INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3198/Del/2013
Assessment Year 2006-07

Kurele Fragranes Pvt. Ltd., G-496, Gujaini Dabauli Kanpur 208022 PAN AACCK6739K	Vs.	ACIT Cent. Circle-23 New Delhi
(Appellant)		**(Respondent)**

Assessee by:	Shri Sanjay Kumar,CA Shri Akarsh Garg, Advocate
Department by :	Shri J.K. Mishra . DR
Date of Hearing	13/03/2019
Date of pronouncement	29 /03/2019

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 8.2.2013 passed by Ld. CIT(A) XXXIII, New Delhi for the quantum of assessment passed u/s 153A / 143(3) for the assessment year 2006-07. In the revised grounds of appeal assessee has raised following grounds :-

"1. BECAUSE the ld. CIT (A) has erred in law and on facts in confirming the addition of Rs. 1.01 crores on account of receipt of share application money/share capital by the assessee company, particularly when receipt on account of share application

money/share capital stood duly disclosed and assessed under section 143(3) of the Act and no incriminating material was found during the search carried out on the assessee or referred to for making addition in assessment framed U/s 153A of the Act.

2. BECAUSE all the evidence in relation to the aforesaid share application money/share capital raised during the year were furnished by the assessee company and no infirmity was found or pointed out therein, therefore, addition made and confirmed by CIT(A) is based on conjectures, surmises and suspicion only."

2. Brief facts *qua* the aforesaid issue raised are that assessee company has filed its return of income on 29.11.2006 showing loss of Rs. 5,45,979/-. The said return was subject to scrutiny and assessment order was passed u/s 143(3). Later on search and seizure operation was carried u/s 132(1) on 19.1.2009 on Kurele Group including Assessee Company and accordingly, a notice u/s 153A was issued. At the time of search the assessment for the assessment year 2006-07 has attained finality and accordingly in terms of *second proviso* to section 153A such an assessment is to be treated as unabated; and without any reference to any seized material or incriminating evidence found during the course of search. In the impugned proceedings, AO on the basis of balance sheet noted that fresh share application money has been received by the assessee aggregating to Rs. 1,01,00,000/-. Relevant observation of the AO reads as under :-

"From the perusal of the 'Balance Sheet' it is seen that the assessee company has received fresh share application money/capital to the tune of Rs. 1,01,00,000/-. The assessee vide query raised at point No. 3 of this office questionnaire 02.12.2010 was specifically asked to furnish the information with regard to

share application money received during the year and to establish the identity, creditworthiness and genuineness of the transactions of the share applicants. In response to above query, two letters were filed on 22.12.2010 containing the details of fresh share application money received during the year mainly in the form of documents submitted before the ITO-6(1), Kanpur in regular course of assessment proceedings. The details of fresh share application money received by the assessee is given as under :-

S.No.	Name of the Party	Amount of Share application money and share premium
1	Ashish Gupta	Rs. 50,000
2	B.S. Yadav	Rs. 50,000
3	Emkay Commercial Company Ltd.	Rs. 4.0,00,000
4	Emkay Commercial Company Ltd.	Rs. 30,00,000
5	Raziel Tieup Pvt. Ltd.	Rs. 10,00,000
6	Esmarie Mercantiles Pvt. Ltd.	Rs. 10,00,000
7	Nendej Tieup Pvt, Ltd.	Rs. 10,00,000
	Total	Rs. 1,01,00,000

3. Before the Ld. CIT (A) assessee has challenged that the said addition beyond the scope of section 153A as it is not based on any seized document or material. However, Ld. CIT (A) rejected the assessee's plea after referring to the judgment of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Bhatia 24 taxman.com 98.

