

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.175 & 176/Del/2017
Assessment Years: 2009-10 & 2010-11

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi.

Vs Bhadani Financiers Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AABCB9305MH

CO Nos.88 & 89/Del/2017
(ITA Nos.175 & 176/Del/2017)
Assessment Years: 2009-10 & 2010-11

Bhadani Financiers Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

Vs ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi.

PAN: AABCB9305MH

ITA Nos.169 & 170/Del/2017
Assessment Years: 2008-09 & 2009-10

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs Pragati Imports Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AAACP5404A

CO Nos.59 & 60/Del/2017
ITA Nos.169 & 170/Del/2017
Assessment Years: 2008-09 & 2009-10

Pragati Imports Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

PAN: AAEC5404A

ITA Nos.171 & 172/Del/2017
Assessment Years: 2008-09 & 2009-10

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs. Pragati Tradecom Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AAEC5405B

CO Nos.61 & 62/Del/2017
(ITA Nos.171 & 172/Del/2017)
Assessment Years: 2008-09 & 2009-10

Pragati Tradecom Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

PAN: AAEC5405B

ITA Nos.173 & 174/Del/2017
Assessment Years: 2008-09 & 2009-10

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs. Pragati Imptrade Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AAEC5693F

CO Nos.63 & 64/Del/2017
(ITA Nos.173 & 174/Del/2017)
Assessment Years: 2008-09 & 2009-10

Pragati Imprade Pvt. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

PAN: AAECPS693F

ITA Nos.33 & 34/Del/2017
Assessment Years: 2008-09 & 2009-10

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs. Swastik Tradex (P) Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AALCS6030J

CO Nos.52 & 53/Del/2017
(ITA Nos.33 & 34/Del/2017)
Assessment Years: 2008-09 & 2009-10

Swastik Tradex (P) Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

PAN: AALCS6030J

ITA Nos.35 & 36/Del/2017
Assessment Years: 2008-09 & 2009-10

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs. Swastik Tracom (P) Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.

PAN: AALCS5219H

CO Nos.54 & 55/Del/2017
(ITA Nos.35 & 36/Del/2017)
Assessment Years: 2008-09 & 2009-10

Swastik Tracom (P) Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.
PAN: AALCS5219H

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

ITA Nos.37, 38 & 39/Del/2017
Assessment Years: 2008-09, 2009-10 & 2010-11

ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

Vs. Swastik Exports & Imports P. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.
PAN: AALCS5220J

CO Nos.56, 57 & 58/Del/2017
(ITA Nos.37, 38 & 39/Del/2017)
Assessment Years: 2008-09, 2009-10 & 2010-11

Swastik Exports & Imports P. Ltd.,
Room No.22, Ground Floor,
Shanti Niketan,
8, Camac Street, Park Street,
Kolkata.
PAN: AALCS5220J

Vs. ACIT,
Central Circle-31,
ARA Centre,
E-2, Jhandewalan Extn.,
New Delhi

(Appellant)

(Respondent)

Assessee by : Shri Gautam Jain, Advocate &
Shri Lalit Mohan, CA
Revenue by : Shri Sanjay Goyal, CIT, DR
Date of Hearing : 28.03.2019
Date of Pronouncement : 30.04.2019

ORDER

PER BENCH:

The above batch of appeals filed by the Revenue are directed against the separate orders dated 17th October, 2016 of the CIT(A)-30, New Delhi, relating to

respective assessment years as mentioned above. Respective assesseees have also filed Cross Objections against the appeals filed by the Revenue. Since identical grounds have been taken by the Revenue as well as the assessee in the appeals and Cross Objections, respectively, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. First we take up ITA No.175/Del/2017 as the lead case. Facts of the case, in brief, are that the assessee is a company and derives income from financing activities. The original return of income was filed on 25th September, 2013 declaring total income of Rs.2,70,43,362/-. A search and seizure action u/s 132 of the IT Act, 1961 was initiated in the case of the assessee on 18th June, 2013 at Shanti Niketan Building, 8, Camac Street, Kolkata. Subsequently, the assessment jurisdiction over the assessee was transferred from Central Circle-29, New Delhi to the PCIT (Central)-3, New Delhi vide order u/s 127(1) dated 8th May, 2015 with immediate effect. In response to notice u/s 153A of the Act issued on 22nd April, 2015, the assessee filed the return on 12th May, 2015 declaring total income of Rs.2,70,43,362/-. Subsequently, the Assessing Officer issued statutory notices u/s 143(2) and 142(1) along with a questionnaire in response to which the AR of the assessee appeared from time to time and filed the requisite details.

