

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA.Nos.4026, 4027, 4028 & 4029/Del./2017
Assessment Years 2009-2010, 2010-2011, 2011-2012 & 2012-2013

Jey Kay Pvt. Ltd., 10 Scindia House, Connaught Place, New Delhi – 110 001 PAN AAACJ0047M	vs.	The DCIT, Central Circle-8, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri V.K. Aggarwal, A.R. & Smt. Shweta Bansal, C.A.
For Revenue :	Shri J.K. Mishra, CIT-D.R.

Date of Hearing :	08.08.2019
Date of Pronouncement :	09.08.2019

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by Assessee are directed against the different Orders of the Ld. CIT(A)-25, Delhi, Dated 29.03.2017 for the A.Ys. 2009-2010 to 2012-2013.

2. Briefly the facts of the case are that during assessment years under appeals the assessee had disclosed income only from house property. The company owns a

property at 15-Amrita Shergil Marg, New Delhi which is stated to be residential house property. Income from rent was declared. Search was conducted in the case of assessee on 04.08.2014 wherein property tax challan for A.Y. 2014-2015 was found and on the basis of this document, proceedings under section 153A have been initiated. As per the said bill, the Tax Department of New Delhi Municipal Council, New Delhi has charged the property tax of the said property on rateable value of Rs.43,51,200/- per annum. On the basis of this document, A.O. computed higher rateable value of the property and addition was made on account of income from house property ignoring the rent declared by the assessee. The Ld. CIT(A) dismissed the appeals.

3. The Learned Counsel for the Assessee at the outset submitted that Ld. CIT(A) has erred in confirming the assessment orders under section 153A which is illegal being against the provisions of the Income Tax Act. He has submitted that during the course of search, no incriminating material was found pertaining to the

impugned assessment years. As on the date of search, no assessment proceedings were pending. The assessee filed original return of income under section 139(1) of the I.T.Act on time. Copies of the acknowledgment of filing of the original return of income are filed on record. He has submitted that under these circumstances no addition could be made of this nature under section 153A of the I.T. Act. He has submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 573 (Del.) in which it was held as under:

“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”

3.1. He has submitted that the Honble Delhi High Court in the case of Pr. CIT vs. Meeta Gut Gutia 395 ITR 526 (Del.) in paras 69 to 72 of the Order 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 qua each 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.”

3.2. He has further submitted that the Judgment of Honble Delhi High Court in the case of Pr. CIT vs. Meeta Gut Gutia (supra) has been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department reported in 257 Taxman 441.

4. The Ld. D.R. on the other hand relied upon the Orders of the authorities below.

5. We have considered the rival submissions. It is an admitted fact that during the course of search conducted a property tax challan for A.Y. 2014-2015 was found which is also reproduced in the assessment orders which is copy of the property tax bill raised by NDMC. Learned Counsel for the Assessee also referred to PB-52 to show receipt of the same which pertain to the A.Y. 2014-2015. This receipt, therefore, pertain to A.Y. 2014-2015 and has no relevance to the A.Ys. 2009-2010 to 2012-2013 under appeals. Since no incriminating material was found pertaining to the assessment years under appeals, therefore, the issue is covered by the Judgments of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra) and Pr. CIT vs. Meeta Gut Gutia (supra) and the Judgment in the case of Pr. CIT vs. Meeta Gut Gutia (supra) of the Hon'ble Delhi High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. In view of the above, there was no justification for the authorities

below to make the addition on account of higher rateable value of the property under the head income from other sources. In view of the above, we set aside the Orders of the authorities below and delete all the additions.

6. In the result, appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 09th August, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.