4. Before us, Ld. Counsel, Shri Sanjay Kumar submitted that it is an admitted fact that no incriminating material or evidence was found during the course of search and the addition made by the AO was purely based on balance sheet which already stood scrutinised by the AO during the course of original assessment proceedings and this issue was even inquired by the AO. Thus, no addition can be roped in the present proceedings u/s 153A. He also all drew our attention to the copy of Panchnama prepared in the case of assessee and also

relevant observations and findings of the AO and Ld. CIT(A) to point out that it is an admitted fact that the addition made by the AO is not based on seized material / documents found during the course of search. In such a situation, addition is beyond the scope of section 153A and in support he relied upon the following judgments:

1. *Judgment of Hon'ble Delhi High Court dt. 25.05.2017 in the case of* ***Pro CIT Vs. Meeta Gutgutia since reported in [2017] 82 taxmann.com 287 (Delhi)*** *: 152 DTR 153*
2. *Judgment of Hon'ble Delhi High Court dt. 28.08.2015 in the case of* ***CIT Vs. Kabul Chawla [2016) 380 ITR 573 (Delhi) : [2015} 234 Taxman 300 (Delhi).***
3. *Judgment of Hon'ble Kamataka High Court dt. 15.12.2015 in the case of* ***CIT Vs. Lancy Constructions [2016} 237 Taxman 728 (Karnataka).***
4. *Unreported decision dated 14.11.2014 of Hon'ble Tribunal 'D' Bench, Delhi in the case of* ***Dy. CIT vs. Kurele Paper Mills Pvt. Ltd. in ITA No.3761/Del/2011.***
5. *Unreported decision dated 06.07.2015 of Hon'ble Delhi High Court in the case of Pr.CIT vs. Kurele Paper Mills Pvt. Ltd. in ITA No.369/2015.*
6. *Hon'ble Supreme Court in the case of Pr. CIT VS. Kurele Paper Mills Pvt. Ltd. [2016J 380 ITR (St.) 65 in S.L.P. (C) No. 34554 of 2015*
7. *Judgment of Hon'ble Gujarat High Court dt. 14.03.2016 in the case of* ***Pr. CIT Vs. Saumya Construction P. Ltd. [2016] 387 ITR 529 {Guj}.”***

5. He further submitted that during the course of the original assessment proceedings, the entire balance sheet, profit and loss account were subject to detailed scrutiny by the AO which is evident

from various notices and replies filed by the assessee as given in the paper book from pages 1 to 61. Once the entire issue and the fresh share application money received by the assessee during the year as appearing in the balance sheet has been examined by the AO, then without their being any seized material, no further addition can be made based on same material. Thus, addition made by the AO and as sustained by the Ld. CIT(A) should be deleted on this ground.

6. On the other hand, Ld. DR though did not controvert the contention that there is no incriminating material found at the time of search, but he submitted that, once notice u/s 153(3) is issued to the assessee then it is incumbent upon the assessee to file the return of income and AO has all the powers to assess and reassess the total income for the year and same cannot be restricted to the seized material. He too relied upon the judgment of Hon'ble High Court in the case of CIT vs. Anil Kumar Bhatia(supra).

6. After considering the aforesaid submissions and on perusal of the orders and letter referred to before us, we find that it is an admitted fact that the original assessment completed u/s 143(3) vide order dated 31.12.2008 which had attained finality at the time of search. It is also undisputed that additions made by the AO is not based on incriminating material found during the course of search, albeit is based on perusal of balance sheet which was part of the assessment record and duly scrutinise during the course of original assessment proceedings. In such a situation, additions made are beyond the scope of 153A proceedings. This proposition of law has been well settled and reiterated by the Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla reported in [2016] 380 ITR 573 (Delhi)** and has been reiterated in the case of **Pr. CIT vs. Meeta Gutgutia reported in [2017] 152 DTR 153 (Delhi).**

7. In the case of CIT vs. Kabul Chawla (supra), the Hon'ble High Court, after discussing various judgments and analysing section 153A *in-extenso*, have laid down the following legal proposition:-

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or

reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO 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."

8. The Hon'ble High Court has also taken note of the judgment of their earlier judgment in the case of **CIT vs. Anil Kumar Bhatia reported in [2013] 352 ITR 493 (Del)** and observe that this was not the issue before the Court. Again in the case of Pr. CIT Vs. Meeta Gutgutia's (supra), their Lordships have again reiterated the same principle in a very detailed manner and have also distinguished one of their earlier judgment in the case of Smt. Dayawanti Gupta reported in 390 ITR 496. The relevant observations made by their Lordships are as under:-

"56. Section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to Section 132 which deals

with 'search and seizure'. Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to reopen at least six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under Section 132 incriminating material justifying the re-opening of the assessments for six previous years is found that the invocation of Section 153 A qua each of the AYs would be justified.

