

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND  
MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.1191/Chd/2017**  
Assessment Year: 2007-08

The DCIT  
Central Circle-II  
Chandigarh

Vs.

Sh. R.K. Garg,  
SCO 49-50, Sector-26  
Chandigarh

PAN No. ABYPG9179M

(Appellant)

(Respondent)

Assessee By : Sh. Ashwani Kumar

Revenue By : Sh. Ashish Abrol

Date of hearing : 01/02/2018

Date of Pronouncement : 01/05/2018

**ORDER**

**PER ANNAPURNA GUPTA, A.M.**

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-3, Gurgaon dt. 18/05/2017.

2. In the present appeal Revenue has raised the following grounds:

*i) "Whether on the facts and circumstances of the case the CIT(A) was right in concluding that there was a difference in scope of proceeding under section 153A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment?"*

*ii) Whether on the facts and circumstances of the case the CIT(A) was right in holding that no addition can be made u/s 153A in respect of completed assessment of no incriminating material is found during search?"*

*iii) Whether there is any restriction on the powers of the Assessing officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se?"*

*iv) Whether on the facts and circumstance of the case the CIT(A) was correct in interpreting section 153A which started with a non-obstinate clause stating therein that the operation of section 139, 147, 148, 149, 151 & 153 was deposed. Meaning thereby that in search cases the Assessing officer is duty bound to take up the assessment u/s 153A and that the above mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if antescaped income or under-assessed income undisclosed*

income has to be assessed for such completed assessment, then it has to be done in the proceeding u/s 153A in search cases?

v) Whether on the facts and circumstanced of the case the CIT(A) was right to bring in special procedure of block assessment as laid in chapter XIV B into the new procedure of search assessment u/s 153A introduced by Finance Act, 2003, w.e.f. 1.06.2003, when chapter XIV B was scrapped to reduced litigation and dispute regarding treatment of a particular income as undisclosed and whether it is relatable to material found during search (Finance bill 2003 under head "Assessment in search cases- abolition of the special procedure in Chapter XIV-B and introduction of new provisions")

vi) Whether on the facts and circumstances of the case the CIT (A) was right in ignoring the basic difference in search assessment u/s 153A and chapter XIVB being that in section 153A the "total income" has to be assessed or reassessed in six separate A.Ys., as opposed to assessing the "undisclosed income" in the scrapped Chapter XIV B for block period in a single assessment?

vii) whether on the facts and circumstanced of the case the CIT(A) was right in following Delhi High Court decision in the case of CIT vs. Kabul Chawla (61 taxman.com 412) when the Hon'ble HC itself admits in para 37 (iv) the "Although Section 153A does not say that additions should strictly made on the basis of evidence found in course of search..... " there by interpreting the statute in the manner which were never worded or intended by the legislature?

viii) Whether on the facts and circumstanced of the case the CIT(A) has erred in ignoring the Principle of Strict interpretation of statues when the words used on the statue i.e. sec 153(1)(b) of the IT Act, 1961 are Assess or Reassess the "Total Income"

ix) Whether on the facts and circumstances of the case the CIT(A) right in not following the Hon'ble SC judgment on interpretation of statue in the case of Smt. Tarulata Shyam & Others vs. CIT (108ITR 345), Keshavji Ravji And Co vd. CIT (183 ITR 1). Padamsundara Rao (Deed.) & others vs State of Tamil Nadu 255 ITR 147, Prakash Nath Khanna & Others vs CIT 266 ITR 1, Institute of Chartered Accountants of India vs. Price water House 93 Taxman 588?

x) Whether on the facts and circumstances of the case the CIT(A) is right in not following the Hon'ble HC judgment on the issue of additions in search case u/s 153A in the case of CIT vs. Anil Kumar Bhatia 352 ITR 493 (Delhi HC), Madugula Venu vs. DIT 49 Taxman.com 200 (Delhi HC), CIT vs. Raj Kumar Arora 367 ITR 517 (Allahabad HC), canara Housing Developmen Company vs. DCIT 49 taxman.com98 (Karnataka HC), Filatex India Ltd. vs. CIT 229 Taxman 555 (Delhi HC) Sunny Jacob Jewellers and wedding centre, 362 ITR 664 (Kerala HC) and CIT vs. Continental Warehousing Corporation 64 taxman.com 34(SC)?"

xi) Whether the Hon'ble CIT(A) was justified in following the decision of the Hon'ble Delhi High Court dated 28.05.2015 in the case of CIT Vs Kabul Chawla, when the said decision was distinguished in the Revenue favoring judgment of the Hon'ble Delhi High Court dated 27.10.2016 in the case of Smt. Dayawanti through Smt. Sunita Gupta (UH) Vs CIT."

3. The Revenue in the present appeal is aggrieved by the action of the Ld. CIT(A) in deleting the addition made by the AO in assessment proceeding conducted pursuant to search carried out at the premises of the assessee, for the reasons that no incriminating material was found during the course of search.

6. Briefly stated a search and seizure operation, under section 132 of the Income Tax Act, 1961 was carried out on the assessee on 04/10/2012. The assessee had originally filed return under section 139(1) of the Act showing total income of Rs. 64,64,945/- under the head Salary and Income from other sources. Pursuant to search and in response to notice under section 153A, the assessee filed his return of income declaring the same income as filed in the original return of income. Thereafter assessment was framed under section 153A, making addition under section 2(24)(iv) of the Act on account of benefit / perquisite obtained by the assessee from a company, M/s SAB Industries, in which the assessee was a Director having substantial interest, in the form of excess payment of sale consideration received by him on account of sale of Bentley Car (Luxurious Vehicle) to the company, which was computed at Rs. 10,05,000. Further an addition of Rs. 2,25,622/- was also made on account of interest received on Income Tax Refund.