3. The Assessing Officer, during the course of assessment proceedings, observed that the assessee has received share capital and share premium to the tune of

Rs.19,35,00,000/- and unsecured loan of Rs.1,50,00,000/- during the year under consideration from the following investors:-

Name of the party.	Amount of share capital	Amount of share premium.	Total	Amount of unsecured loan	Grand total
Swastik Exports & Imports (P) Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Pragati Imptrade (P) Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Pragati Imports Pvt. Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Swastik Tracom Pvt. Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Pragati Tradecom Pvt. Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Swastik Tradex Pvt. Ltd.	26,87,500	2,95,62,500	3,22,50,000	25,00,000	3,47,50,000
Total	1,61,25,000	17,73,17,000	19,35,00,000	1,50,00,000	20,85,00,000

4. He noted that the assessee company is a private limited company having equity shares of face value of Rs.10/- each. However, the assessee has shown receipt of huge premium of Rs.90/- per share. All these six share applicants, i.e., the investors are also private limited companies incorporated in the preceding year only. He observed that the search action u/s 132 of the IT Act was conducted on 18th June, 2013 at the registered offices of all the aforesaid six companies situated at Shanti Niketan Building, 8, Camac Street, Kolkata. During the search, consequential survey action u/s 133A of the Act was conducted at 133, Canning Street, Kolkata where statements of the directors of some of the above mentioned companies were recorded u/s 131 of the Act on 18th June, 2013. He observed that in their statements, all of them have stated that the companies in which they are directors are solely jamakharchi/paper companies used for providing accommodation entries. They do

not have any real business activity and they charge commission at 0.5% for providing accommodation entry.

5. Considering the statements of the four directors of some of the companies who had invested in the six aforementioned investor/shareholder companies, the Assessing Officer confronted the same along with their statements recorded u/s 131 of the Act and asked the assessee to produce the directors/controlling persons of all the shareholders who had made investments in the aforesaid six companies.

6. The assessee, in response to the notice, filed the following submission which has been reproduced by the A.O. at para 8 of his order and which reads as under:-

"At the outset it is respectfully submitted and reiterated that during the year assessee had received share application money of Rs. 19,35,00,000/- and unsecured loan of Rs.1,50,00,000/- from share holders for which evidence in the shape of following documents have already been placed on record:

- i) *Copy of share certificate of each of the share holders;*
- ii) *Copy of letter by assessee company to the share holders intimating the allotment of shares;*
- iii) *Copy of share application form of the share holders;*
- iv) *Copy of minutes of the Board of Directors of the shareholders for investment in assessee company;*
- v) *Copy of confirmation of investment by way of share capital and loan separately alongwith source of such investment of each of the shareholders;*
- vi) *Copy of ledger account of share capital and loans of each of the shareholders in the books of assessee company;*
- vii) *Copy of bank statement of the shareholder;*
- viii) *Copy of the acknowledgement of return of income along with audited balance sheet for assessment years 2009-10 of the share holder;*
- ix) *Copy of income tax jurisdiction alongwith PAN of the shareholders;*
- x) *Copy of company master data of each of the shareholders;*
- xi) *Copy of list of signatory of the shareholders;*
- xii) *Copy of intimation u/s 143(1) of each of the shareholders.*
- xiii) *Copy of certification of incorporation alongwith memorandum of association and article of association of the each of the shareholders;*

- xiv) Copy of board resolution of assessee company;
- xv) Copy of Form 2 for allotment of shares filed by assessee company before ROC;
- xvi) Copy of Form 20B (Annual Return) filed by assessee company before ROC; and
- xvii) Copy of bank statement of assessee company.
- xviii) Details/information of source of fund for investment made.

2.1 It is also submitted that all the shareholders have independently confirmed their investment as well as unsecured loan given in response to notices u/s 133(6) of the Act. In view thereof the submission of assessee is that assessee has at its end furnished complete details and evidence in the shape of confirmation (both independent and otherwise) income tax particulars, bank statements and audited financial statements of shareholders to discharge the burden in respect of share capital subscribed and unsecured loan given by the shareholders of assessee company and also establish that such companies cannot in law be called to be paper companies having no business of their own except of providing accommodation entries. The assessee in support of the above also seeks to tabulate the assets position of each of shareholder companies to show that such companies are investment companies having made strategic investment in the assessee company:

Sr. No.	Name of companies	Share capital	Reserves & Surplus	Loans & advances	Investment
1.	Swastik Export & Imports (P) Ltd.	1,00,00,000	5,67,00,000	25,85,479	6,37,50,000
2.	Pragati Imtrade (P) Ltd.	1,00,00,000	5,67,00,000	25,90,411	6,37,50,000
3.	Pragati Imports (P) Ltd.	1,00,00,000	5,67,00,000	25,88,767	6,37,50,000
4.	Swastika Tracom (P) Ltd.	1,00,00,000	5,67,00,000	25,85,479	6,38,08,000
5.	Pragati Tradecom (P) Ltd.	1,00,00,000	5,67,00,000	25,90,411	6,37,50,000
6.	Swastika Tradex (P) Ltd.	1,00,00,000	5,67,00,000	25,88,767	6,38,08,000

2.3 Apart from the above, assessee submits to your goodself that all the above share holders are already centralized and assessed with you/under your jurisdiction, so you have additional privilege of cross verification of facts, figures & contentions etc. In any case, having chosen to assessee the same independently, it has to be hold that such companies are not paper companies: when they independent sources of investment which sources are being independently examined in their hands. A not on lifting

of corporate veil enclosed herewith (Pages 262-265 of this reply)

2.4 *Having regard to the above, it ought to be held that the shareholders companies are not paper companies having no business of their own except providing accommodation entries. There is no material to support the aforesaid and therefore the submission is that allegation in the notices is legally and factually misconceived".*

7. However, the Assessing Officer was not satisfied with the explanation given by the assessee. From the various details furnished by the assessee in the case of the aforementioned six companies, the Assessing Officer observed that the investors/shareholders which are private limited companies are not actively engaged in any business. From the documents furnished by the above mentioned investors u/s 133(6) of the IT Act, he noted that these companies have share capital and share premium running in crores of rupees whereas they have declared meager income. Further, some of the directors of these companies are the employees of KLJ Group of companies. He noted that during the search action u/s 132 of the IT Act conducted on 18th June, 2013, the statements of various directors were recorded wherein the directors have stated that they do not know about the activities of the companies in which they are directors. The Assessing Officer reproduced the statements recorded from various directors in the assessment order.

8. The Assessing Officer further noted that during the course of search at Shantiniketan Building, room No.22, Ground Floor, 8 Camac Street, Kolkata, six bunches of loose papers identified as KLJ/KOL/1, KLJ/KOL/2, KLJ/KOL/4 KLJ/KOL/5, KLJ/KOL/7 and KLJ/KOL/9 were seized which contained details of

the persons from whom share application was received, details of share allotted and other related details as required under the provisions of the Companies Act, 1956. He observed that a perusal of these papers revealed that the shareholders of the assessee company have sold their shareholding to the associated companies of the KLJ group during the F.Y. 2009-10. From the various details so analysed by him, he noted that the shareholders have sold their shareholding @ Rs.10 per share whereas they have purchased the share @ Rs.120/- (i.e., face value of Rs.10/- + premium of Rs.40/- per share). The Assessing Officer, therefore, asked the assessee to produce the directors/main controlling persons of all the investors along with their account books and bank statements of the investor companies for the relevant year before him for his personal examination with a view to establish the identity, credit worthiness and genuineness of the transactions. In response to the notice u/s 142(1), Shri Rajesh Kumar Surana was produced on 22nd March, 2016 whose statement was recorded and who was confronted with the contents of his earlier statement recorded u/s 131 of the IT Act on 18th June, 2013 wherein he had stated that he works as an entry operator and provides entries to the business group by charging commission. In his statement recorded on 22.03.2016, he submitted that no statement was recorded on 18th June, 2013 and only signatures were obtained on the print out supplied to him. He further stated that these are investment companies. However, the Assessing Officer rejected the same stating that it is an afterthought and the person is making a false statement just to accommodate the assessee. He noted that

in his reply to Question No.12 on 18th June, 2013, Shri Rajesh Kumar Surana in his own handwriting had written that he had given the statement without any threat or pressure. The Assessing Officer similarly recorded the statements of Shri Sanjay Kumar Singhi, Sandeep Kumar Singhi and Shri Jivendra Mishra who had given similar replies as by Shri Rajesh Kumar Surana. Rejecting the various explanations given by the assessee and observing that the assessee failed to substantiate the credit worthiness and genuineness of the six companies who have made investment in the shares of the assessee company, the Assessing Officer, invoking the provisions of section 68 of the IT Act, made addition of Rs.20.85 crores to the total income of the assessee. The Assessing Officer further made addition of Rs.10,42,500/- u/s 69C of the IT Act being the commission expenses incurred for obtaining accommodation entries which is 0.5% of the accommodation entry of Rs.20.85 crores. Thus, the Assessing Officer accordingly determined the total income of the assessee at Rs.23,65,85,862/- as against the returned income of Rs.2,70,43,362/-.

9. Before the CIT(A), it was argued that during the course of search action u/s 132 of the IT Act, no incriminating document/material was found at the time of search or subsequently. At the time of initiation of search action u/s 132 of the Act, the assessment or reassessment was also not abated and the additions made in the assessment order u/s 153A of the Act dated 29th March, 2016 are not based on any incriminating document/material. For the above proposition, decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla reported in 380 ITR 573* was

relied upon. So far as the loose papers seized/inventorised as annexures i.e., KLJ/KOL/1, KLJ/KOL/2, KLJ/KOL/4 KLJ/KOL/5, KLJ/KOL/7 and KLJ/KOL/9 are concerned, it was argued that these documents do not belong to the assessee and the same belong to the six investor companies of the assessee. These are all statutory registers required as per the Companies Act, 1956 and the transactions reflected in the registers pertained to the share issue and transfer in relation to the six investor companies of the assessee during the F.Y. 2007-08 to 2009-10. These transactions are duly reported to ROC by filing various statutory forms and are also reflected in the financial statements of the six investor companies of the assessee. Further, the issue of shares at a premium was fully incorporated and disclosed in the audited financial statements and relevant ROC returns of the assessee. It was again reiterated that the assessment was not abated at the time of initiation of search action u/s 132 and no incriminating document/material was found as a result of the search action to show that the assessee had taken any accommodation entry. So far as the alleged commission is concerned, it was again submitted that no evidence was found in the search u/s 132 of the Act which shows any alleged commission.

10. Based on the arguments advanced by the assessee, the Id.CIT(A) deleted the addition on the ground that no incriminating document/material was found during the course of search and the assessment was not abated at the time of initiation of search action u/s 132 of the Act and, therefore, no addition can be made u/s 153A of the Act. While holding so, he relied on the decision of the Hon'ble Delhi High court

in the case of Kabul Chawla (supra). The relevant observation of the CIT(A) at para 6.4 read as under:-

“6.4 I have carefully considered assessment order, written submissions, case laws relied upon and oral arguments of Ld.AR. The objections/arguments of the appellant are discussed as under:-

(i) In the assessment order, the following additions have been made u/s 153A, without seizing any incriminating document/material during the search and seizure action u/s 132 on 18.6.2013:

(a) Unexplained cash credit on account of share application/premium u/s 68 of the Act :Rs.20,85,00,000/-

(b) Unexplained expenses u/s 69C of the Act :Rs.10,42,500/-

Therefore, it is submitted by the appellant that in absence of any incriminating document/material, no addition can be made u/s 153 A of the Act, when the assessment is not abated at the time of initiation of the search action u/s 132 of the Act. Therefore, in these facts and circumstances, I agree with the arguments of the appellant.

