

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.5558/Del/2017
Assessment Year: 2008-09**

DCIT, Circle 1(1),
Gurgaon.

vs. DLF Universal Ltd., (formerly
Known as DLF Retail Developers
Ltd.), 9th Floor, DLF Centre, Sansad
Marg, New Delhi.
PAN : AAACJ 1655P

**C.O. No. 231/Del/2017
(in ITA No.5558/Del/2017)
Assessment Year: 2008-09**

DLF Universal Ltd., (formerly
Known as DLF Retail Developers
Ltd.), 9th Floor, DLF Centre,
Sansad Marg, New Delhi.
(Appellant)

vs. DCIT, Circle 1(1),
Gurgaon.

(Respondent)

Revenue by : Ms. Nidhi Srivastava, CIT/DR
Assessee by : Sh. R.S. Singhvi, C.A.

Date of hearing: 22/01/2020
Date of order : 13/02/2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 29/07/2013 in appeal No. 140/15-16
passed by the learned Commissioner of Income Tax (Appeals)-1, Gurgaon

("Ld. CIT(A)"), for assessment year 2008-09, in the case of M/s. DLF Universal Ltd. ("the assessee"), Revenue preferred this appeal. The assessee has also filed cross-objections challenging the validity of initiation of proceedings u/s. 153A of the Income-tax Act, 1961 ("the Act").

2. Brief facts of the case are that the assessee is a company engaged in the business of real estate development. For the assessment year 2008-09, they have filed return of income on 29.09.2008 declaring a total income of Rs.2,85,15,17,102/- and revised the same on 07.02.2009 with declared income of Rs.2,85,15,27,398/-. Subsequently, pursuant to the search and seizure action carried out in the case of M/s. Orris Infrastructure Limited group of cases on 16.01.2013, notice u/s. 153A of the Act was issued on 10.03.2015. The assessee replied that neither any search was conducted in the premises of the assessee nor any inquiry was conducted by the Investigation Wing and the said notice was issued on the basis of search conducted in the case of Orris Infrastructure Limited, wherein some documents were found in the locker maintained by the assessee and M/s. Orris Infrastructure group jointly. The assessee, however, filed its return of income, as was filed earlier only. The assessment u/s. 153A/143(3) of the Act was completed by order dated 30.03.2015 at an income of Rs.28,75,90,520/- by making addition of Rs.2,03,63,120/- u/s. 14A read with Rule 8D of the Rules.

3. Aggrieved by such an addition, the assessee preferred appeal before the CIT(A) and contended that the dividend income itself is Rs.26,51,114/- and further that no document pertaining to the assessee was found from any of the two lockers, in respect of which warrant of authorization bearing the name of the assessee was issued. It was further contended that the only

document found pertaining to the assessee from the office of M/s. Orris Infrastructure Ltd. does not belong to the assessee.

4. The Id. CIT(A) considered the material available before him and reached a factual conclusion that no document pertaining to the assessee qua the addition u/s. 14A read with Rule 8D was found during the search and therefore, in the light of the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 573 and PCIT vs. Kurele Paper Mills Ltd., 380 ITR 571, the Id. CIT(A) directed the deletion of the disallowance.

5. The Revenue filed this appeal challenging such deletion of the addition made by the Assessing Officer u/s. 14A read with Rule 8D, whereas the assessee preferred the cross objection stating that the CIT(A) should have adjudicated the challenge of the assessee to initiation of proceedings u/s. 153A when no search was conducted on the assessee.

6. We have gone through the record in the light of submissions made on either side. The assessment order does not show any material seized in the search and seizure proceedings to form a basis for addition u/s. 14A read with Rule 8D of the Rules. It is not in dispute that as on the date of assumption of jurisdiction by the Assessing Officer u/s. 153A, the assessment for the assessment year 2008-09 was a concluded one and therefore, it does not get abated. It is settled principle of law that in terms of decision of Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra), Chintels India Ltd vs. DCIT, 397 ITR 416 (Del), PCIT vs. Best Infrastructure (India) Ltd., 397 ITR 82 (Del), PCIT Vs. Meeta Gutgutia, 395 ITR 526 (Del), Ld. PCIT vs. Ms Lata Jain, 384 ITR 543 (Del), the assessments and reassessments pending on the date of the search shall abate and the total income for such assessment

years will have to be computed by the Assessing Officers as a fresh exercise; and that although Section 153A of the Act 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. In the absence of any material to the contrary, it is not possible for us to find fault with the findings of the Id. CIT(A) while following the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra) to reach a conclusion that the addition made u/s. 14A read with Rule 8D cannot be sustained in the absence of any incriminating material un-earthed during the search proceedings. We, accordingly find the grounds of appeal as devoid of merits and the same are liable to be dismissed and are accordingly dismissed. In the result, the appeal of the Revenue is dismissed and consequently, the cross objections filed by the assessee becomes infructuous. The cross objections of the assessee are, therefore, also dismissed as infructuous.

7. In the result, the appeal of the Revenue and cross objections of the assessee are dismissed.

Order pronounced in the open court on 13th February, 2020.

Sd/-
(PRASHANT MAHARISHI)
Accountant Member

Sd/-
(K. NARASIMHA CHARY)
Judicial Member

Dated: 13/02/2019
'aks'