

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2946/Del./2017
Assessment Year 2007-2008

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| Smt. Neeru Gupta, H.No.11, Block-5, Roop Nagar, New Delhi. PAN AGZPG6361M | vs. | The ACIT, Central Circle-7, New Delhi-55. |
| (Appellant) | | (Respondent) |

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| For Assessee : | -None- |
| For Revenue : | Shri R.L. Meena, CIT-D.R. |

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| Date of Hearing : | 24.09.2019 |
| Date of Pronouncement : | 01.10.2019 |

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-24, New Delhi, Dated 27.10.2015 for the A.Y. 2007-2008.

2. Briefly the facts of the case are that assessee is an individual. A search and seizure operation under section 132 of the I.T. Act was carried-out on M/s Satya Parkash & Brothers group of cases on 28.10.2010. Warrant of

authorization under section 132 of the I.T. Act, 1961 was also issued in the name of the assessee. Notice under section 153A of Income Tax Act, was issued against the assessee. The Counsel for Assessee filed letter sought adjournment due to ill health. Thereafter, statutory notices were issued, but, none have been attended to. In A.Y. 2007-2008 under appeal, the assessee has filed return of income declaring income of Rs.1,40,100/-. Since assessee did not attend the proceedings under section 153A of the I.T. Act, the A.O. estimated the income of assessee at Rs.5 lakhs and passed the Order under section 153A r.w.s. 143(3) Dated 28.03.2013. The assessee challenged the addition before the Ld. CIT(A). The Ld. CIT(A) restricted the addition to Rs.3 lakhs on best Judgment assessment.

3. None appeared on behalf of the assessee. It is contended in the grounds of appeal that addition is made without recovery of any incriminating document during the course of search, therefore, assessment is illegal and unjustified.

4. The Ld. D.R. however, relied upon the Orders of the authorities below.

5. After considering the facts of the case, we are of the view that entire addition is liable to be deleted. In this case, the assessee filed original return of income and the A.O. on the basis of the return of income estimated the income at higher amount, therefore, no incriminating material was found during the course of search so as to estimate the income. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 held as under :

“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 ?”

5.1. 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”

5.2. Similarly in the case of Pr. CIT vs. Meeta Gut Gutia 395 ITR 526 (Del.) the Hon'ble Delhi High Court held that invocation of Section 153A to reopen the concluded assessments of assessment orders earlier to the year of search was not justified in the absence of any incriminating material found during the course of search qua each such

earlier assessment orders. This view of the Hon'ble Delhi High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department reported in 257 Taxman 441 (SC). In view of the above and following the above decisions, we set aside the Orders of the authorities below and delete the entire addition.

6. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2019

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT "E" Bench |
| 6. | Guard File |

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.