

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

ITA.No.6249, 6250 & 6251/Del./2014  
Assessment Years 2005-06, 2006-07 & 2007-08

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| Shri Kanwaljeet Singh Toor,<br>House No.1026, Phase-X,<br>Mohali (Punjab) PANAAQPT2132C<br>(Appellant) | vs. | The DCIT, Central Circle-4<br>Jhandewalan Exim,<br>New Delhi.<br>(Respondent) |
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| For Assessee : | Shri M.R. Sharma, Advocate. |
| For Revenue :  | Shri Vinay Verma, CIT-D.R.  |

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| Date of Hearing :       | 08.11.2017 |
| Date of Pronouncement : | 21.11.2017 |

**ORDER**

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

All the appeals by the same assessee are directed against the common order of the Ld. CIT(A)-XXXIII, New Delhi, dated 14<sup>th</sup> July, 2014, for the A.Y. 2005-2006, 2006-2007 and 2007-2008.

2. We have heard the learned Representatives of both the parties and perused the material on record.

3. All the appeals of the assessee are time barred by 03 days. The assessee filed an application for condonation of delay and it is explained that appeal papers were signed by assessee on 29<sup>th</sup> October, 2014 and appeal fees was deposited on 05.11.2014. The

same appeals were handed over to the Counsel to file the same before the Tribunal who filed the appeals on 14.11.2014. In the process there is a delay of 03 days. Considering the explanation of assessee, we are of the view that nominal delay in filing the appeals shall have to be condoned. We are satisfied with the explanation of assessee that assessee was prevented by sufficient cause in not filing the appeals within the period of limitation. The delay in filing all the appeals are condoned.

4. Briefly the facts of the case are that search and seizure operation under section 132 of the I.T. Act was carried out at various business and residential premises of the Directors and important employees of the Pearl Group on 22.03.2010. This group, in the recent past, diversified into multifarious activities and apart from land sale and purchase, it has entered into the field of construction of integrated township, Group Housing, building commercial malls - cum- complexes, multiplexes, Education and hospitals, print and visual media, manufacture of spices etc. The residence of the assessee was also covered under section 132 of the I.T. Act. In response to the statutory notice under section 153A issued on 30<sup>th</sup>

December, 2010, assessee filed his return of income on 08<sup>th</sup> June, 2011. The A.O. issued statutory notices for completion of the assessments under section 153A of the I.T. Act.

5. In A.Y. 2005-2006, it was noticed that assessee has shown loan of Rs.8 lakhs received from M/s. Assurance Buildtech Ltd. In A.Y. 2006-2007, similarly, it was noticed that assessee has taken loan of Rs.12 lakhs from M/s. Assurance Buildtech Ltd., and Rs.11,53,077 from M/s. Shoveller Infracon Ltd., totaling to Rs.23,53,077/-. In A.Y. 2007-08, assessee had taken loan of Rs.73,60,000/- from M/s. Assurance Buildtech Ltd., Rs.49 lakhs from M/s. Shoveller Infracon Ltd., and Rs.69,20,000/- from M/s. P.P.Syntex (P) Ltd., totaling to Rs.1,91,80,000/-. Confirmations of the same loans were filed. The A.O. however, was not satisfied with the explanation of assessee and made all the above additions against the assessee under section 68 of the I.T. Act.

5.1. The assessee challenged all the three additions before the Ld. CIT(A) on merits. The assessee also challenged the order of the A.O. under section 153A of the I.T. Act because no addition could be made in the absence of any incriminating material found during

the course of search. The Ld. CIT(A) noted from the assessment order that it appears that there is no incriminating evidence found during the course of search relating to additions under section 68 of the I.T. Act. The Ld. CIT(A) followed the decision of the Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Bhatia in ITA.No.1626, 1632, 1998, 2006, 2010 and 2020 of 2010 dated 07.08.2012, that the A.O. has full power to assess total income under section 153A irrespective of incriminating evidence for each one assessment year for the entire period of search assessment. The Ld. CIT(A) accordingly, rejected the legal ground of the assessee. The Ld. CIT(A) also dismissed the appeals of assessee on merit.

6. The assessee in all the appeals has challenged the additions of Rs.8 lakhs, Rs.23,53,077 and addition of Rs.1,91,80,000 under section 68 of the I.T. Act. The assessee has also challenged the orders of the authorities below in making and confirming the above additions on account of unexplained cash credits in proceedings under section 153A of the I.T. Act, without any incriminating material or otherwise relating to these cash credits were found during the course of search.

7. The Learned Counsel for the Assessee submitted that for A.Y. 2005-2006, the assessee filed original return of income on 30<sup>th</sup> July, 2005, for A.Y. 2006-2007, original return was filed on 27<sup>th</sup> July, 2006 and for A.Y. 2007-2008 original return was filed on 31<sup>st</sup> July, 2007. He has therefore, submitted that on the date of search the assessments have got completed because no notice under section 143(2) have been issued to the assessee in all the assessment years under appeals. He has submitted that since no incriminating material was found during the course of search about the cash credits of which additions have been made in the assessment years under section 153A of the I.T. Act, therefore, no additions could be made in proceeding under section 153A of the I.T. Act. He has submitted that the issue is covered in favour of the assessee by the Judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573.

8. On the other hand, Ld. D.R. relied upon the orders of the authorities below. The Ld. D.R. submitted that Revenue has already made a request to the effect that in case the Tribunal comes to a conclusion that this addition cannot be made under section 153A,

then a direction under section 150(1) should be issued for taxing this amount under section 148 of the I.T. Act, 1961. Such point can be raised orally at the time of hearing if it goes to root of the matter.

9. 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 Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment.”*

10. Considering the facts of the case in the light of the above decision, it is clear that during the course of search, no incriminating material was found in respect of assessment years under appeals so as to make additions of unexplained cash credits under section 153A of the I.T. Act. The A.O. made additions of unexplained cash credits in all the assessment years under appeals without there being recovery of any incriminating material found during the course of search. All the original returns had already been filed prior to the

search and the last date of issue of notice under section 143(2) had already expired on the date of search. Therefore, on the date of search on 22<sup>nd</sup> March, 2010, no assessments were pending for assessment years under appeals. In the facts and circumstances of the case, it is clear that A.O. was not justified in invoking the provisions of Section 153A of the Act against the assessee for assessment years under appeals because no incriminating material qua assessment years under appeals were found during the course of search. It may also be noted here that Ld. CIT(A) in his findings has specifically mentioned on perusal of the assessment records that there is no incriminating evidence found during the course of search relating to the additions under section 68 of the I.T. Act. The issue is therefore, covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra). Same view is taken by Hon'ble Delhi High Court in the case of CIT vs. Meeta Gutgutia 395 ITR 526 following its earlier decision in the case of Kabul Chawla (supra). In view of the above, we set aside the orders of the authorities below and delete all the additions under section 68

of the I.T. Act in the proceedings under section 153A of the I.T. Act in all assessment years under appeals.

11. The Ld. D.R. further contended that in case appeals are decided against the Revenue by holding that this addition cannot be made under section 153A, then the direction under section 150(1) should be issued for taxing this amount under section 148 of the I.T. Act, 1961. We are afraid to accept this contention of the Ld. D.R. because it is the sole prerogative of the A.O. to initiate re-assessment proceedings after satisfying the conditions of Section 148 and recording the reasons for the same. The jurisdiction of the A.O. cannot be ushered-up in the present proceedings. Since the appeals have already been allowed in favour of the assessee, therefore, what remedy is available to the Revenue for proceeding further against the assessee cannot be raised in the present proceedings. The scope of the proceeding cannot be enlarged to give a different colour to proceed against the assessee. Once assessment orders have been set aside under section 153A of the I.T. Act and additions have been deleted, Revenue is at liberty to take any action as per Law, if so, advised in accordance with Law. Therefore, no direction is required under section 150(1) of the I.T. Act. The contention of Ld. D.R. is rejected.

12. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court

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

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

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

VBP/-

Copy to

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|----|----------------------------|
| 1. | The appellant              |
| 2. | The respondent             |
| 3. | CIT(A) concerned           |
| 4. | CIT concerned              |
| 5. | D.R. ITAT 'D' Bench, Delhi |
| 6. | Guard File.                |

// By Order //

Asst. Registrar : ITAT Delhi Benches :  
 Delhi.