57. The question whether unearthing of incriminating material relating to any one of the AYs could justify the reopening of the assessment for all the earlier AYs was considered both in Anil Kumar Bhatia {supra) and Chetan Das Lachman Das {supra). Incidentally, both these decisions were discussed threadbare in the decision of this Court in Kabul Chawla {supra). As far as Anil Kumar Bhatia {supra) was concerned, the Court in paragraph 24 of that decision noted that "we are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We therefore express no opinion as to whether Section I53A can be invoked even under such situation". That question was, therefore, left open. As far as Chetan Das Lachman Das {supra) is concerned, in para 11of the decision it was observed:

"11. Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or Information available with the Assessing Officer which can be related to the evidence found. This, however,

does not mean that the assessment under Section 153A can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

58. In Kabul Chawla {supra), the Court discussed the decision in Filalex India Ltd. {supra) as well as the above two decisions and observed as under:

"31. What distinguishes the decisions both in CIT v. Chetan Das Lachman Das {supra), and Filatex India Ltd. v. CIT-IV {supra) in their application to the present case is that in both the said cases there was some material unearthed during the search, whereas in the present case there admittedly was none. Secondly, it is plain from a careful reading of the said two decisions that they do not hold that additions can be validly made to income forming the subject matter of completed assessments prior to the search even if no incriminating material whatsoever was unearthed during the search. 32. Recently by its order dated 6th July 2015 in ITA No. 369 of 2015 {Pr. Commissioner of Income Tax v. Kurele Paper Mills P. Ltd.), this Court declined to frame a question of law in a case where, in the absence of any incriminating material being found during the search under Section 132 of the Act, the Revenue sought to justify initiation of proceedings under Section I53A of the Act and make an addition under Section 68 of the Act on bogus share capital gain. The order of the CIT (A), affirmed by the ITAT, deleting the addition, was not interfered with."

59. In Kabul Chawla {supra), the Court referred to the decision of the Rajasthan High Court in Jai Steel (India) v. Assn. CIT [2013] 36 taxmann.com 523/219 Taxman 223. The said part of the

decision in Kabul Chawla {supra) in paras 33 and 34 reads as under:

'33. The decision of the Rajasthan High Court in Jai Steel (India), Jodhpur v. A CIT {supra) involved a case where certain books of accounts and other documents that had not been produced in the course of original assessment were found in the course of search. It was held where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration while computing the total income under Section 153A of the Act. The Court then explained as under:

"22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:

(a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, I.T.A. No.4679 & 4680/DEL/2014 20 the AO acts under his original jurisdiction, for which, assessments have to be made;

(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material; and

(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

34. The argument of the Revenue that the AO was free to disturb income de hors the incriminating material while making assessment under Section 153A of the Act was specifically rejected by the Court on the ground that it was "not borne out from the scheme of the said provision" which was in the context of

search and/or requisition. The Court also explained the purport of the words "assess" and "reassess", which have been found at more than one place in Section 153A of the Act as under:

"26. The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess'-have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word assess has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the I.T.A. No.4679 & 4680/DEL/2014 21 interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents."

9. Thus, the Hon'ble High Court after detail analysis concluded that, whence there is no incriminating material qua each of the assessment year roped in under section 153A, then, no addition can be made while framing the assessment under section 153A.

10. The aforesaid principle and ratio are clearly applicable on the facts of the present case also, as admittedly no incriminating material relating to these assessment years or as a matter of fact for any of the assessment years were found during the course of search and accordingly, the originally assessed income.

11. Accordingly the addition of Rs. 1,001,000/- is directed to be deleted being beyond the scope of assessment u/s 153A.

12. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 29th March, 2019.

sd/- sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 29 /03/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi