

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

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

**ITA No.193/Asr/2019**  
Assessment Year: 2012-13

Smt. Manju Mittal  
H.No. 15-17,  
Street No.4,  
Ferozpur Cantt.

Vs.

Dy. CIT,  
Central Circle-1,  
Jalandhar.

[PAN: ABZPM 7157J]

**(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:**

This appeal has been preferred by the Assessee/Appellant against the impugned order dated 12.02.2019 passed by the Ld. CIT(A)-5, Ludhiana, u/s 250(6) of the Income Tax Act, 1961 (hereinafter called as 'the Act').

**2.** The brief facts of the case are that a search operation u/s 132 of the Act was carried out at the residential premises of the assessee on dated 11.02.2016 and the business premises of other concerns/persons of Bhagwati Group of Ferozpur. During the course of search, certain typed balance sheets/trial balances etc. in the computers installed at the respective business premises of M/s. Bhagwati Lacto Vegetarian Exports Pvt. Ltd., Ferozpur Cantt. in short

will be referred as 'BLVE' and M/s Bhagwati Lacto Foods Pvt. Ltd., the two companies in which the assessee later became substantive shareholder were found and seized. As per Revenue most of the figures of raising of funds as per the documents did not tally with the audited balance sheet of the respective company. While examining the assessee's balance sheet, it was noticed that the assessee had received loan of Rs.47,55,000/- on different dates from 26.05.2011 to 09.09.2011 from M/s. BLVE, wherein she held 12.69% of the shareholding during the relevant financial year. This was in addition to her credit balance of M/s LBVE appearing in the books of M/s Rahul Enterprises on account of purchases made from M/s. BLVE. The assessee was confronted with the facts and show caused as to why the amount of loan should not be taxed as deemed dividend as per provisions of section 2(22)(3) of the Act. In response to which, the assessee had relied upon the decision of Delhi High Court in the case of CIT (Central) vs. Kabul Chawla, reported at 380 ITR 573 (Delhi), and submitted that no incriminating article has been recovered during the course of search from the assessee or residential premises of the assessee and even the assessment stands processed and completed u/s 143(1) of the Act. Hence, no addition is called for. The Assessing Officer while relying upon the judgment passed by the Kerela High Court in the case of 'E.N. Gopal Kumar vs. CIT(Central)' reported at 390 ITR 131 (Ker) *wherein it was held that the statute nowhere makes it conditional 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,* made the addition of Rs.42,55,000/- u/s 2(22)(e) of the Act.

**3.** The assessee challenged the said addition before the Ld. CIT(A) who vide impugned order on the same footing as held by Assessing Officer , upheld the addition.

**4.** The Assesse challenged the impugned order and while relying upon the judgment of Delhi High Court in the case of CIT vs. Kabul Chawala 61 taxmann.com 412, reiterated the same contentions as raised before the authorities below.

**5.** On the contrary, the Ld. DR relied upon the various judgments and submitted that though the incriminating material was recovered during the time search operation, however in law there is no necessity of any incriminating material while initiating proceedings u/s 153 of the Act as 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 principle 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 also various decision of other High Courts. The Ld. CIT DR further submitted that 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).

**6.** Having heard the parties at length and perused the material available on record. It was claimed by the Assessee that the Income Tax Return for the relevant assessment year 2012-13 has already been processed and completed on dated 23.03.2013 u/s 143(1) of the act. Whereas a search operation u/s 132 was carried out at the residential premises of the assessee on 11.02.2016. Further the material i.e., back up data stored in various computers lying in the business premises of M/s Bhagwati Lacto Foods Pvt. Ltd., and from the Laptop of Sh. Manjeet Singh, Accountant of the Company, was used against the assessee as incriminating material. Further nothing has been recovered either from possession or premises of the assessee. Though the assessee claimed before the authorities below that where no assessment proceeding for the year under consideration is pending, in that eventuality, in the absence of any incriminating evidence found during the course of search and seizure proceedings, no addition/disallowance can be made qua unabated assessment for the said year, however 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)' (Supra), 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.

**7.** The question involved in the instant case relates to the issue , where no assessment proceeding for the year under consideration is pending, in that eventuality, in the absence of any incriminating material found during the course of search and seizure proceedings,

whether the addition can be made qua unabated assessment for the said year.

**8.** The judgments which are against the assessee's contention are many but we are quoting few on which the Revenue Department has 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*
- (iv) *Canara Housing Development Co. vs. DCIT 49 taxmann.com 98,*
- (v) *CIT vs. Anil Kumar Bhatia 24 taxmann.com 98*
- (vi) *CIT vs. Chetan Das Luchman Das 25 taxmann.com 227.*

**9.** There are many judgments of various High Courts in favour of the assessee's contention, however 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 2<sup>nd</sup> July, 2018.*

**10.** 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 2<sup>nd</sup> 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 the respectfully followed .

**11.** 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 23.03.2013 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.

**12.** 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's possession or premises, on the basis of which the additions have been made.

**13.** 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 11<sup>th</sup> March, 2019*} wherein also the dictum laid down in Kabul Chawla case (supra) 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, hence stands allowed.

**14.** In the result, the both the appeals 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.

Copy forwarded to:

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3. The CIT
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Sd/-

(N.K.CHOUDHRY)  
JUDICIAL MEMBER

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By Order