

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 516 /Del/2017
A.Y. 2011-12**

ACIT Central Circle 04, New Delhi (APPELLANT)	Vs.	Late Smt. Bhawna Gupta (Through Legal Heir, Sh. Sameer Gupta) R/o. A-43, Phase-II, Noida Extension, Uttar Pradesh-201305 PAN : AAEPG7683B (RESPONDENT)
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**I.T.A. No. 522 /Del/2017
A.Y. 2012-13**

ACIT Central Circle 04, New Delhi (APPELLANT)	Vs.	Smt. Anita Gupta R/o. A-43, Phase-II, Noida Extension, Uttar Pradesh - 201305 PAN : AEVPG0643J (RESPONDENT)
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Appellant by	Sh. Ashish Goel, CA
Respondent by	Sh. Sanjay Goyal, CIT-DR

Date of Hearing	31.07.2019
Date of Pronouncement	31.07.2019

ORDER

PER BENCH :

Both these appeals are filed by the assessee against the order dated 24.11.2016 passed by CIT(A)-23, New Delhi for assessment year 2011-12 and 2012-13.

2. Grounds of appeal are as under :

ITA No. 516/Del/2017

“1. *The order of Ld. CIT(A) is not correct in law and facts.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,09,80,369/- made by the Assessing Officer on account of gain on sale of investment.*

3. *The appellant craves leave to add, amend any/all grounds of appeal before or during the course of hearing of the appeal.”*

ITA No. 522/Del/2017

“1. *The order of Ld. CIT(A) is not correct in law and facts.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,88,27,050/- made by the Assessing Officer on account of Long Term Capital Gain.*

3. *The appellant craves leave to add, amend any/all grounds of appeal before or during the course of hearing of the appeal.”*

3. The issues are identical in both the appeals, therefore, we are taking ITA No. 516/Del/2017 for Assessment Year 2011-12. The assessee is an individual. During the year, the assessee earned income from house property and other sources. The assessee filed return of income for year under consideration declaring a total income of Rs. 9,08,750/-. A search and seizure operation was conducted on 03.10.2013 in Jakson Group of cases u/s 132 of the Act. Correspondingly, assessment u/s 153A initiated in case of assessee, notice u/s 153A(1) of the Act was served upon the assessee and assessee filed original ITR in response to same. Notice u/s 142(1) along with questionnaires were served upon the assessee and in respect of thereto, the authorized representative of

the assessee attended the proceedings from time to time and filed necessary details and produced books of accounts. The Assessing Officer assessed the income at Rs. 1,18,89,120/- as against income of Rs. 9,08,750/- as per order u/s 153A /143(3) dated 30.03.2016 thereby making addition of Rs. 1,09,80,369/- on account of bogus exempt long term capital gain.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) through legal heirs. The CIT(A) allowed the appeal of the assessee.

5. During the course of hearing, the Ld. DR submitted written submission wherein the Ld. DR distinguished the decision of the Kabul Chawla 21 taxman.com 412 passed by the Hon'ble Delhi High Court, but the facts of the present assessee's case were not elaborated by the Ld. DR. Therefore we are deciding the case from the observations made by the Assessing Officer as Ld. DR's submissions.

6. The Ld. AR submitted that in similar circumstances the relatives of the assessee as being assessed on similar basis which was decided by the Tribunal in the case of Sameer Gupta who is a son of assessee. The Ld.AR submitted that the Hon'ble High Court also confirmed the decision of the Tribunal.

7. We have heard both the parties and perused all the relevant material available on record. The tribunal in case of Son of the assessee herein held as under :-

"24. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has filed his original return of income on 30th March, 2012 declaring total income of Rs. 3,92,11,220/-. In response to notice u/s 153A of the IT Act, the assessee filed return in response to notice u/s 153A on 5th January, 2015 declaring the same income. The assessee in his return of income had claimed exemption of long term capital gain of Rs. 5,62,61,726/-. The assessment order was

passed u/s 143(3) read with section 153A by making addition of the long term capital gain as bogus. From the order of the assessing officer, we find nowhere it is mentioned that any incriminating material was found during the course of search. The entire addition made by the AO is based on post search inquiries. There is also no ground by the revenue that any such incriminating material was found other than the statement of Shri Sundeep Gupta at the time of search. Under these circumstances, we have to adjudicate as to whether the CIT(A) has erred in deleting the addition made by the AO in absence of any incriminating material.

25. *We find the Id. CIT(A) while deleting the addition has relied on various decisions including the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Kabul Chawala reported in 21 taxman.com 412 (234 taxman 300). Finding of the CIT(A) on this issue has already been reproduced in the presiding paragraphs. So far as the reliance by the Ld. DR in the case of Smt. Dayawanti vs. CIT (supra) is concerned, we find the facts of that case are completely different from that of the facts of the present case. In that case the son of the assessee had categorically admitted that there were unaccounted purchase and sale of various items in Supari from different parties. He had also admitted that certain purchases are unaccounted and accordingly he had surrendered certain income. However, in the present case there is no unaccounted transaction found during the course of search. The capital gain that arose from the sale of shares are already recorded in the books of accounts and no incriminating material whatsoever was found during the course of search . Therefore, the said decision in our opinion is not applicable to the facts of the present case.*

26. *It has come to our notice subsequent to the hearing that the Hon'ble Delhi High Court in the case of Pr. CIT vs. Meeta Gutgutia reported in 2017 (5) TMI 1224 has held that addition cannot be made in absence of any Incriminating material and the decision in the case of Smt. Dayawanti Gupta has been duly considered. So far as the decision of Hon'ble Kerala High Court in the case of E. N. Gopal Kumar (supra) relied by the Ld. Dr is concerned, we find the said decision is of a non-jurisdictional High Court and the Tribunal is bound by the decision of the Jurisdictional High Court. Since the Hon'ble High Court in a number of cases recently has held that addition cannot be made in order passed u/s. 153A r.w.s. 143(3) in absence of any incriminating material found during the course of search in the case of completed assessments, therefore, we do not find any infirmity in the order of the CIT(A) deleting the addition in absence of any incriminating material found during the course of*

search.

27. We further find the revenue has not challenged the vital legal ground on which the Ld. CIT(A) has deleted the addition. Since the Hon'ble Jurisdictional High Court has clearly held that addition in order passed u/s 143(3)/ 153A cannot be made In absence of any incriminating material and since in the instant case, there is no evidence whatsoever on record that any incriminating material was found during the course of search and since the addition was made on the basis of certain inquiries conducted subsequent to the search on the basis of return already filed, therefore, on this issue itself addition has to be deleted. We, therefore, uphold the order of the CIT(A) and dismiss the ground raised by the revenue.”

The Hon'ble High Court in the said case held as under :-

“In this case the search took place in the premises on 03.10.2013. A notice under Section 153A was issued to the assessee which re-affirmed its earlier returns. The Assessing Officer completed the Section 153A assessment by adding amounts under Section 60A to the tune of ₹5,62,61,726/- for AY 2011-12. The CIT (A) and the ITAT concurrently granted relief to the assessee in the appellate proceedings holding that no fresh incriminating material was seized warranting the additions during the search. Both the appellate authorities relied upon the judgment of this Court in CIT v. Kabul Chawla, 380 ITR 573.

In these circumstances, the Court is of the opinion that no question of law arises as the ratio in Kabul Chawla (supra) applied. The appeal is, therefore, dismissed.”

In the present case also there is no unaccounted transaction found during the course of search. The capital gain that arose from the sale of shares are already recorded in the books of accounts and no incriminating material whatsoever was found during the course of search. Since the Hon'ble Jurisdictional High Court has clearly held that addition in order passed u/s 143(3)/ 153A cannot be made In absence of any incriminating material and since in the instant case, there is no evidence whatsoever on record that any incriminating material was found during the course of search and since the addition was made on the basis of certain inquiries conducted subsequent to

the search on the basis of return already filed, therefore, on this issue itself addition has to be deleted. The issue in the present case is identical with that of the decision given by the Tribunal as the same is son of the assessee herein. In fact, now the son only representing the assessee after her death. Therefore, the CIT(A) rightly allowed the appeal of the assessee. Thus, appeal of the revenue is dismissed.

8. As regards ITA no. 522/Del/2017 the same is also identical, therefore, the appeal of the revenue is dismissed.

9. In result, both the appeals filed by the revenue are dismissed.

Order pronounced in the Open Court on 31st JULY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 31/07/2019

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	31.07.2019
Date on which the typed draft is placed before the dictating Member	31.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	