

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

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

ITA No.2330/Del/2016  
Assessment Year: 2007-08

ACIT, Central Circle-18, New Delhi	<b>Vs.</b>	M/s. Subhash Dabas Prop. Tirupati Construction Co., C/o- Tirupati Buildings & Officers Pvt. Ltd., Plot No. 3, Dwarka City Centre, Sector- 10, Dwarka, New Delhi
<b>PAN :AAGPD6947F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

C.O. No. 223/Del/2016  
[Arising out of ITA No.2330/Del/2016]  
Assessment Year: 2007-08

M/s. Subhash Dabas Prop. Tirupati Construction Co., C/o- Tirupati Buildings & Officers Pvt. Ltd., Plot No. 3, Dwarka City Centre, Sector- 10, Dwarka, New Delhi	<b>Vs.</b>	ACIT, Central Circle-18, New Delhi
<b>PAN :AAGPD6947F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Shri S.S. Rana, CIT(DR)
Assessee by	Shri Mahavir Singh, Adv.

Date of hearing	16.07.2019
Date of pronouncement	30.07.2019

**ORDER****PER O.P. KANT, A.M.:**

This appeal by the Revenue and cross objection by the assessee are directed against order dated 22/02/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-27, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2007-08.

**2.** The grounds of the appeal raised by the Revenue are reproduced as under:

1. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts and in case in deleting Rs.60,00,000/- ( out of Rs.1,42,69,262/- by treating as director's remuneration) which was added to the income of the assessee as Deemed Dividend u/s 2(22)(e).*
2. *That the Commissioner of Income Tax (Appeals) has erred in law and on facts in accepting the assessee plea of treating Rs.60,00,000/- as director's remuneration without realizing the fact that the assessee never took this grounds in assessment proceedings and the department never got the chances/opportunity to rebut or examine the claime of the assessee.*
3. *That the Commissioner of Income Tax (Appeals) has erred in law and on facts by neither conducting her own independent and effective inquiry nor giving a direction as per subsection 4 of section 250, Income Tax Act and ignoring Hon'ble Delhi High Court's judgment in the case of "The Commissioner of Income Tax – II Vs. M/s, Jansampark Advertising and Marketing (P) Ltd."*
- 4 (a) *The order of CIT(Appeals) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

**2.1** Grounds raised in the cross objection are reproduced as under:

1. *That the appeal is not maintainable, particularly in view of Board's Instructions issued from time to time.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in confirming the addition of Rs.82,69,262/- paid to the appellant by the payer company, treating same as deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.*
3. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

**2.2** Before us, the assessee raised the following additional ground:

*"The learned CIT(A) has erred in law as well on facts in confirming additions made by the Ld. A.O. in assessment order dated 28.03.2013 in the circumstances where earlier assessment stood already completed u/s 143(3) on 31.12.2008 and no incriminating material was found during search and seizure operation conducted on 14.09.2010 in view of judgment of the Hon'ble High Court of Delhi in case of CIT Vs. Kabul Chawla."*

**3.** The Ld. counsel of the assessee submitted that said additional ground raised being legal in nature and no new investigation of the facts is required and thus the additional ground may be admitted in view of the settled legal position.

**4.** We have heard the parties on the issue of the additional ground raised. We agree with the contention of the Ld. counsel that facts in respect of this legal ground are already available on record and thus in view of the decision of the Hon'ble Supreme Court in the case of NTPC Vs. CIT (1998) 229 ITR 383 (SC), the additional ground of the assessee is admitted.

**5.** First of all, before us the Ld. DR submitted that tax effect involved in the appeal filed by the Department is below the limit prescribed by the Central Board of Direct Taxes (CBDT) for filing or pursuing the appeals before the Tribunal and, therefore, the appeal of the Revenue might be treated as withdrawn. The appeal filed by the Revenue is accordingly dismissed as withdrawn.

**6.** The learned counsel of the assessee, on the other hand, in support of the additional ground submitted that no incriminating material has been found qua the assessment year involved and no proceedings were pending in respect of the assessment year on the date of the search on the assessee and 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 (Delhi), no addition could have been made in the impugned assessment proceeding completed under section 153A of the Income-tax Act, 1961 (in short 'the Act').

**7.** Ld. DR could not controvert the submission of learned counsel of the assessee.

**8.** We have heard both the parties and perused the material on record. We find that in the case of the assessee search under section 132 of the Act was conducted on 14/09/2010 and consequently, notice under section 153A of the Act was issued,

which was duly complied by the assessee on 21/01/2013. The assessee submitted that assessment under section 143(3) of the Act was already completed on 31/12/2008 at total income of Rs.5,92,80,820/- pursuant to earlier search initiated on 01/06/2006. The Assessing Officer in the present assessment proceedings made addition of Rs.1,42,69,262/- on account of deemed dividend under section 2(22)(e) of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and filed detailed submissions challenging the legality of the assessment as well as merit of the addition. The Ld. CIT(A) partly allowed the amount of Rs.60 lakh received by the assessee as salary and upheld the balance amount of Rs.82,69,262/-.

**9.** In view of the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla(supra), if the two conditions of no incriminating material and completed assessments are satisfied, no addition would have been made in the assessment proceeding under section 153A of the Act. In the instant case, search has been conducted on 14/09/2010 and the assessment for the year into consideration was completed on 31/12/2008 under section 143(3) of the Act. Further, in the impugned assessment completed there is no reference of any incriminating material for making addition under section 2(22)(e) of the Act. In view of both the conditions being satisfied, we are of the considered opinion that no addition could have been made in the instant assessment in view of the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra). Accordingly, the additional ground raised by the assessee is allowed.

**10.** In the result, the appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is allowed.

***Order is pronounced in the open court on 30<sup>th</sup> July, 2019.***

Sd/-  
**[K.N. CHARY]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 30<sup>th</sup> July, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi