

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

ITA No. 993/CHD/2017
Assessment Year : 2006-07

The DCIT,
Central Circle-II,
Chandigarh

Vs.

Ms. AKJ Portfolio Pvt Ltd.,
H.No.1133, Sector 22-B,
Chandigarh

PAN No. AAFCA3127N

(Appellant)

(Respondent)

Appellant by : Shri Gulsha Raj, CIT-DR
Respondent by : Sh. Ashish Chadha

Date of Hearing : 24.04.2018
Date of Pronouncement: 24.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 31/3/2017 of the Commissioner of Income Tax [hereinafter referred to as CIT(A)]-3, Gurgaon.

2. Though number of grounds have been taken by the Department in its appeal, but the Revenue is mainly aggrieved by the action of the CIT(A) in deleting the addition made by the Assessing officer in the assessment proceedings carried out u/s 153A of the Income-tax Act, 1961 (in short 'the Act') on the ground that no incriminating material was found during search action carried out at the premises of the assessee on 26.5.2011 u/s 132 of the Act.

3. At the outset, Ld. Counsel for the assessee has submitted that the issue raised in this appeal of the Department is covered in favour of the assessee by numerous decisions of the High Courts. He, in this respect has brought our attention to the copy of the 'Panchnama' to say that no incriminating material warranting any addition was found during the search action.

On the last date of hearing, the Ld. DR was directed to confirm from the Assessing officer as to whether any incriminating material was found during search action, to which the Ld. DR has relied upon a letter dated 29.3.2018, which has been received from the Assessing officer, wherein, it has been confirmed that the assessment u/s 153A of the Act in this case is not based on any incriminating documents found during the survey. The Ld. Counsel for the assessee has further invited our attention to the impugned order of the CIT(A) and has stated that the Ld. CIT(A) had deleted the addition so made by the Assessing officer observing that pursuant to the filing of the return by the assessee, the original assessment proceedings already stood concluded on the date of search and that no assessment / re-assessment was pending on the date of search. The Ld. CIT(A) has relied upon the decision of the Coordinate Bench of the Tribunal in the case of 'M/s Mala Builders Pvt Ltd Vs. ACIT' ITA Nos. 433 to 437/Chd/2014, wherein the Tribunal has further relied upon the decision of the Hon'ble Bombay High Court in the case of 'CIT Vs. Murli Agro Products Pvt Ltd', (2014) 49 taxman.com 172 (Bom.), ITA No.36 of 2009 and in the case of 'CIT Vs. Continental Warehousing Corporation' ITA No. 523 of 2013 reported in (2015)

279 CTR 0389 (Bombay) and on the case of Hon'ble Delhi High Court in the case of 'CIT Vs. Kabul Chawla' 234 Taxman 300 (Delhi) wherein the Hon'ble High Courts have been unanimous to hold that in the absence of any incriminating material found during the search action, when there was no pending assessment which can be said to have abated on the date of search, the additions cannot be made. When Ld. DR was confronted to the above findings made by the Ld. CIT(A), the Ld. DR has been fair enough to admit that no incriminating material was found during the search action and that the original assessment proceedings stood completed on the date of search

4. The issue, thus, is squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of 'CIT Vs. Kabul Chawla' [2016] 380 ITR 573 (Del) and further in the case of 'Principal CIT Vs. Meeta Gutgutia' [2017] 395 ITR 506, Hon'ble Bombay High Court in the case of 'CIT Vs. Continental Warehousing Corporation' [2015] 374 ITR 645 (Bom.), Hon'ble Calcutta High Court in the case of PCIT Vs. Salasor Stock Broking Ltd 2016 (8) TMI 1131 and the decision of the Hon'ble Delhi High Court in the case of 'Kabul Chawla' (supra) has also followed by the Hon'ble Gujarat High Court in the case of case of 'PCIT Vs. RSA Digi Prints' 2017 (9) TMI 530. The Ld. Counsel has also referred to various decisions of the coordinate Benches of the Tribunal on this issue.

5. Respectfully following the decisions of the higher courts, we do not find any infirmity in the order of the CIT(A) in holding that in

the case of concluded assessments, in the absence of any incriminating material found during the search action, the impugned additions were not warranted.

The appeal of the Revenue is, therefore, dismissed.

Order pronounced in the Open Court

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Dated : 24.04.2018
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*