(ii) As, I have already held (supra), while deciding in ground no. 2, that no addition can be made in the assessment order u/s 153A of the Act, since no incriminating document/material was found during search action u/s 132 and also assessment was not abated, in view of the ratio laid down in the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Kabul Chawla 2015, 61 Taxmann.com 412(Delhi).

In view of the above, it is not required now to adjudicate the above ground no. 3, 4 and 5 and hence these are treated as allowed. Therefore, addition u/s 68 of the Act of Rs. 20,85,00,000/- and u/s 69C of the Act of Rs. 10,42,500/-, are deleted.”

11. Aggrieved with such order of the ld.CIT(A), the Revenue is in appeal before the Tribunal raising the following grounds:-

“1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on the facts in directing the A.O to delete the addition made u/s 68 of the I.T. Act on account of unexplained credits and u/s 69C on account of unexplained expenses.

2. On the facts and in the circumstances of the case the Ld. CIT (A) has erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed Hon'ble Supreme Court.
3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153A would only mean undisclosed income discovered from seized/incriminating material.
4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153A of the Act.
5. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.
6. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.
- 7 That the grounds of appeal are without prejudice to each other.
8. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”
12. The Id. DR strongly opposed the order of the CIT(A) deleting the addition by relying on the decision of the Hon'ble Delhi High Court in the case of *Kabul Chawla (supra)*. Referring to the decision of the coordinate Bench of the Tribunal in the case of *ITO vs. M/s Synergy Finlease Pvt. Ltd. vide ITA No.4778/Del/2013, order dated 8th March, 2019*, he submitted that the Tribunal, following the decision of the Hon'ble Supreme Court in the case of *Pr. CIT, Central-1 vs. NRA Iron & Steel reported in 103 taxman.com 48*, has allowed the appeal filed by the Revenue and

upheld the addition made by the Assessing Officer u/s 68 of the Act on account of share capital and share premium. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. NDR Promoters*, 102 *taxman.com* 182, he submitted that the Hon'ble Delhi High Court has upheld the addition made by the Assessing Officer u/s 68 of the IT Act in respect of the amount received as share capital from several companies on the ground that all these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at the same address. So far as the decision relied on by the Id.CIT(A) in the case of *Kabul Chawla* (supra) is concerned, the Id. DR submitted that the decision of the Hon'ble Delhi High Court has not been accepted by the Department and SLP against the same has been filed in the Hon'ble Supreme Court which is pending. Further, the words 'total income' as used in section 153A would not mean only undisclosed income discovered from seized or incriminating material and a restrictive and pedantic interpretation of the scope of assessment u/s 153A of the Act cannot be adopted. Referring to the decision of the Hon'ble Karnataka High Court in the case of *Canara Housing Development Company vs. DCIT*, he submitted that the income includes income unearthed during search and any other income. Therefore, the order of the CIT(A) should be reversed and the order of the Assessing Officer be restored.

13. The Id. counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that the original return of income in the instant

case was filed on 25th September, 2009. The search was conducted on 18th June, 2013. The notice u/s 153A of the Act was issued on 22nd April, 2015. At the time of search no incriminating material was found and the addition u/s 68 of Rs.20.85 crores was made on the basis of the figures already appeared in the audited accounts which were already filed before the Revenue authorities. He submitted that the addition is not based on any incriminating material found as a result of the search on the assessee, and the so-called loose papers seized and inventorised by the Assessing Officer did not belong to the assessee and they belonged to the six investor companies of the assessee. Further, these are all statutory combined registers and the transactions reflected in the registers pertained to the share issue and transfer in relation to the six investor companies of the assessee which are duly reported to the ROC by filing various statutory forms. Therefore, when the addition is not based on any incriminating material found as a result of the search, therefore, in view of the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla reported in 380 ITR 573*, the addition made by the Assessing Officer is not sustainable and the order of the CIT(A) should be upheld and the grounds raised by the Revenue should be dismissed. Merely because the Revenue has filed an appeal before the Hon'ble Supreme Court against the decision of the Delhi High Court, the same cannot be a ground to take a contrary view than the view taken by the Hon'ble Delhi High Court unless the same is reversed by the Hon'ble Supreme Court. He accordingly submitted that the appeal filed by the Revenue be dismissed.

14. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the assessee in the instant case filed the original return of income on 25th September, 2009 for the impugned assessment year. The return was duly accepted and intimation u/s 143(1) of the Act was issued. No assessment or reassessment was completed u/s 143(3) or 148 of the IT Act and no notice u/s 143(2) of the Act was issued thereafter or any other proceedings have been commenced to disturb the said return of income. Therefore, it has attained finality prior to the date of search on 18th June, 2013. It is an admitted fact that in the search action u/s 132 of the Act, no incriminating document/material was found and seized at the time of search and also subsequently. Since at the time of initiation of search action u/s 132 of the Act the assessment or reassessment was not abated and the additions made in the assessment order passed u/s 153A of the Act dated 29th March, 2016 are not based on any incriminating document/material seized, therefore, in view of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra), the addition made by the Assessing Officer cannot be sustained. We find the Hon'ble Delhi High Court in the case of Pr. CIT vs. Dharampal Premchand Ltd. vide ITA No.512/2016, order date 21.08.2017 has held as under:-

“Although an appeal by the Revenue against the said decision in Kabul Chawla is pending before the Supreme Court, there is no stay of the said judgment and, therefore, as far as this Court is concerned, the decision in Commissioner of Income Tax v. Kabul Chawla (supra) is still good law. That decision explicitly holds that there has to be incriminating material to justify the assumption to jurisdiction under Section 153A of the Act qua each of the AYs for which assessment is sought to be reopened.”

15. The various other decisions relied on by the Id. counsel for the assessee in the paper book also support the case of the assessee that in absence of any incriminating material found during the course of search, no addition can be made u/s 153A of the Act in case of a non-abated assessment. So far as the loose papers seized and inventorised as Annexures KLJ/KOL/1, KLJ/KOL/2, KLJ/KOL/4 KLJ/KOL/5, KLJ/KOL/7 and KLJ/KOL/9 are concerned, it is an admitted fact that these papers do not belong to the assessee and these papers belong to the six investor companies of the assessee. Further, these are all statutory combined registers which were required to be maintained as per Companies Act, 1956 and the transactions reflected in the registers pertained to the share issue and transfer in relation to those six investor companies of the assessee. Therefore, this cannot be called as incriminating material. We, therefore, do not find any infirmity in the order of the CIT(A) in deleting the addition. Accordingly, the order of the CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

CO No.88/De1/2017 (A.Y. 2009-10)

16. The Id. counsel for the assessee did not press the grounds of the Cross Objection filed by the assessee for which the Id. DR has no objection. Accordingly, the CO filed by the assessee is dismissed as not pressed.

17. In the result, the appeal filed by the Revenue and the CO raised by the assessee are dismissed.

ITA Nos.176, 169,170, 171,172,173,174, 33,34,35,36,37,38 & 39/Del/2017

18. In all the above appeals, the Revenue has raised identical grounds wherein addition made by the Assessing Officer u/s 68/69C have been deleted by the CIT(A) on the ground that no incriminating material was found and seized during the course of search and also subsequently and at the time of initiation of search action u/s 132 of the IT Act the assessment or reassessment was also not abated and the additions are not based on any incriminating document/material. We have already decided the issue in ITA No.175/Del/2017 as above and the grounds raised by the Revenue have been dismissed. Following the same reasoning, the grounds raised by the Revenue in all these appeals are dismissed.

CO Nos.89,59,60,61,62,63,64,52,53,54,55,56,57 & 58/Del/2017

19. The ld. counsel for the assessee did not press the grounds raised in the Cos for which the ld. DR has no objection. Accordingly, all the COs filed by the respective assesseees are dismissed as not pressed.

20. In the result, all the appeals filed by the Revenue and the COs raised by the assesseees are dismissed.

The decision was pronounced in the open court on 30.04.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 30th April, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi