

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3783/DEL/2014  
[A.Y 2005-06]

&

ITA No. 3784/DEL/2014  
[A.Y 2006-07]

M/s HBN Insurance Agencies  
B - 53, B-1, Community Centre  
Janakpuri, New Delhi

Vs.

The A.C.I.T  
Central Circle -4  
New Delhi

PAN: AABCH 4386 E

(Applicant)

(Respondent)

Assessee By : Ms. Gunjan Jain, CA  
Department By : Shri A.K. Saroha, CIT- DR

Date of Hearing : 17.12.2019  
Date of Pronouncement : 23.12.2019

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

The above two appeals by the assessee are preferred against the common order of the Commissioner of Income Tax [Appeals] - 33, New Delhi dated 23.12.2013 pertaining to assessment years 2005-06 & 2006-07. Since common issues are involved in both these appeals and since

the first appellate authority has disposed these appeals by a common order and both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] was carried out at various premises of HBN Group on 20.11.2009, which included premises of the assessee also. Statutory notice was issued and served upon the assessee and pursuant to the said notice, the assessee filed its return of income declaring total income of Rs. 84,540/- for Assessment Year 2005-06 and Rs. 25,680/- for Assessment Year 2006-07. The assessee is engaged in the business activity of providing all kinds of consultancy services on insurance/risk management consultancy services.

3. During the course of assessment proceedings, it was brought to the notice of the Assessing Officer that the assessee company has undergone voluntary winding up on 16.08.2010 under the Easy Exit Scheme. Since no order of winding up was issued by the appropriate

authority and no such order was filed, the Assessing Officer proceeded to complete the assessment in the name of the assessee company.

4. During the course of scrutiny assessment proceedings, the assessee was asked to explain the source of deposits in the bank account with AXIS Bank, New Delhi. On receiving no plausible reply, the Assessing Officer proceeded by examining the bank deposits and found that during the period 01.04.2004 to 31.03.2005, total deposits were to the tune of Rs. 12,16,399/-. Since gross receipts from the business activities were shown at Rs. 5,57,619/-, the Assessing Officer treated the difference of Rs. 6,58,780/- as unexplained bank deposit and accordingly, made the additions u/s 68 of the Act.

5. The assessee carried the matter before the Id. CIT(A) and vehemently contended that no incriminating material was found during the search conducted u/s 132 of the Act and additions made by the Assessing Officer have no reference to any such incriminating material found at the time of search, hence the additions made are beyond the scope of section 153A of the Act.

6. The contention of the assessee did not find any favour with the ld. CIT(A). The ld. CIT(A) was of the firm belief that neither during the assessment proceedings nor during the appellate proceedings, the assessee has explained the source of cash deposits in the bank account and, accordingly, confirmed the assessment.

7. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that the issues are squarely covered in favour of the assessee and against the Revenue by the decision of the Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573.

8. Per contra, the ld. DR supported the findings of the Assessing Officer. It is the say of the ld. DR that during the course of search proceedings, several incriminating documents were found which included the balance sheet of the assessee company. Therefore, it cannot be said that the assessment is devoid of any incriminating material and, therefore, there is no error in the findings of the ld. CIT(A).

9. We have given thoughtful consideration to the orders of the authorities below. We find that the assessee company filed its return of income for Assessment Year on 23.12.2005 and for Assessment Year 2006-07 on 16.03.2008. Return for Assessment Year 2005-06 was processed u/s 143(1) vide intimation dated 27.03.2006 and for Assessment Year 2006-07 on 12.03.2009. As per the provisions of section 143(2) of the Act, notices could have been issued by 31.12.2006 for Assessment Year 2005-06 and by 31.03.2009 for Assessment Year 2006-07. Since the date of search and seizure operation is 20.11.2009, it can be safely concluded that since no notice was issued and served upon the assessee u/s 143(2) of the Act, assessment is complete.

10. In our considered opinion, the profit and loss account and balance sheet of the assessee company, by any stretch of imagination, cannot be considered as incriminating material. It is also not the case of the Revenue that the bank accounts were unearthed during the search operation. On these facts, the ratio laid down by the Hon'ble High Court of Delhi in the case of *Kabul Chawla* [supra], squarely apply wherein the Hon'ble High Court of Delhi held as under:

*"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material.*

*Obviously an assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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."*

11. This view was further fortified by the decision of the Hon'ble Supreme Court in the case of Meeta Gutgutia 96 Taxmann.com 468 wherein it was held as under:

"57. The question whether unearthing of incriminating material relating to any one of the AYs could justify the re-opening of the assessment for all the earlier AYs was considered both in [CIT v. Anil Kumar Bhatia](#) (supra) and [CIT v. Chetan Das Lachman Das](#) (supra). Incidentally, both these decisions were discussed threadbare in the decision of this Court in [Kabul Chawla](#) (supra). As far as [CIT v. Anil Kumar Bhatia](#) (supra) was concerned, the Court in paragraph 24 of that decision noted that "we are not concerned with a case where no incriminating material was found during the search conducted under [Section 132](#) of the Act. We therefore express no opinion as to whether [Section 153A](#) can be invoked even under such situation". That question was, therefore, left open. As far as [CIT v Chetan Das Lachman Das](#) (supra) is concerned, in para 11 of the decision it was observed:

"11. Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or Information available with the Assessing Officer which can be related to the evidence found. This, however, does not mean that the assessment under Section 153A can be arbitrary or made without any relevance or

*nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

*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."*

12. Respectfully following the ratio laid down by the Hon'ble High Court of Delhi and Hon'ble Supreme Court [supra], we are of the considered view that the assessment framed u/s 153A of the Act for both the Assessment Years under appeal deserves to be set aside. We, accordingly direct the Assessing Officer to delete the impugned additions from both the Assessment Years.

13. In the result, the appeals of the assessee in ITA Nos. 3783 & 3784/DEL/2016 are allowed.

**The order is pronounced in the open court on 23.12.2019.**

**Sd/-**

**[SUSHMA CHOWLA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 23<sup>rd</sup> December, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
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