

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.1796/Del./2015
Assessment Year 2007-2008

The ACIT, Central Circle-4, (Erstwhile CC-25, New Delhi), Room No.331, ARA Centre, Jhandewalan Extn., New Delhi.	VS	Shri Ashok Kumar Singh, C-6 & 7/6529, Vasant Kunj, New Delhi – 110 070. PAN AAXPS1360E
(Appellant)		(Respondent)

For Revenue :	Shri Ravi Kant Gupta, Sr. DR
For Assessee :	Shri Gautam Jain, Advocate Shri Lalit Mohan, C.A.

Date of Hearing :	23.05.2018
Date of Pronouncement :	01.06.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-23, New Delhi, dated 31.01.2015, for the A.Y. 2007-2008, challenging the deletion of addition of Rs.50 lakhs on account of unsecured loans/credits under section 68 of the I.T. Act, 1961.

2. In this case, search and seizure operation under section 132 were carried-out in the case of assessee on 18.10.2011. The A.O. issued notice under section 153A of the I.T. Act. In response thereof, assessee filed return of income declaring income of Rs.5,05,320/-. The A.O. noted that assessee has received unsecured loan of Rs.50 lakhs from Shri Arpit Agarwal. The A.O. found that assessee failed to prove the genuineness and creditworthiness of the unsecured loan and accordingly, made addition of Rs.50 lakhs under section 68 of the I.T. Act.

3. The assessee challenged the above addition before Ld. CIT(A) and it was submitted that no addition could be made because no incriminating material was found or detected during the course of search *qua* the above addition. The assessee also challenged the addition on merit explaining that assessee proved genuineness of the loan in the matter and accordingly, addition may be deleted. It was also noted that there is no evidence to indicate any fact to the contrary nor was any such

evidence found during the course of search. Thus, the conclusion raised by the Revenue in rejecting the loan transaction as not genuine is without any basis. The addition was accordingly deleted. However, the issue of legality of the order under section 153A was not decided because the addition on merit have already been deleted. Learned Counsel for the Assessee, submitted that since no incriminating material have been recovered during the course of search and the original assessment stood completed on the date of the search, therefore, no addition could be made under section 153A of the I.T. Act. PB-1 is acknowledgment of filing of original return of income on 30.07.2007. He has, therefore, submitted that the issue is covered by the Judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 in which it was held as under :

“Completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed

during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment”

3.1. He has also relied upon the decision of the Hon’ble Delhi High Court in the case of Pr. CIT vs. Meeta Gutgutia 395 ITR 526 in which it was held as under :

“69. What weighed with the Court in the above decision was the “habitual concealing of income and indulging in clandestine operations” and that a person indulging in such activities “can hardly be accepted to maintain meticulous books or records for long.” These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

*70. The above distinguishing factors in **Dayawanti Gupta** (supra), therefore, do not detract from the settled legal position in **Kabul Chawla** (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.*

71. *For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.*

Conclusion

72. *To conclude :*

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153 A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.”

4. The Ld. D.R. did not dispute the above fact.
5. Considering the above, we are of the view that since no incriminating material was recovered during the course of search *qua* the above addition and that original assessment stood completed on the date of search, therefore, no addition could be made against the assessee in assessment order under section 153A of the I.T. Act. The Departmental appeal is liable

to be dismissed. In this view of the matter, there is no need to decide the addition on merit. Departmental appeal fails and is dismissed.

6. In the result, appeal of the Department is dismissed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st June, 2018

VBP/-

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
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// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.