

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G'NEW DLEHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA.No.72/Del/2012  
Assessment Year: 2005-06**

**ACIT, Central Circle-22,  
New Delhi,**

**vs M/sSatnam International P. Ltd.,  
201, Vipps Centre,  
2, Community Complex, Masjid  
Moth, G.K. II, New Delhi**

**PAN AAACS1173P  
(Appellant)**

**(Respondent)**

Appellant by: Shri S. S. Rana, CIT-DR

Respondent by: Sh. Sanat Kapoor, Advocate

Date of hearing: 11/7/1919

Date of order : 16 /7/2019

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Challenging the Order dated 27.10.2011 in Appeal No. 268/09-10 passed by the Ld. Commissioner of Income Tax (Appeals)-III, Delhi, ("Ld. CIT(A)"), Revenue preferred this appeal.

2. Briefly stated relevant facts are that the assessee company was incorporated on 26.3.1989 to carry out the business of builders, colonisers estate developers, town planners etc. For the Assessment Year 2005-06 they have filed their return of income on 28.10.2005 declaring an income of Rs.4,97,607/-. Subsequently, the search and

seizure operations were conducted in the group cases of M/sKohinorFood Ltd on 5.12.2007 and according to the Revenue, a search warrant was issued and executed in the name of the assessee also. Notice dated 12.12.2008 was issued under section 153A of the Income Tax Act, 1961 (for short "the Act") and the assessee claims to have filed their return of income on 5.1.2009 declaring the total income of Rs 4,97,607/-and paid the tax.

3. Assessee further filed a letter dated 13.4.2009 contesting the validity of the notice dated 12.12.2008 issued under section 153A of the Act on the ground that the learned Assessing Officer of the person on whom the search under section 132 of the Act was conducted had not recorded satisfaction note that the valuable article, books of accounts or documents seized during the course of search belong to a person other than the person searched. Assessee further contested that no search warrant of authorisation for conducting research was issued under section 132 of the Act nor was the same executed in the name of the assessee.No panchnama has been drawn and no search was conducted in the premises of the assessee company. It could be seen from the record that the assessee specifically alleged that the Assessing officer had invoked the provisions of section 153A of the Act without complying with the provisions contained in section 132 of the Act before issuing the notice under section 153A of the Act, thereby rendering the proceedings under section 153A of the Act without jurisdiction and consequently null and void.

4. During the course of assessment, learned Assessing Officer found that the assessee company had shown purchase of land for Rs.68,22,000/-and the sale of the same for Rs.74,02,875/-after debiting the expenses to the tune of Rs.5,93,098.85. Further the assessee adjusted the brought forward losses of Rs.95,491/-.Learned Assessing Officer treated the sale consideration of Rs.78 lakhs as income from undisclosed sources. So also not accepted the plea of the assessee that the sum of Rs.2 Lacs was the loan. He, therefore, by order dated 21/12/2009 under section 153A /143(3) of the Act by made an addition of Rs.78,00,000/-on account of unexplained income from undisclosed sources and Rs.2,00,000/-on account of unexplained cash credit claimed to be loan.

5. Assessee preferred an appeal before the Ld. CIT(A) challenging these two additions. Ld. CIT(A) held that the addition of Rs.78 lakhs and Rs.2 Lacs is baseless and deleted. Ld. CIT(A), however, declined to allow the set off of loss of Rs.95,491/-. Revenue is, therefore, aggrieved by the deletion of the major addition and preferred this appeal.

6. Under rule 27 of the Appellate Tribunal Rules, 1963, assessee submitted that the assumption of jurisdiction by the learned Assessing Officer under section 153A of the Act, in the absence of any incriminating material seized from the assessee at the time of search by the Revenue, by issuing notice under section 153A of the Act is bad and the consequent assessment has to be quashed.

7. We have gone through the record. From the impugned order, it is clear that as demonstrated by the assessee, the assessee made payments through cheques to various persons with whom agreement to purchase land at Sonipat was made between the landowners and the assessee and the same land was sold by the assessee to Eldeco Infrastructure and Properties Ltd and the copies of the part payment agreement to purchase the land as well as the confirmation from the Eldeco Infrastructure and Properties Ltd and the bank statement and copy of the statement of account of Eldeco were to be found on record. Ld. CIT(A) held that the assessee acquired the right to purchase the property, which is capital asset within the meaning of Section 2(14) of the Act and sold the same to Eldeco and, therefore, the sale of such right had resulted in capital gains to the assessee under the provisions of the Act. Ld. CIT(A), on a perusal of the return of income of the assessee for assessment year 2005-06 as well as the computation of income and the trading and profit and loss account for the period, found that the assessee had shown the income arising from the above purchase and sale transaction of land under the heading "Business Income" but this transaction is not business of the assessee but rather in the nature of capital investment giving rise to short-term capital gain.

8. So also, in respect of the addition of Rs.2 Lacs, it was submitted before the Ld. CIT(A) that the said amount of Rs.2 Lacs was unsecured loan from its directors as on 31.3.2005 and the directors have given the loan to the assessee from the personal withdrawals from their capital account, which was entered in the journal book and journal voucher

was also filed. On a perusal of the material before him, as a matter of fact, Ld. CIT(A) found that the directors made withdrawals for household expenses and the unsecured loan of Rs.2 Lacs to the assessee was properly explained.

9. No material is produced before us by the Revenue to disturb the factual finding written by the Ld. CIT(A) basing on the material in the shape of the agreement to purchase the land, confirmation from the purchaser of the land, and statement of accounts, trading and profit and loss account etc in respect of the deletion of Rs. 78 lakhs and the statement of affairs in the books of accounts of the assessee, journal book and journal voucher etc in respect of the deletion of Rs.2Lacs. Findings of fact by the Ld. CIT(A) are firmly entrenched into the record and do not warrant any interference, in the absence of any material rendering it unacceptable.

10. Further, it has been the case of the assessee all through that no search was conducted in their premises not any search warrant was executed on their name. It is further contended that nothing incriminating was found against the assessee in any search that was conducted in respect of the assessee. The additions are not based on any material relating to our belonging to the assessee and as a matter of fact no satisfaction to that effect by the Assessing Officer of the person searched was recorded. In the circumstances, assessee placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 and submitted that in the absence of any incriminating material available qua the assessee qua

the assessment order, it is not open for the revenue to make any addition.

11. It is not the case of the Revenue that any incriminating material was found justifying the additions in this case. Though the assessee has been contending that no search was conducted in their premises pursuant to any warrant issued on their name and no material was seized in their premises justifying the additions, such a contention has not been rebutted by the authorities below. It is also not in dispute that as on the date of search there were no pending assessment proceedings in respect of the Assessment Year 2005-06. It is, therefore, clear that in the absence of any incriminating material that could be found during the search and seizure operations, the concluded assessment of the assessee for the AY 2005-06 was reopened and the additions were made.

12. Hon'ble Delhi High Court in case of CIT vs. Kabul Chawla (supra) considering its earlier decision in the case of CIT vs. Anil Kumar Bhatia (supra) considered the following question of law:

*“2. The issue that the Court proposes to address in these appeals is the same that was considered by the ITAT viz., “Whether the additions made to the income of the Respondent-Assessee for the said A.Ys under section 2(22)(e) of the Income Tax Act, 1961 (‘Act’) were not sustainable because no incriminating material concerning such additions were found during the course of search and further no assessments for such years were pending on the date of search ?”*

13. Further, the Hon'ble Delhi High Court in the above case as regards completed assessment held as under :

*“vii. 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”*

14. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. MeetaGutgutia (supra) in paras 69 to 72 has 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 quaeach 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."*

15. In the circumstances, it is clear that the decision of the Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra) is applicable and even on the question of law also, the additions cannot be sustained.

16. Viewing from any angle there do not appear any valid grounds to interfere with the findings of the Ld. CIT(A) in the impugned order, and therefore, we decline to interfere with the same.

17. Appeal of the Revenue is, accordingly, dismissed.

**Pronounced in the open court on 16<sup>th</sup> July, 2019.**

Sd/-

sd/-

(O.P.KANT)  
Accountant Member

(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Dated: 16<sup>th</sup> July, 2019  
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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