

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

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

ITA No.990/Chd/2017

(Assessment Year : 2010-11)

The D.C.I.T.,
Central Circle-II,
Chandigarh.

Vs.

M/s DHG Marketing Pvt. Ltd.,
SCO 49-50, Sector 26,
Chandigarh.

(Appellant)

PAN: AADCD1364Q
(Respondent)

Appellant by : Shri Gulshan Raj, CIT DR

Respondent by : Shri Ashwani Kumar, CA
& Ms. Kanika Gupta, CA

Date of hearing : 02.05.2018

Date of Pronouncement : 09.05.2018

ORDER

PER ANNAPURNA GUPTA, A.M.:

The present appeal has been preferred by the Revenue against the order passed by learned Commissioner of Income Tax(Appeals)-3, Gurgaon dated 31.3.2017, relating to assessment year 2010-11 deleting the addition made by the AO pursuant to search conducted on the assessee and assessment framed u/s 153A of the Act, for the reason that no incriminating material was found during search.

2. Brief facts are that a search and seizure operation u/s 132 of the Income Tax Act, 1961(in short 'the Act'), was carried out on the assessee. Thereafter statutory notice u/s 153A of the Act was issued to the assessee, in response to which the assessee filed its return of income declaring Nil income. Subsequently notices u/s 143(2) and 142(1)

alongwith questionnaire were issued to the assessee, in response to which due reply was filed by the assessee. After considering the replies filed by the assessee, addition u/s 68 of the Act, on account of unexplained credits relating to share capital received by the assessee during the impugned year was made amounting to Rs.4.15 crores.

3. The matter was carried in appeal before the Ld. CIT(Appeals), where the assessee contended that the impugned addition could not have been made in the present case in the absence of any incriminating material found during the course of search and further since the assessment in the present case had not abated. The Ld.CIT(Appeals) agreed with the contentions of the assessee, finding that the assessment having not abated in the present case and no incriminating material having been found during the course of search he deleted the addition made following various decisions of the High Court and the ITAT in this regard.

4. Aggrieved by the same, the revenue has come in appeal before as raising 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 any escaped income or underassessed 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.Vs., 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 (108 ITR 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 (L/H) Vs CIT."

4. During the course of hearing before us Ld.DR filed written submission on the issue dated 01/05/2018 stating therein that the CIT(Appeals) had erred in deleting the addition merely for the reason that no incriminating material was found during the course of search since the CIT(Appeals) had failed to verify the contention of the assessee. It was contended by the Ld.DR in the submissions that it was the duty of the CIT(Appeals) to bring on record the above said clinching facts. The contents of the written submission as filed before us is reproduced here under:

*"The search was conducted on M/s Steel Strips Group of cases on 04.10.2012. An addition of Rs.20 lacs was made by the AO on account of unexplained share application money u/s 68 of the Act. **The case law M/s Mala Builders Pvt Ltd vs ACIT ITA No.433 to 437/Chad/2017** relied upon by the CIT(A) is on different footings i.e. related to section 24(b) of the Act. Moreover, the CIT(A) has failed to verify the contention of the Assessee that no incriminating documents have been found and seized during search. It was his duty to bring on record the above said clinching facts.*

2. In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to validity of proceedings u/s 153A:

1. E.N. Gopakumar Vs CIT [(2016) 75 taxmann.com 215 (Kerala)]! (Copy Enclosed)

where Hon'ble Kerala High Court held that assessment proceedings generated by issuance of a notice under section 153A(1)(a) can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 on basis of which notice was issued under section 153A(1)(a). The above order has been passed after considering cases of (i) CIT v. Kabul Chawla 120161 380 ITR 573/[2015J 234 Taxman 300/61 taxmann.com 412 (Delhi) (para 4),

(ii) CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd. [2015] 374

ITR 645/232 Taxman 270/58 taxmann.com 78 (Bom.) (para 4),

(iii) Principal CIT v. Kurele Paper Mills (P.) Ltd. [2016] 380 ITR 571 (Delhi) (para 4),

(iv) CIT v. Lancy Constructions [2016] 383 ITR 168/237 Taxman 728/66 taxmann.com 264 (Kar.) (para 4),

(v) CIT v. ST. Francies Clay Decor Tiles [2016] 240 Taxman 168/70 taxmann.com 234 (Ker.) (para 5) and

(vi) CIT v. Promy Kuriakose [2016] 386 ITR 597 (Ker.) para 5).

CIT Vs Raj Kumar Arora r2014] 52 taxmann.com 172 (Allahabad)/r2014l 367 ITR 517 (Allahabad)

where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment

3. CIT Vs Kesarwani Zarda Bhandar Sahson Alld. fITA No. 270 of 2014] (Allahabad)

where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment

4. CIT Vs St. Francis Clay Decor Tiles (385 ITR 624) (Copy Enclosed)

where Hon'ble Delhi Kerala Court held that notice issued under section 153A -return must be filed even if no incriminating documents discovered during search

5. Smt Davawanti Vs CIT T20161 75 taxmann.com 308 (Delhi)/r20171 245 Taxman 293 (Delhi)/f20171 390 ITR 496 (Delhi)/[2016l 290 CTR 361 (Delhi) (Though Staved by the Apex Court)

where Hon'ble Delhi High Court held that Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as

statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified

6. CIT Vs Anil Kumar Bhatia (24 taxmann.com 98. 211 Taxman 453, 352 ITR 493) (Copy Enclosed)

where Hon'ble Delhi High Court held that jurisdiction of AO under 153A is to .assess total income for the year and not restricted to seized material. Post search reassessment in respect of all 6 years can be made even if original returns are already processed u/s 143(1)(a) - Assessing Officer has power u/s 153A to make assessment for all six years and compute total income of assessee, including undisclosed income, notwithstanding that returns for these years have already been processed u/s 143(1)(a). Even if assessment order had already been passed in respect of all or any of those six assessment years, either under section 143(1)(a) or section 143(3) prior to initiation of search/requisition, still Assessing Officer is empowered to reopen those proceedings under section 153A without any fetters and reassess total income taking note of undisclosed income, if any, unearthed during search.

7. Filatex India Ltd Vs CIT (49 taxmann.com 465) (Copy Enclosed)

where Hon'ble Delhi High Court held that during assessment under section 153A, additions need not be restricted or limited to incriminating material, found, during course of search.”

5. Thereafter Ld.DR placed reliance on a number of decisions of the High Court stating that even in the absence of any incriminating material found during the course of search addition u/s 153A could be made in the case of completed assessment also. At this juncture the Ld.DR was asked to place on record what incriminating material was found during the course of search. In response Ld.DR filed

a letter of the Deputy Commissioner of income tax, Chandigarh, the Assessing Officer in the present case, the contents of which are reproduced here under:

**GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT**

*Office of the Deputy Commissioner of Income Tax,
Central Circle-II, - Room No. G02, C.R Building,*

Sector 17-E, Chandigarh

E-Mail-chandigarh.dcit.cen2@incometax.gov.in
No. DCIT/CC-II/CHD/2018-19/75

Phone:0172-2701548
Dated 05.04.2018

To

The Income Tax officer(Hq)
O/o Commissioner of Income Tax (DR)
Chandigarh

Sir,

Subject: Appeals in the case of M/s DHG Marketing Pvt. Ltd., SCO 49-50, Sec-26, Chandigarh-A.Y. 2010-11- Reg

Kindly refer to your office letter no. CIT-DR/ITAT-02/2017-18/1578-1579 dated 08.03.2018.

2. *Brief facts of the case are that pursuant to search & seizure operation u/s 132 of the I.T. Act, 1961 carried out on the assessee on 04.10.2012, the assessment was completed u/s 153A(l)(b) r.w.s. 143(3) of the I.T. Act, 1961 vide assessment order dated 23.03.2015 at an income of Rs.4,15,00,000/- against nil returned income. As per the assessment order, enquiries revealed that the companies from whom money was received by the assessee existed only on paper and were simply entry providers. These companies had minimal or negligible returned income. The shareholders did not have any business of their own. All credits appearing in their bank accounts originated from other accounts..*

3. *Further, as per the assessment order the assessment is not based on any incriminating document found during search.*

Yours faithfully,
Sd/-
(Bandana Diwedi)"

6. Ld.DR referring to the above fairly conceded that no incriminating material was found during the course of search. Ld. counsel for the assessee on the other hand supported the order of the CIT(appeal). Ld counsel for the assessee further relied on the order of the ITAT Chandigarh

bench in the case of DCIT vs M/s SCM Fintrade private limited in ITA No. 981 & 982/Chandigarh/2017 dated 05.01.18 and stated that the issue in the said case was identical to that in the present case as also the grounds raised by the revenue. Ld. counsel for the assessee drew our attention to the findings of the ITAT in the said case 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-à-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 re-assessment 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 inn 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.”

7. Ld. Counsel for the assessee stated that the present case was covered by the aforesaid decision.

8. We have heard the contentions of both the parties. We do not find merit in the present appeal filed by the Revenue. The fact that a search was conducted on the assessee on 04-10-12 and the assessment in the present case, pertaining to assessment year 10-11 was not pending on the said date and thus had not abated, is not disputed. It is also an admitted fact, as noted above by the Assessing Officer of the assessee, that no incriminating material was found during the course of search. In the backdrop of such facts the decision of the Hon'ble Delhi High Court in the case of, Kabul Chawla(supra) has been rightly followed by the Ld.CIT (appeal), holding that no addition could be made in such circumstances. Therefore the Ld. CIT(appeal), we hold, has rightly deleted the addition made in the present case following various judicial pronouncements in this regard. Vis a vis the ground raised by the revenue that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla has been distinguished in the case of Dayawanti vs CIT in ITA No. 357/2015 and others dated 27/10/2016, we find that this aspect has being dealt with by the ITAT in the case of M/s SCM Fintrade Private Limited (supra) wherein it has been held that the case of Dayawanti (Supra) was subsequently discussed by the Hon'ble Delhi High Court in the case of Pr. CIT vs Meeta Gutgutia, proprietor, M/s Ferns & Petals in ITA No. 306/2017 and

others, vide order dated 25/05/2017, wherein it was held that in the case of Dayawanti(supra), incriminating material was found during search action while in the case of Pr. CIT vs Meeta Gutgutia(supra) no incriminating material was found during search action and addition was not justified in view of the above. In view of the above we do not find any infirmity in the order of the Ld. CIT(appeal) deleting the impugned addition.

9. In the result the appeal filed by the revenue is dismissed

Order pronounced in the open court.

Sd/-

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 9th May, 2018

Rati

Copy to:

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

Assistant Registrar,
ITAT, Chandigarh