

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.4262 to 4265/Del/2016  
Assessment Years: 2007-08 to 2010-11

ACIT,  
Central Circle-29,  
New Delhi.

Vs Jaypee Financial Services Ltd.,  
FA-45, Shivaji Enclave,  
New Delhi.

PAN: AAACJ2992B

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, CA
Revenue by	:	Smt. Naina Soin Kapil, Sr. DR
Date of Hearing	:	04.09.2019
Date of Pronouncement	:	05.09.2019

ORDER

PER R.K. PANDA, AM:

The above batch of appeals filed by the Revenue are directed against the separate orders dated 16<sup>th</sup> May, 2016 of the CIT(A)-30, New Delhi, relating to assessment years 2007-08 to 2010-11 respectively.

2. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

3. First we take up ITA No.4262/Del/2016 as the lead case. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading of equity shares, securities and commodities through recognized stock exchanges. It filed its return of income on 31<sup>st</sup> October, 2007 declaring total income at Rs.86,67,680/-. The return was processed u/s 143(1) of the Act, vide intimation dated 21<sup>st</sup> February, 2009. A search and seizure action u/s 132 of the Act was initiated in the case of the assessee as part of Jaypee Group on 30<sup>th</sup> March, 2012. In response to notice u/s 153A issued on 05.08.2013, the assessee filed its return of income on 2<sup>nd</sup> September, 2013 declaring a total taxable income of Rs.86,67,680/- which was the income as per the original return of income. The Assessing Officer got the accounts audited by the special auditor appointed u/s 142(2A) of the IT Act. Thereafter, the Assessing Officer completed the assessment u/s 153A of the Act determining the total income at Rs.15,84,35,130/- wherein he made addition of Rs.14,97,45,205/- on account of Client Code Modification and Rs.22,242/- u/s 40A(3) of the Act.

4. In appeal, the Id.CIT(A), following the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla reported in 380 ITR 573*, deleted the addition of Rs.14,97,47,205/- made by the Assessing Officer on account of Client Code Modification. He, however, sustained the addition of Rs.22,242/- made by the Assessing Officer u/s 40A(3) of the Act.

5. Aggrieved with the order of the CIT(A), the Revenue is in appeal before the tribunal by raising the following grounds:-

- (a) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in directing the AO to delete addition made on account of Client Code Modification.
- (b) On the facts and in the circumstances of the case, the Ld.CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawala by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.
- (c) 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 undisclosed income discovered from seized / incriminating material.
- (d) 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 r.w.s,153C of the Act.
- (e) 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.
- (f) That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
- (g) That the grounds of appeal are without prejudice to each other.
- (h) 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."

6. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Ld.CIT(A) while holding that the Assessing Officer has no jurisdiction to frame assessment u/s 153A of the Act in

absence of any incriminating material found during the course of search and when the assessment has already been completed before the date of search u/s 153A of the Act has observed as under:-

“7.3 I have carefully considered assessment order, written submission and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under:-

(i) In the search action, which took place on 30.3.2012, it is submitted by the appellant that no incriminating material was found and also no assessment was abated. It is further submitted that the additions of Rs. 14,97,67,447/-, made vide assessment u/s 153A, are not based on any seized material, as there is no reference of any seized material in the assessment order. Therefore, it is submitted that alleged additions made by the A.O. are uncalled for.

Based on the above facts, it was also submitted by the appellant that decision of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs. Kabul Chawla 2015 61Taxmann.com 412(Del), is squarely applicable the facts of the appellant.

Conclusion:

In view of the above, it is clear that:

- a) No assessment/reassessment proceedings, were pending as on 30.3.2012 and hence, no assessment was abated.
- b) The addition made by the A O is not based on any incriminating documents/seized material found during the course of search and seizure action u/s 132 of the Act, on 30.3.2012.

From the above facts, it is clear that no assessment was abated at the time of initiation of action u/s 132 on 30.3.2012 and also, the additions made in assessment order u/s 153A dated 24.3.2015, are not based on any incriminating document. As such, facts of the appellant are squarely covered by the ratio laid down by Hon'ble Jurisdictional High Court of Delhi, in the case of CIT vs. Kabul Chawla (supra).

In view of the above, I agree with the arguments of the appellant and therefore, additions made by the A.O, in absence of any incriminating documents/evidence, cannot be sustained.

Accordingly, ground No.6 to 11 are hereby allowed.”

7. While deleting the amount of Rs.14,97,47,205/- on account of Client Code Modification, the Id.CIT(A) held as under:-

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

(i) In the assessment order, the following addition has been made u/s 153A, without referring any incriminating document found during search and seizure action u/s 132 on 30.3.2012:

(a) Client Code Modification : Rs. 14,97,45,205/-

Therefore, it is submitted by the appellant that in absence of any incriminating document, no addition can be made u/s 153A, when the assessment of this year, is not abated.

(ii) As, I have already held (supra), while deciding in ground no. 6 to 11, that no addition can be made in the assessment order u/s 153A, since no incriminating document 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(Del).

In view of the above, it is not necessary to adjudicate ground no. 12 to 14 and hence, treated to be allowed.”

8. The Id. DR could not controvert the above factual findings given by the CIT(A) that no incriminating material was found during the course of search and the assessment was not pending on the date of search. Therefore, following the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (supra)*, which has subsequently been reiterated in the case of *PCIT vs. Varun Beverages Ltd. in ITA 561/2019, order dated 02.07.2019*. We do not find any infirmity in the order of the CIT(A). We find the Hon'ble Delhi High Court in the case of *Varun Beverages Ltd. (supra)* has observed as under:-

“4. The Commissioner of Income Tax (Appeals) [‘CIT (A)’] agreed with the Assessee on merits and quashed the assessment under Section 153-A of the IT Act. When the matter reached the ITAT at the instance of the Revenue, it dismissed the appeal following the decision of this Court in Commissioner of Income-tax (Central)-III v Kabul Chawla (2016) 380 ITR 573 (Del).

5. The Court is informed by learned counsel for the Revenue that although the Revenue’s appeal in the case of Commissioner of Income- tax (Central)- III v Kabul Chawla (supra) was dismissed by the Supreme Court on the ground of monetary limit of the tax effect involved, the correctness of the said judgment is in question in other appeals filed by the Revenue in the Supreme Court. Nevertheless, the Court is informed that there has been no stay of the operation of the judgment of this Court in Commissioner of Income-tax (Central)-III v Kabul Chawla (supra).

6. Since the ITAT has followed the decision of this Court in Commissioner of Income-tax (Central)-III v Kabul Chawla (supra), which holds good as of date and has not been stayed by the Supreme Court, this Court sees no reason to interfere with the impugned order of the ITAT.

7. No substantial question of law arises in the present appeal and the same is accordingly dismissed.”

9. Since, admittedly, in the instant case, the addition is not based on any incriminating material found during the course of search and the assessment was not pending on the date of search, therefore, respectfully following the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (supra)* and *PCIT vs. Varun Beverages Ltd. (supra)*, we uphold the order of the CIT(A) and the grounds raised by the Revenue are dismissed. So far as the contention of the Id. DR that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has not been accepted by the Department and the SLP against the same has been filed before the Hon'ble Supreme Court is concerned, the same, in our opinion, cannot be a ground to take a contrary view than the consistent view taken by the jurisdictional High Court unless and until the same is reversed by the

Hon'ble Supreme Court. The grounds raised by the Revenue are accordingly dismissed.

ITA Nos.4263 to 4265/Del/2016 (A.Ys: 2008-09 to 2010-11)

10. After hearing both the sides, we find identical grounds have been raised by the Revenue in all these appeals challenging the various additions made by the Assessing Officer which has been deleted by the CIT(A) except the disallowance u/s 40A(3). We find the grounds raised by the Revenue are identical to the grounds raised in ITA No.4262/Del/2016 (A.Y. 2007-08). We have already decided the issue and the grounds raised by the Revenue have been dismissed. Following the similar reasonings the grounds raised by the Revenue are dismissed.

11. In the result, all the four appeals filed by the Revenue are dismissed.

The decision was pronounced in the open court on 05.09.2019.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 05<sup>th</sup> September, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi