

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

**BEFORE SHRI S.K. YADAV, JUDICIAL MEMBER, AND
SHRI B.P. JAIN, ACCOUNTANT MEMBER,**

**ITA Nos. 261 & 262/DEL/2015
[Assessment Years: 2003-04 & 2004-05]**

Dr. Roop
C/o Roop Netralaya
Shivaji Road, Meerut.

Vs.

The A.C.I.T
Central Circle
Meerut

PAN : ABPPR 3723 B

[Appellant]

[Respondent]

Date of Hearing : 25.10.2017

Date of Pronouncement : 18.12.2017

Revenue by : Smt. Paramita Tripathy, CIT-DR
Assessee by : Shri Raj Kumar Gupta, CA

ORDER

PER BENCH:-

Both the above appeals preferred by the assessee are directed against the common order dated 11.11.14 passed by the CIT(A), Meerut for A.Ys 2003-04 and 2004-05.

2. Briefly stated, the facts of the case are that an assessment order was passed u/s.153A/143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] on 28.12.07 in the case of the assessee. In the appeal filed by the assessee against the said order, Ld. CIT(A) Meerut vide his order dt.29.06.09 deleted both the additions which are under consideration in this appeal. The Revenue challenged the same before this Tribunal being ITA No.3794/D/2009 and the assessee also filed cross objections bearing CO No.365/D/2009. Both the matters were decided by the ITAT vide common order dated 01.07.11. The ITAT, vide Para-34 of its order remitted all legal issues challenging the validity of the notice u/s.153A to the file of the CIT (A) for deciding the same afresh with a direction that the assessee shall be at liberty to raise any other contentions before the Ld. CIT(A) regarding validity of assessment made u/s.153A of the Act as he is so advised. Further, vide Para-71 of the said ITAT order dt.01.07.11, the issues of additions for two gifts received from Smt. Laxmi Aggarwal Rs.4,00,000/- on 22.07.02 and Rs.3,50,000/- from Sh. Kesho Ram Gupta on 22.07.02, in the departments appeal, were also remitted to the file of the ld. CIT(A) to be decided de-novo after providing an opportunity of being heard to the assessee.

3. In compliance to the directions of the ITÂT, CIT (A) Meerut passed impugned order dated 11.11.14. The ld. CIT(A), confirmed both the additions of Rs.4,00,000/- & Rs.3,50,000/- and also dismissed all legal grounds taken up by the assessee including the challenge of validity of proceedings u/s.153A of the I.T. Act. The assessee, has filed the present appeal before ITAT against the said order of ld. CIT(A) dt.11.11.14 challenging the legality and validity of proceedings u/s.153A as well as challenging both the additions of Rs.4,00,000/- & Rs.3,50,000/- on merits also.

4. The assessee, during the course of hearing on 15.05.17, filed concise/consolidated/revised grounds of appeal, which reads as under:-

- i. *That under the facts and circumstances, this being an unabated year within the meaning of 2nd proviso to Sec. 153 A, both the additions under consideration being gift of Rs. 4 lacs from Smt. Laxmi Agarwal and Rs. 3.50 lacs from Sh. Kesho Ram Gupta, since, not emanating from any seized material, hence, outside the scope of examination and addition U/s. 153 A.*
- ii. *That under the facts and circumstances, the approval U/s. 153 D being mechanical, without application of mind and*

without giving an opportunity of hearing makes the impugned Asstt. Order invalid and unsustainable in law.

iii. That under the facts and circumstances, addition of Rs. 4 lacs for gift received from Smt. Laxmi Agarwal is un - sustainable in law as well as on merits.

iv. That under the facts and circumstances, addition of Rs. 3.50 lacs for gift received from Sh. Kesho Ram Gupta is un - sustainable in law as well as on merits.

5. The Ld. AR, while arguing Ground No.1, submitted that AY 2003-04 was an unabated AY. It has been submitted that in this case, search u/s.132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] took place on 27.10.05. The regular return of A.Y.2003-04 was filed on 20.10.03. The notice u/s.143 (2) for A.Y.2003-04, as the law stood at that point of time, could have been issued only upto 31.10.04, however no such notice was issued till that time and also that no proceedings were pending in respect of A.Y.2003-04 as on 27.10.05. The Ld. AR further submitted that in this case, the additions which have been made relate to only two gifts of Rs.4,00,000/- & Rs.3,50,000/- received from Smt. Laxmi Aggarwal and Sh. Kesho Ram Gupta respectively through bank accounts during the year and there is no incriminating material found in search in respect of these two gifts.

It has been contended that these gifts were noticed only on perusal of regular bank account of the assessee during the course of asstt. proceedings u/s153A. It has also been stated that these gifts were duly appearing in the regular balance sheet as on 31.03.03 as well as in the capital account. The Ld. AR further stated that since A.Y.2003-04 was an unabated AY and since no material or incriminating material was found in respect of these two gifts, therefore the issue of these gifts was altogether outside the scope of examination in AY u/s.153A. The Ld. AR placed reliance on the case of CIT VS. KABUL CHAWLA 380 ITR (DEL.) 573, Pr. CIT VS. MEETA GUTGUTIA 295 CTR (DEL.) 466 AND PR. CIT VS. RAM AVATAR VERMA 395 ITR 252 (DEL.), for the proposition that in the case of an unabated AY, the addition can be made only on the basis of any incriminating material found during search. The Ld. AR also placed reliance on the case of PR. CIT VS. WORLD WINDOW IMPEX INDIA (P) LTD. IN ITA NO.175/2016 decided by Hon'ble Delhi High Court vide order dt.09.03.16 for the proposition that even if the original return was processed u/s.143 (1) and not u/s.143 (3), the legal position as held in Kabul Chawla (Supra), remains unaltered. In view of these submissions, the Ld. AR argued that since both the additions in appeal do not emanate from any seized material found during the course of search and A.Y.2003-04 being an unabated AY, therefore,

both the additions should be deleted threshold on this legal ground itself.

6. The ld. DR, on the other side, stated that although no incriminating material relating to these two gifts for which addition has been made was found during search, however, as no assessment u/s.143 (3) took place for A.Y.2003-04 prior to the date of search and since the assessee could not satisfactorily explain the gifts with reference to sec.68, therefore the A.O. as well as CIT (A) were fully justified in making and confirming these additions. He also argued that these additions should not be deleted merely on technicalities. The Ld. DR also relied upon the findings of CIT (A).

7. We have heard the rival submissions and perused the relevant material on record. In this case, search u/s132 took place on assessee on 27.10.05. The regular return of A.Y.2003-04 was already filed on 20.10.03. The notice u/s.143 (2) for A.Y.2003-04 could have been issued on or upto 31.10.04. As claimed by the assessee, no proceedings were pending for A.Y.2003-04 as on the date of search i.e. on 27.10.05. The Ld. DR has not disputed this contention that no notice u/s.143 (2) was issued upto 30.10.04. He also did not dispute the

contention of the assessee that no proceedings for A.Y.2003-04 were pending as on the date of search i.e. on 27.10.05. In this case, the additions under dispute are in respect of two gifts of Rs.4,00,000/- & Rs.3,50,000/- received during the year from Smt. Laxmi Aggarwal and Sh. Kesho Ram Gupta respectively, on 22.07.02. No incriminating material was found and seized during search relating to these two gifts. The credits in the bank a/c in respect of these two gifts were noticed by the A.O. during the course of impugned proceedings u/s.153A, while examining the regular bank account of the assessee. The perusal of copies of various panchnamas executed during the course of search as placed before us vide Pgs.1-14 of the paperbook, reveals that cash and jewellery were found during search. From the copy of capital account for AY 2003-04, it is apparent that gifts of Rs.7,50,000/- appears in the capital account being received in this year through cheques. Thus, all these facts clearly show that firstly, it was an unabated AY and secondly, that no incriminating material was found and seized during search for that AY. The contention of the Ld. Counsel, under these facts, is that, in case of unabated assessments u/s.153A, the addition can be made only on the basis of incriminating material. In CIT Vs. Kabul Chawla 380 ITR (Del.) 573, it has been held that in the case of unabated asstt. u/s.153A, in the absence of

incriminating material being unearthed during search, no addition could have been made. Again, Hon'ble Delhi High Court in the case of Meeta Gutgutia (supra), vide order dt.25.05.17, confirmed the findings as given in the case of Kabul Chawla after taking into consideration other cases on the similar issue.

8. In substance, in this case, the addition has been made u/s.153A for two gifts received during the year, however, since, it is an unabated AY and no incriminating document was found and seized during the course of search for that AY, therefore following the ratio of Kabul Chawla (Supra), we are inclined to hold that the issue of these two gifts was outside the scope of examination in the impugned proceedings u/s.153A. Now reverting to the contention of Ld. DR that no assessment prior to search for A.Y.2003-04 was completed u/s.143 (3), therefore the issue of these gifts can be examined in proceedings u/s.153A is without any substance. Hon'ble Delhi High Court in the case of WORLD WINDOW IMPEX INDIA (P) LTD. (Supra) has clearly held that the ratio as laid down in this regard in the case of Kabul Chawla (Supra) also covers the situation where, prior to search, no assessment u/s.143 (3) was passed for the year under consideration. In result this ground of appeal stands allowed.

9. Since we have allowed the ground no1, other grounds do not require any adjudication.

10. In result the appeal of the assessee stands allowed.

A.Y.2004-05

11. The facts and circumstances as well as the background of appeal of this year are also similar to that of A.Y.2003-04. The concise/consolidated/revised grounds of appeal as taken by the assessee are also similar which are as under:-

- i. *That under the facts and circumstances, this being an unabated year within the meaning of 2nd proviso to Sec. 153 A, both the additions under consideration being gift of Rs. 9 lacs from Sh. Anand Jain, Rs. 10 lacs from Sh. Balbir Singh and Rs. 10 lacs from Sh. Kirodi Mal, since, not emanating from any seized material, hence, outside the scope of examination and addition U/s. 153 A.*
- ii. *That under the facts and circumstances, the approval U/s. 153 D being mechanical, without application of mind and without giving an opportunity of hearing makes the impugned Asstt. Order invalid and unsustainable in law.*

- iii. *That under the facts and circumstances, addition of Rs. 9 lacs for gift received from Sh. Anand Jain is unsustainable in law as well as on merits.*
- iv. *That under the facts and circumstances, addition of Rs. 10 lacs for gift received from Sh. Balbir Singh is unsustainable in law as well as on merits.*

- v. *That under the facts and circumstances, addition of Rs. 10 lacs for gift received from Sh. Kirodi Mal is un - sustainable in law as well as on merits.”*

12. In ground no. 1, the Ld. AR has contended that the facts and circumstances of this year are similar to that of A.Y.2003-04. It has been argued that this year i.e. A.Y.2004-05 is also an unabated AY wherein no incriminating material has been found and seized. The additions are in respect of three gifts of Rs.9,00,000/-, Rs.10,00,000/- & Rs.10,00,000/- received during the year from Sh. Anand Jain, Sh. Balbir Singh and Sh. Kirori Mal respectively.

13. In the present case, search u/s.132 took place on 27.10.05. The regular return was filed in August 2004 and the notice u/s.143 (2) could have been issued on or upto 31.08.05. It is submitted that no notice u/s.143 (2) was issued till that time and no proceedings were

pending for A.Y.2004-05 as on the date of search i.e. 27.10.05. It is further submitted that no incriminating material was found and seized for these three gifts totaling Rs.29,00,000/- during search and the said gifts were received through cheques. Thus it has been contended that it is also an unabated assessment and since the additions for the gifts is not emanating from any seized material found during the course of search therefore, the issue of examination of these three gifts with reference to sec.68 of the Act or otherwise is outside the scope of assessment u/s 153A and consequently, the addition of Rs.29,00,000/- needs to be deleted for this sole reason apart from other contentions made on merits. In support of his contention, the Ld. AR has strongly relied upon his same submissions and on the same authorities as relied upon for A.Y.2003-04.

14. The Ld. AR, on the other hand, also made the same submissions as made for A.Y.2003-04. It has been, therefore, argued that the A.O. was justified in considering these issues in assessment proceedings u/s.153A and the CIT(A) was correct in confirming this action of the A.O.

15. The same issue under similar facts has been examined in this order for AY 2003-04. We find that, as per the facts given above, A.Y.2004-05 is also an unabated AY. We also find that no incriminating material was found and seized during the course of search for this AY. Hence, relying upon the authorities as stated in order relating to A.Y.2003-04, we are inclined to hold that the issue of these gifts was outside the scope of examination in assessment u/s 153A. We hold that the A.O. was not justified in making addition for these gifts in assessment framed u/s.153A. Thus, the additions stand deleted and this ground stands allowed.

16. Since we have allowed the ground no. 1, other grounds do not require any adjudication.

17. As a result the appeal of the assessee stands allowed.

18. To sum up, both the appeals of the assessee are allowed.

The order is pronounced in the open court on 18.12.2017.

Sd/-

**[S.K. YADAV]
JUDICIAL MEMBER**

Sd/-

**[B.P. JAIN]
ACCOUNTANT MEMBER**

Dated: 18th December, 2017

VL/

Copy forwarded to:

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

Asst. Registrar
New Delhi