search under section 132(1) was conducted on 23.11.2012 and on the date of search, no proceeding for the instant assessment year were pending as prior to date of search no notice under section 143(2) of the Act was issued and served on the assessee in respect of original return of income filed by the assessee on 07.11.2011 under section 139(1) of the Act. Since no assessment was pending on the date of search and same did not abate, the addition made by the A.O. without any evidence or material found as a result of search is without jurisdiction. The assessee relied upon the decision of the jurisdictional Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 and others. The Ld. CIT(A) however, rejected the contention of assessee because the time limit for issue of notice under section 143(2) of the Act had not expired in this case at the time of

search. The addition on merit was also confirmed. Appeal of assessee was dismissed.

4. The assessee in the grounds of appeal challenged the addition of Rs.2 crores. Learned Counsel for the Assessee reiterated the submissions made before the Ld. CIT(A) and submitted that the time for issue of notice under section 143(2) had expired on 30<sup>th</sup> September, 2012. Therefore, no assessment was pending. As such, the issue is covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla (supra).

5. On the other hand, the Ld. D.R. relied upon the orders of the Ld. CIT(A) and filed the written submissions in which it is briefly highlighted that the provisions of Section 153A are clear and did not mandate requirement of incriminating documents for the purpose of finalising the assessment or re-assessment under section 153A of the I.T. Act. The Ld. D.R. submitted that the tax statute should be interpreted strictly. The Ld. D.R. submitted that the other High Courts have held that there is no need for recovery of any incriminating material during the course of search and relied upon

the decision of the Allahabad High Court in the case of Raj Kumar Arora dated 11<sup>th</sup> July, 2014 in ITA.No.56 of 2011, decision of Kerala High Court in the case of E.N. Gopalkular vs. CIT (2016) 75 taxmann.com 215, decision of Allahabad High Court in the case of CIT vs. Kesarwani Zarda Bhandar Sahson ITA.No.270 of 2014, decision of Kerala High Court in the case of CIT vs. St. Francis Clay Décor Tiles 385 ITR 624 and decision of Hon'ble Delhi High Court in the case of Smt. Dayawanti Gupta vs. CIT 390 ITR 496.

6. We have considered the rival contentions. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 held as under :

*“Completed assessments can be interfered with by the A.O. while making the assessment under section 153A 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”*

6.1. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia 395 ITR 526 considering its earlier decisions in the case of Kabul Chawla (supra) and Smt. Dayawanti Gupta vs. CIT (supra) held as under :

“69. What weighed with the Court in the above decision was the “habitual concealing of income and indulging in clandestine operations” and that a person indulging in such activities “can hardly be accepted to maintain meticulous books or records for long.” These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in *Dayawanti Gupta (supra)*, therefore, do not detract from the settled legal position in *Kabul Chawla (supra)* which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

#### Conclusion

72. To conclude :

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153 A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.”

6.2. It is not in dispute that search was carried out in the case of assessee on 23.11.2012. The A.O. did not refer to any incriminating material in the assessment order which would have recovered during the course of search so as to make addition of Rs.2 crore on account of share application money. The assessee submitted before Ld. CIT(A) that it has filed original return of income on 07.11.2011 under section 139(1) of the

I.T. Act. It was also submitted that on the date of search, no proceedings for instant assessment year were pending and no notice under section 143(2) have been issued or served upon the assessee. It was also pleaded that no incriminating material were detected as a result of search so as to make the above addition. The Ld. CIT(A) rejected the contention of assessee because the time for issue of notice under section 143(2) of the Act had not expired in this case at the time of search. Proviso to Section 143(2) relevant to assessment year under appeal provides *“provided that no notice under clause (ii) shall be served on the assessee after expiry of six months from the end of the financial year in which the return is furnished.”* In this case, original return of income was filed under section 139(1) on 07.11.2011. Therefore, the financial year in which the return is furnished would end on 31<sup>st</sup> March, 2012. Therefore, no notice under section 143(2) could be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished. In this case, such date would expire on 30<sup>th</sup> September, 2012. Therefore, on the date of search on 23.11.2012 no assessment was pending against the assessee and assessment had already completed under the Act. Since no incriminating material was found or recovered during the course of search so as to make addition of share application money therefore, the issue is covered in favour of the assessee by the judgment of the jurisdictional High

Court in the case of Kabul Chawla (supra) and Meeta Gutgutia (supra). Therefore, the invocation of Section 153A by the A.O. for assessment year under appeal was without any legal basis as there was no incriminating material found in respect of assessment year under appeal.

6.3. The Ld. D.R. however, relied upon the decisions of other High Courts. However, the same cannot be given precedence as against the decision of jurisdictional High Court. Thus, there was no justification by the A.O. to make addition of Rs.2 crores under section 153A of the I.T. Act. In view of the above discussion, we set aside the orders of the authorities below and delete the addition of Rs.2 crores.

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

Order pronounced in the open Court.

Sd/-  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Delhi, Dated 21<sup>st</sup> November, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

*//By Order//*

Asst. Registrar, ITAT Delhi Benches  
Delhi