

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.K.CHOUDHRY, JUDICIAL MEMBER AND
DR. A.L.SAINI, ACCOUNTANT MEMBER

ITA Nos.272 & 273 /Asr/2019
Assessment Years: 2010-11&2011-12

Sh. Gurmeet Singh
H.No.3, Rose Avenue,
Ferozepur.

Vs.

Dy. CIT
Central Circle-1,
Jalandhar.

[PAN:AKBPS 8876P]

(Appellant)

(Respondent)

ITA Nos.274 & 275 /Asr/2019
Assessment Years: 2010-11&2011-12

Sh. Kashmira Singh
H.No.3, Rose Avenue,
Ferozepur.

Vs.

Dy. CIT
Central Circle-1,
Jalandhar.

[PAN:AEWPS 9566D]

(Appellant)

(Respondent)

Appellant by : Sh. Ashray Sarna (Ld. CA)
Respondent by: Smt. Prabhjot Kaur (Ld. CIT-DR)

Date of hearing: 29.11.2019
Date of pronouncement: 01.01.2020

ORDER

PER N.K.CHOUDHRY, JM:

All these appeals preferred by the Assessees are against the separate orders dated 11/02/2019 passed by the Ld. CIT(A)-5, Ludhiana u/s. 250(6) of the Act, 1961 (hereinafter called as the 'Act).

2. As the issue and facts of all the appeals under consideration are similar and identical, therefore, for the sake of brevity have been taken simultaneously for adjudication by this composite order and for brevity the facts of ITA No.274/Asr/2019 shall be quoted and result of the same shall apply *mutatis mutandis* to the other appeals.

3. The brief facts of the case are that assessee had filed its return of income on dated 31.3.2011 by declaring the income of Rs.2,80,000/- which was processed and completed u/s 143(1) of the Act vide order dated 17.04.2011. Thereafter, on dated 11.02.2016 a search operation u/s 132 of the Act was carried out at the residential premises of the assessee as well as at the other concerns/ persons of Bhagwati Group of Ferozepur. In consequence to which notice u/s 153A of the Act was issued on 13.06.2017, in response to which the assessee filed his return of income on dated 10.07.2017 disclosing the income at Rs.280,000/-.

As per revenue case , during the course of search operation at the residential premises of Sh. Prem Singh on dated 11.02.2016, his statement was recorded on oath in which he stated that some investment in purchase of land was made by him out of funds provided by M/s Guru Nanak Milk Products, Village-Mallanwala. On verifying the trail of funds, it was noticed that M/s Guru Nanak Milk Products had raised loans from M/s Bhagwati Lacto Vegetarian Exports Pvt. Ltd., Ferozepur. It was further noticed that the assessee and his son Sh. Gurmeet Singh were partners in M/s Guru Nanak Milk Products with 50% share each and also substantive shareholders in M/s Bhagwati

Lacto Vegetarian Exports Pvt. Ltd., Ferozepur with shareholding of 22.38% and 30.55% respectively. Therefore, the firm in which the assessee and his son had substantial interest separately had received loan from a private limited company in which they have again substantive interest as per provision of Sec.2(22)(e) of the Act. The Assessing Officer held that the total amount of loan as on 01.04.2009 was Rs.3,50,50,000/- and as on 31.3.3010 the same was Rs.15,51,39,865/-. Thus, the firm had received loan of Rs.12,00,89,865/- during the relevant financial year. However, the accumulated profit by the end of the financial year was Rs.11,95,472/- . The AO ultimately held that since both the assessee and his son are to be taxed for the deemed dividend received, it would be logical to assess only 50% of the amount in the hands of the assessee, therefore, 50% of the accumulated profit which comes to Rs.5,97,736/- is warranted and therefore added in the income of the assessee.

4. The assessee challenged the said addition before the Ld. CIT(A) who vide impugned order dated 11.02.2019 upheld the action of the AO for making the addition under challenge, against which the assessee is in appeal before us.

5. The Assesse while relying upon the judgment of Delhi High Court in the case of CIT vs. Kabul Chawla 61 taxmann.com 412, submitted that assessee's assessment has already been completed as on the date of search and no incriminating material has been found during the search operation from the possession or premises of the

assessee therefore, no addition could be made in pursuance to section 153A of the Act.

6. On the contrary, the Ld. DR relied upon the various judgments and submitted that though the incriminating material was recovered during the search operation, however in law there is no necessity of any incriminating material for initiating the proceedings u/s 153 of the Act as held by various High Courts and the addition can be made without any incriminating material qua the years covered by Sec.153A. The Ld. DR finally argued that the conclusion drawn by Delhi High Court in the case of CIT vs. Kabul Chawala (*supra*) is contrary to the principles laid by the same High Court in the case of Anil Kumar Bhatia (*24 taxmann.com 98*) and Chetan Das Lachman Das (*25 taxmann.com 227*) and various decision of other High Courts. Further the decision of Kabul Chawla (*supra*) is not a good law because the issue relating to material not found during the search was considered to be open in Anil Kumar Bhatia (*supra*) whereas the same was already decided in that case. Consequently, the case decided in Chetan Das Lachman Das (*supra*) was not distinguishable from the case of Kabul Chawla (*supra*).

7. Having heard the parties at length and perused the material available on record. The Assessee has claimed that from the orders passed by the authorities below there is nothing to suggest as to what incriminating material has been found during the search u/s 132(1) of the Act from the assessee possession or his premises, on the basis of which the additions have been made and it is also a fact that the Income Tax Return filed by the assessee for the relevant assessment year: 2011-12 has been processed and completed on 17-04-2011 by

the Revenue Department u/s 143(1) of the Act. Therefore, it cannot be said that assessment proceedings were pending as on the date of search operation on dated 11-02-2016 and while initiating the proceedings u/s 153A of the Act. Even it is not the case of the Revenue department that assessment proceedings were alive and pending as on the date of search. Whereas both the authorities below held that as per Kerala high Court judgment in the case of Kerala High Court in the case of 'E.N. Gopal Kumar vs. CIT(Central)' (390 ITR 131(Kerela High Court), there is no condition that the Department has to unearth some incriminating material to conclude some method against the assessee in events where the assessment is triggered by a notice under Section 153(1)(a) of the Act.

8. The question involved in the instant case relates to the issue , where no assessment proceedings for the year under consideration are pending, in that eventuality, in the absence of any incriminating material found during the course of search and seizure proceedings, whether addition can be made qua unabated assessment for the said year.

9. There are many judgments against the assessee's contention but we are quoting few on which the Revenue Department relied:-

- (i) *'E.N. Gopal Kumar vs. CIT (Central)' reported 390 ITR 131(Kerela High Court)*
- (ii) *CIT vs. Raj Kumar Arora, 52 Taxmann.com.172*
- (iii) *CIT vs. K.P. Ummaer, Prop. Star Rolling Mill [2019] 413 ITR 0251*

- (iii) *Canara Housing Development Co. vs. DCIT* 49 *taxmann.com* 98,
- (iv) *CIT vs. Anil Kumar Bhatia* 24 *taxmann.com* 98
- (v) *CIT vs. Chetan Das Luchman Das* 25 *taxmann.com* 227.

10. The judgments of various High Courts in favour of the assessee's contention. For the sake of brevity, we are mentioning few.

- (1) *CIT vs. Kabul Chawala* 61 *taxmann.com* 412
- (2) *Pr. CIT vs. Dharampal Premchand Ltd.* [2018] 408 ITR 0170 (Delhi High Court)
- (3) *Pr. CIT vs. Sunrise Finlease (Pvt.t) Ltd.* [2018] 305 CTR (Guj) 421 (Gujrat High Court)
- (4) *CIT vs. Deepak Kumar Agarwal & Ors* [2017] 100 CCH 0011 (Mumbai High Court)
- (5) *Pr. Joint CIT vs. Meeta Gutgutia* [2017] 395 ITR 526 (Delhi High Court)
- (6) *Pr. Joint CIT vs. Meeta Gutgutia* [2018] *Taxmann.com* 411 (Supreme Court) in SLP (C) Dairy No. 18121/2018 dated 2nd July, 2018.

11. No doubt there are judgments on both sides to the issue, however, as per decision of Hon'ble Apex Court in the case of *CIT Vs. Vegetable Products* 88 ITR 192 , wherein the Hon'ble Court laid down the proposition to the effects "*whenever there are two reasonable constructions of a taxing provision are*

possible that construction which favours the assessee must be adopted" meaning thereby when two different views of Court are available on an issue then the view which favors the assessee or the judgment which favours the assessee should be followed, we do not have hesitation to follow the judgment of Hon'ble Delhi High Court rendered in the case of CIT(Central-3) vs. Kabul Chawla (supra) wherein clearly held *that if on the date of search, the assessment proceedings already stood completed and no incriminating material unearthed during the search, then no addition can be made to the income already assessed.* The said dictum of the Hon'ble High Court confirmed by the Hon'ble Apex Court vide order dated 2nd July, 2018 in the case of Pr. **Joint CIT vs. Meeta Gutgutia** (supra) by dismissing the SLP filed against the judgment of Delhi High Court, *wherein the same dictum has been laid down by the Hon'ble Court as laid down in the CIT vs. Kabul Chawla (supra),* hence it cannot said that law laid down by Delhi High Court in Kabul Chawla case {supra} is not a good law as claimed by the Ld. CIT DR. Even otherwise the cases relied upon decided by the High Courts have not been confirmed by the Hon'ble Apex Court, hence, the view which favors the assessee and/or the judgments which favours the assessee are required to be respectfully followed .

12. While coming to the instant case, though the Ld. CIT DR also relied upon the judgment of apex Court in Dy. CIT Vs Zuari Estate Development and Investment Co. Ltd. [2015] 373 ITR 661 and submitted that any intimation issued u/s 143(1) cannot be considered as assessment, however it is a fact that in this case Income Tax Return filed by the assessee for the relevant assessment year: 2011-12 has already been processed and completed on dated 17.04.2011 by the Revenue Department u/s 143(1) of the Act and it is not the case of the Revenue Department that the assessment proceedings were still alive as on the date of search operation, therefore the case cited by the Ld. CIT DR is distinguishable on facts.

Even from the orders passed by the authorities below there is nothing to suggest as to what incriminating material has been found on dated 11.02.2016 during the search u/s 132(1) of the Act from the assessee possession or his premises, on the basis of which the additions have been made.

As the issue involved in the instant case is squarely covered by the decisions of Delhi High Court in the case of CIT vs. Kabul Chawla (supra) and CIT vs. Meeta Gutgutia (supra) and by the co-ordinate bench at Amritsar {Jalandhar Camp} in the case of Smt. Sanjana Mittal Vs. DCIT {ITA no. 487/ASR/2018 decided on dated 11th March, 2019} *wherein also the dictum laid down in Kabul Chawla case has been followed*, hence respectfully following the same, we are inclined to delete the addition made by the AO and sustained by the Ld. CIT(A). Consequently, the appeal i.e. ITA no. 272/ASR/2019 is liable to be allowed. Ordered accordingly.

13. In the result of ITA no. 272/ASR/2019, all the appeals under consideration filed by the assessee stands allowed.

Order pronounced in the open Court on 01/01/2020.

Sd/-

(DR. A.L.SAINI)
ACCOUNTANT MEMBER

Dated: 01/01/2020.

/PK/ Ps.

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Sd/-

(N.K.CHOUDHRY)
JUDICIAL MEMBER

By Order