7. The Ld. CIT(A) found that no incriminating material or evidence was found and seized during the course of search nor were the additions made emanating out of search proceeding. He further found that at the time of search proceeding, assessment in the impugned year was not pending and had therefore not abated. Therefore, the Ld. CIT(A) held that the impugned addition could not have been made in the facts of the present case in the order passed under section 153A of the Income Tax Act, 1961, relying upon the decision of the Coordinate Bench of the ITAT in the case of M/s Mala Builders Pvt. Ltd. Vs. ACIT in ITA No. 433 to 437/Chd/2014, wherein the Tribunal had further relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs. M/s Murli Agro Products Pvt. Ltd. in ITA No. 36 of 2009 and in the case of CIT Vs. Kabul Chawla, 234 Taxman 300 (Del) in which the Hon'ble High Courts had held that in the absence of any incriminating material found during the course of search action, where there was no pending assessment which could be said to have been abated on the date of search, addition could not have been made. Ld. CIT(A) therefore allowed the assessee's appeal, deleting the additions made by the AO.

8. Before us the Ld. Counsel for the assessee pointed out that the impugned case was squarely covered by the decision of Tribunal in the case of DCIT Vs. M/s SCM Fintrade Pvt. Ltd. in ITA No. 981 and 982/Chd/2017 dt. 05/01/2018

decided on identical set of facts wherein addition made in assessment framed pursuant to search u/s 153A was deleted by the CIT(A) for the reason that there was no incriminating material found during search and the assessments had not abated, which order was upheld by the ITAT. Besides Ld. Counsel for the assessee stated that the Ld. CIT(A) had rightly deleted the addition made following the order of the Coordinate Bench in the case of M/s Mala Builder Pvt. Ltd. (supra) and the Hon'ble High Court in the case of Kabut Chawla (supra), since addition in the impugned case were not based on any incriminating material found during the search and seizure operation.

9. The Ld. DR, when confronted with the findings of the Ld. CIT(A), fairly admitted that no incriminating material was found during the search action and the original assessment proceeding stood completed on the date of search. The Ld. DR also fairly conceded that the present case was squarely covered by the decision of the ITAT Chandigarh Bench in the case of M/s SCM Fintrade Pvt. Ltd. (supra).

10. We have heard the contention of both the parties. We do not find any merit in the present appeal filed by the Revenue. The fact that search was carried out on the assessee on 04/10/2012 and at the time of search action no assessment or reassessment proceeding was pending is undisputed. It is also undisputed that no incriminating document or record or any other evidence was found or seized during the course of search proceeding which resulted in any addition in the case of the assessee. Therefore the Ld. CIT(A), we hold, has rightly deleted the addition made following various judicial pronouncements in this regard. We have also gone through the order of the ITAT in the case of DCIT Vs. SCM Fintrade Pvt. Ltd. (supra), and find that the facts and issue are identical with that in the present case, as admitted by the both the parties before us. In the said case also the addition made in assessment framed pursuant to search was deleted by the CIT(A), whose order was upheld by the ITAT, for the reason that no incriminating material was found during search and the assessments had not abated. We find that even the grounds raised by the Revenue in the said case was identical to that in the present case. The findings of the ITAT in the case of DCIT Vs. SCM Fintrade Pvt. Ltd. (supra) at para 5 of its order, therefore squarely apply in the present also, which read as under

“ 5. We have heard the contentions of both the parties. We do not find any merit in the present appeal filed by the Revenue. The facts vis-a-vis both the appeal that search action was carried out on the assessee on 4.10.2012 and at the time of search action no assessment or reassessment proceedings were pending is undisputed. It is also not disputed that no incriminating documents or record or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the assessee. Therefore, the Ld.CIT(Appeals), we hold, has rightly deleted the addition made following various judicial pronouncements in this regard. Further we do not find any merit in the contention of the Ld. DR that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has been distinguished in the case of Smt.Dayawanti Vs. CIT in ITA No.357/2015 & Others dated 27.10.2016, since we find that even this aspect has been dealt with by the ITAT Chandigarh Bench in the case of M/s Bharatnet Technology Ltd. (supra) in which it was observed that the case of Smt.Dayawanti (supra) was subsequently discussed by the Hon'ble Delhi High Court in the case of Principal CIT Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals in ITA No.306/2017 & Other decision vide order dated 25.5.2017, wherein it was held that in the case of Smt.Dayawanti (supra) incriminating material was found during search action, however, in the case of Principal CIT Vs. Meeta Gutgutia Prop. M/s Ferns 'N' Petals no incriminating material was found during search action and hence addition made was not justified. In view of the above, we do not find any infirmity in the order of the Ld.CIT(Appeals) while deleting the impugned additions in both the appeals filed by the Revenue.”

Applying the aforesaid decision to the present case, we uphold the order of the Ld. CIT(A) deleting the addition made in the present case in the absence of any incriminating material found during the course of search, and dismiss all the grounds raised by the Revenue.

11. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court.

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**  
Dated : 01/05/2018  
AG

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR