

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.3589/Del./2016
Assessment Year 2008-2009

The ACIT, Central Circle-26, Room No.323, 3 rd Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Golden Heaven Reality Pvt. Ltd., 305, 3 rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi. PAN AACCG7437Q
(Appellant)		(Respondent)

Cross Objection No.284/Del./2016
Arising out of
ITA.No.3589/Del./2016 - Assessment Year 2008-2009

M/s. Golden Heaven Reality Pvt. Ltd., 305, 3 rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi. PAN AACCG7437Q	vs.	The ACIT, Central Circle-26, Room No.323, 3 rd Floor, ARA Centre, Jhandewalan Extn., New Delhi.
(Cross-Objector)		(Respondent)

For Revenue :	Shri Sanjay Goel, CIT-D.R.
For Assessee:	Shri Krishna Sampath, Advocate.

Date of Hearing :	03.02.2020
Date of Pronouncement :	03.02.2020

ORDER**PER BHAVNESH SAINI, J.M.**

The Departmental Appeal and Cross Objection by Assessee are directed against the Order of the Ld. CIT(A)-29, New Delhi, Dated 30.03.2016, for the A.Y. 2008-2009 on the following grounds :

- “1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the reduction of value of stock/inventory by Rs.1,80,84,869/- on account of brokerage, and Rs.9,25,47,870/-, on account of compensation, without appreciating the fact that the assessee failed to substantiate the above expenses u/s.37(1) either at the assessment stage or at the appellate stage.*

2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the Hon'ble Allahabad High Court has held in the case of Commissioner of Income-tax, Central. Kanpur v*

Raj Kumar Arora [2014] 52 taxmann.com 172 (Allahabad), after considering the Judgment given by the Hon'ble Delhi High Court in case of CIT vs., AniLKumar Bhatia [2012] 211 Taxman 453/24 taxmann.com 98, that the AO has power to reassess returns of assessee not only for undisclosed income, which was found during search operation but also with regard to material that was available at time of original assessment.”

2. Briefly the facts of the case are that the A.O. passed the assessment order under section 153A/143(3) Dated 25.03.2013. In the Order, as against the returned loss of Rs.1,94,170/-, the A.O. assessed the assessee at the loss of Rs.1,94,170/-. However, the A.O. reduced the value of inventory/stock-in-trade capitalized by the assessee by making the following additions/disallowances. (i) Disallowance on account of brokerage - Rs.1,80,84,869/- (ii) disallowance on account of compensation- Rs.9,25,47,870/-

2.1. The assessee challenged the both the additions before the Ld. CIT(A) and it was submitted that both the additions are beyond the scope of provisions of Section 153A of the I.T. Act because the said disallowances are not based upon any documents/papers seized during the course of search held on assessee on 19.10.2010 and at the time of search, proceedings were completed and not abated.

2.2. The Ld. CIT(A) found that assessee filed original return of income on 17.09.2008, declaring loss of Rs.1,94,170/-. The same was processed under section 143(1) of the Act on 25.07.2009 and no disturbance in income has been made. The search took place in IREO group of cases on 19.10.2010 and the case of assessee was also covered in the said search. Consequent to search, notice under section 153A of the Act was issued on 30.12.2011 and in compliance to that the assessee submitted return of income on 23.12.2012, declaring loss of Rs. 1,94,170/-. During the course of assessment proceedings, it was observed by the AO that assessee has disclosed purchase of land amounting to Rs.54,99,64,194/-.

On examination of the details regarding the said purchase of land, it is seen by the AO that assessee has taken brokerage amounting to Rs.1,80,84,869/- and relinquishment of rights amounting to Rs.14,66,55,370/- in the said purchase of land. The genuineness of such transaction/expenditure could not be explained by the assessee in some of the cases, to the satisfaction of AO and hence the entire expenditure of brokerage of Rs.1,80,84,869/- and compensation for relinquishment of right amounting to Rs.9,25,47,870/- in the case of 6 persons has not been allowed to be accumulated towards the value of stock in trade and reduced accordingly. However, since no such expenditure was claimed in the profit and loss account, no addition has been made in the total income and assessed at a loss of Rs.1,94,170/-. The Ld. CIT(A), in view of these facts found that on the date of search i.e. on 19.10.2010, no proceedings were pending as processing under section 143(1) was completed on 25.07.2009. It was also found that the impugned disallowances are not based on any documents found and

seized during the course of search or emanating out of any undisclosed income, cash, or investment etc., not disclosed by the assessee. Nothing in this regard has also been mentioned by the AO in the assessment order. The disallowance has been made on the basis of enquiries made during the course of assessment proceedings under section 153A of the Act. Therefore, the ratio laid down by Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 (Del.) is applicable in this case. Therefore, there was no justification by the A.O. to make additions under section 153A of the I.T. Act, 1961. The Ld. CIT(A), accordingly, allowed the appeal of assessee.

3. The Ld. D.R. relied upon the Order of the A.O.

4. On the other hand, Learned Counsel for the Assessee submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of CIT Kabul Chawla (supra).

5. We have considered the rival submissions. In the case of CIT vs. Kabul Chawla (supra), the Hon'ble Delhi High Court has considered the following question of law :

“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. This similar view has been taken by the Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia 395 ITR 526 (Del.), in which, following the Judgment in the case of Kabul Chawla (supra), it was 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.”

5.3. The said decision has been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department reported in 96 taxmann.com 468 (SC).

5.4. Since in the present case both the above additions are admittedly made during the course of inquiries at assessment stage under section 153A of the I.T. Act, 1961 and original assessment was already completed on 25.07.2009 by proceeding the return under section 143(1), therefore, issue is covered by Judgments of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla and Pr. CIT vs., Meeta Gut Gutia (supra). The Departmental appeal stand dismissed.

6. In the result, appeal of the Revenue is dismissed.

7. The Cross-Objection is filed in support of the Order of the Ld. CIT(A) and the same have become infructuous and is accordingly dismissed.

8. In the result, Cross-Objection of the Assessee is dismissed.

9. To sum-up, appeal of the Revenue as well as Cross-Objection of the Assessee are dismissed.

Order pronounced in the open Court.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd February, 2020

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.