

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6626/Del./2016
(ASSESSMENT YEAR : 2009-10)**

Smt. Harneet Kaur,
D – 97, Defence Colony,
New Delhi – 110 024.

vs. ACIT, Central Circle 3,
New Delhi.

(PAN : AEHPK0052M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Ragni Handa, Advocate
Shri Aakash Meena, Advocate
REVENUE BY : Smt. Parmita Bishwas, CIT DR

Date of Hearing : 31.01.2019

Date of Order : 25.02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Smt. Harneet Kaur (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 12.06.2015 passed by the Commissioner of Income-tax (Appeals)-23, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

“1. The order of the Ld. Commissioner of Income Tax (Appeals), New Delhi, dated 12.06.2015 is bad in law and in facts.

2. That on facts and in law, the Ld. CIT(A) has erred in not holding the assessment made under section 153A read with section 143(3) of the Act is bad in law and void ab initio.

2.1 That on facts and in law, and on a true and correct interpretation of section 153A of the Act, where admittedly there was no incriminating material found during the course of search u/s 132(1) of the Act, conducted on 14.03.2012, assessment order passed under section 153A/143(3) of the Act is bad in law and void ab initio.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the Ld. AO to examine the taxability of the expenses incurred on credit cards for Rs.10,27,552/- as perquisite in the hands of the appellant, as per the provisions contained in Rule 3 of the Income-tax Rules, 1962, and tax the same at the time of giving effect to the Order of the CIT(A).

3.1 That on facts and in law, the Ld. CIT(A) erred in holding that the appellant had derived personal benefit from these expenses and that same constituted perquisite in the hands of the appellant.

3.2 That on facts and in law the Ld. CIT(A) erred in not appreciating that the entire credit card expenses had been incurred wholly and exclusively for the business of the company i.e. Jay Polychem India Limited, in which the appellant is a director.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During the search and seizure operation conducted at the premises of M/s. Jay Polychem India Limited and its associates on 14.03.2012, a number of credit cards statements of family members of Madhok family were found and seized. Assessing Officer noticed from the seized document that huge amount has been incurred on leather goods/luggage, watches, hotel services, jewellery, boutique, women clothing, men clothing, cosmetics, yarn & fabric, gifts, hospital, shoes, beauty parlour,

fashion house, champion league ticket and other services etc.. It has also come on record that assessee owned HDFC and American Express Gold Cards and has incurred huge amount during financial years 2005-06 to 2011-12 in the name of business of M/s. Jay Polychem India Limited. The payments for credit card bills were made by M/s. Jay Polychem India Limited. Declining the contentions raised by the assessee, AO proceeded to conclude that credit card expenses incurred by the assessee are maintaining for personal lifestyles and were not incurred wholly and exclusively for the purpose of business and no evidence has been produced by M/s. Jay Polychem India Limited to prove as to how these expenses were incurred for the purpose of business of the company and thereby made addition of Rs.10,27,552/- being the total credit cards expenses on account of disallowance of business expenses.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee is an individual tax payee having declared her income from salary, business, rental income and income from other sources at Rs.29,97,752/-. It is also not in dispute that AY 2009-10 was completed assessment on the date of search. It is also not in dispute that the assessee's case is covered in the search conducted at the premises of M/s. Jay Polychem India Limited on 14.03.2012.

6. Ld. AR for the assessee challenging the impugned order questioned the validity of assessment under section 153A of the Income-tax Act, 1961 (for short 'the Act') in the absence of incriminating material found during the course of search and in the absence of abatement of assessment on the date of search and relied upon *CIT vs. Kabul Chawla - 380 ITR 173 (Del.)*.

7. Ld. AR for the assessee also contended that identical issue has already been decided in *assessee's husband's case in ITA Nos.690, 691, 692, 693, 694 & 977/Del/2015 for AYs 2007-08 to 2012-13 & Ors. order dated 21.02.2017* which was covered on the basis of search conducted on 14.03.2012 at the premises of M/s. Jay Polychem India Limited, assessment was passed under section 153A in AYs 2007-08 to 2010-11.

8. However, Ld. DR for the Revenue, on the other hand, to repel the arguments addressed by the ld. AR for the assessee, relied on the orders of the AO/CIT (A).

9. During the recording of statement of Shri Sandeep Singh Madhok recorded under section 131 of the Act on 27.06.2012, he was confronted with seized material/documents, Annexures A-5, A-6, A-7, A-8 and AA-1 and was asked to explain as to how the expenses were incurred and recorded in these annexures are business expenses of the assessee company i.e. M/s. Jay Polychem India Limited. AO extracted the portion of his statement on this issue which is as under :-

Q.21	<i>I am showing you Annexure A-5, A-6, A-7 and A-8 [Party JO-1] found and seized from the office of M/s Jay Polychem India limited D-143 Defence Colony, New Delhi in the course of search & seizure operation conducted under section 132 of the Income Tax Act 1961 on 14.03.2012 and Page No.4 to 61 Annexure AA-1 found and seized on 07.05.2012 from the office premises of the company D-143, Defence Colony, New Delhi. Please explain the entries recorded in these annexure along with supporting evidences?</i>
Ans.	<i>These are credit card statements of myself and my brother Satinder Singh Madhok. Expenses incurred through these credit cards are relating to the business of the company therefore company has paid all these expenses incurred through either by me or my brother through credit cards</i>
Q.22	<i>In reply to Q.No. 23 above you have stated that all the expenses incurred through credit cards of</i>

	<p><i>Madhok family have been claimed as business expenditure and the payment to credit card issuing bank had been made by Jay Polychem India Ltd.</i></p> <p><i>Please state under which head of expenditure/ expenses incurred through credit cards have been debited in the P&L A/c of JPIL. Also produce the relevant bills for the expenses incurred through credit cards</i></p>
<i>Ans.</i>	<p><i>The expenses incurred by me and my family members are mainly debited under the head of Tour & Travelling and business promotion. The nature of these expenses is fully clear from the narration of the credit card statements itself.</i></p>
<i>Q.23</i>	<p><i>From the narration of the credit card statement it appears that most of the expenses are of personal nature and they are not related with business of the company.</i></p>
<i>Ans.</i>	<p><i>No sir these are incurred for the business expediency.</i></p>
<i>Q.24</i>	<p><i>Please justify the payments incurred through credit card hold by you and Satinder Singh Madhok as the narration of expenses in the credit card statement indicates that most of the expenses are of personal in nature and not related to business purpose of the company.</i></p>
<i>Ans.</i>	<p><i>The expenses are incurred for business expediency and fully accounted for.</i></p>

10. Now, the question arises for determination in this case is :-

“as to whether addition has been made by the AO in this case under section 153A on the basis of any incriminating material found during the search.”

11. Identical issue as to the similar credit cards payment has already been decided in favour of Satinder Singh Madhok, husband

of the assessee, wherein it is categorically held that the documents seized cannot be considered as incrementing “documents/material”. Coordinate Bench of the Tribunal in case of *Satinder Singh Madhok decided by order dated 21.02.2017* in which assessment was framed under section 153A of the Act on the basis of search conducted on 14.03.2012 at the premises of M/s. Jay Polychem India Limited as under :-

“5.3 We have dealt with this legal proposition relating to the addition u/s 153A in respect of not abated assessment based on the judgement of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) while adjudicating the issue of addition made on account of disclosure u/s 132(4) of the Act. It is a fact that no incriminating material relating to credit card expenses was found during the course of search. The ld. CIT(DR) has also no dispute on this issue. Under these circumstances, the addition on account of credit card expenses in respect of the captioned assessment years deserves to be deleted. It is ordered accordingly. In result, ground Nos. 4, 4.1 to 4.2 in assessment year 2007-08 and ground Nos. 5, 5.1 to 5.2 of the assessment years 2008-09 to 2010-11 are allowed.”

12. When we examine the undisputed facts of this case that the case of the assessee was covered under section 132 of the Act on the basis of search and seizure operation conducted on 14.03.2012 and in view of the fact that assessment of the assessee for AY 2009-10 was completed assessment as on 14.03.2012 and no incriminating material to unearth any undisclosed income was

seized during the search and seizure operation, the present addition made on account of credit cards expenses qua AY 2009-10 is not sustainable in the eyes of law in view of the law laid down by *Hon'ble jurisdictional High Court in case of Kabul Chawla* (supra). The case of the assessee is also covered by the order passed by the co-ordinate Bench of the Tribunal in the case of *Satinder Singh Madhok, husband of the assessee*.

13. So, we are of the considered view that addition made by AO and confirmed by Id. CIT (A) is liable to be deleted, hence ordered to be deleted. Consequently appeal filed by the assessee is allowed.

Order pronounced in open court on this 25th day of February, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of February, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**