

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 3318 to 3321/Del/2016  
(Assessment Years: 2007-08 to 2010-11)

Dy. CIT, Central Circle-29, New Delhi	Vs.	M/s Jaypee Capital Services Limited, FA - 45, Shivaji Enclave, New Delhi - 110 027. <b>PAN: AAACJ0628A</b>
(Appellant)		(Respondent)

Revenue by :	Shri J. K. Mishra [CIT] - DR;
Assessee by:	Shri Ved Jain, Adv.; & Shri Akshit Goel, C. A.
Date of Hearing	<b>07/01/2020</b>
Date of pronouncement	<b>31/01/2020</b>

**ORDER**

**PER PRASHANT MAHARISHI, A. M. :**

These are the four appeals filed by the Id. Dy. Commissioner of Income Tax, Central Circle 29, New Delhi, dated 16.03.2016 for assessment year 2007-08, even date for assessment years 2008-09, 2009-10 and 2010-11.

2. The facts in all the cases are similar and, therefore, we state the facts of the case for assessment year 2007-08. Assessee is a company who filed its return of income on 31.10.2007 adverting income of Rs.38,46,98,410/- adverting income of Rs.38,46,98,410/-. Consequent the search on Arora Group on 18.01.2008 153A capital proceedings were initiated culminating into order under that section on 31.12.2009 determining the same income.

3. On 30.03.2012 search on Jaypee Group took place. This Group has key person by the name of Gaurav Arora and Saurav Arora. The Group is engaged in the business of trading of equity, commodity, derivatives of equity and forex. Notice u/s 153A was issued on 5.08.2013. Assessee filed return on 2.09.2013 declaring income of rs.38,46,98,410/-. Assessment under Section 153A of the Act was made on 29.03.2015 determining total income of the assessee at Rs.41,32,26,480/-.

4. Aggrieved by the order, assessee preferred appeal before the Id. CIT (Appeals) who passed order on 16<sup>th</sup> March, 2016. The Id. CIT (Appeals) partly allowed the appeal. The Id. CIT (Appeals) adjudicated vide para No. 7 ground Nos. 6 to 12 of the assessee challenging the action of the AO holding that he does not have jurisdiction to pass that order and make the addition as no incriminating evidence was found during the course of search. The Id. CIT (Appeals) adjudicated the same vide para 7.3 of his order holding that addition of Rs.28,22,80,066/- is not based on any incriminating material. He further held that the original assessment order made on 31.12.2009 was completed before the search u/s 132 of the Act initiated on 30<sup>th</sup> March, 2012 and as on that date no assessment or re-assessment proceedings were pending and, therefore, such assessment was not abated. He further held that the additions made by the AO were not based on any incriminating material found during the course of search dated 30.03.2012. Therefore, following the order of the Hon'ble Delhi High Court in CIT Vs. Kabul Chawla 61 taxmann.com 412 (Del.) he deleted the addition. He further discussed the issues on merits also and recorded a clear-cut finding that there is no incriminating material relating to those additions and, therefore, it is not necessary to adjudicate those grounds. Revenue aggrieved with that order has preferred appeal before us.

5. The learned Departmental Representative vehemently submitted that the CIT (Appeals) has erred in law and on facts by relying on the decision in the case of CIT Vs. Kabul Chawla (supra) by the jurisdictional High Court which is not being accepted by the Revenue and the Special Leave Petition against the same has been filed before the Hon'ble Supreme Court. He further stated that

there is no requirement of showing any incriminating material with respect to even the non-abated assessments.

6. The learned Authorized Representative heavily relied upon the decision of the Hon'ble Delhi High Court in CIT Vs. Kabul Chawla (supra) and submitted that as the assessments are concluded assessments in absence of any incriminating material, no addition can be made in the hands of the assessee.

7. On the pointed query raised by the Bench about any incriminating material on the additions made by the learned Assessing Officer, the learned Departmental Representative relied upon the order of the Assessing Officer. However, it was not shown to us that there exist any incriminating material with respect to above additions.

8. We have carefully considered the rival contention and perused the orders of the lower authorities. Apparently the Id. CIT (Appeals) has reached a conclusion that the impugned assessment at the time of search was concluded and did not abate, therefore, if the income of the assessee is to be determined should only be based on the basis of incriminating material found during the course of search. Apparently Revenue did not show us any incriminating material based on which the additions have been made in the present case. The only grievance of the Revenue is that the decision of the Hon'ble jurisdictional High Court, based on which the Id. CIT (Appeals) allowed the appeal of the assessee has been challenged by filing the Special Leave Petition before the Hon'ble Supreme Court. We do not agree with the contentions of the Revenue. The Hon'ble Delhi High Court in CIT Vs. Kabul Chawla (supra) in para 37 has held that in absence of any incriminating material, the completed assessments can be reiterated and they can be interfered only on the basis of some incriminating material un-earthed during the course of search. Therefore, the learned CIT (Appeals) has followed the decision of the Hon'ble jurisdictional High Court and deleted the addition. Thus, we find no infirmity in his order. Accordingly all the grounds of appeal of the Revenue are dismissed.

9. Further the appeal for assessment years 2008-09, 2009-10 and 2010-11 are also having the identical facts. All these assessments are concluded assessments. The learned CIT (Appeals) also following the decision of the Hon'ble jurisdictional High Court deleted the addition in absence of any incriminating material. Therefore, we also confirm the order of the learned CIT (Appeals) for these years.

10. In view of this all the four appeals filed by the Revenue are dismissed.

Order pronounced in the open court on : 31/01/2020.

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated : **31/01/2020**.

\*MEHTA\*

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1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

<b>Date of dictation</b>	<b>31.01.2020</b>
Date on which the typed draft is placed before the dictating member	<b>31.01.2020</b>
Date on which the typed draft is placed before the other member	<b>31.01.2020</b>
Date on which the approved draft comes to the Sr. PS / PS	<b>31.01.2020</b>
Date on which the fair order is placed before the dictating member for pronouncement	<b>31.01.2020</b>
Date on which the fair order comes back to the Sr. PS / PS	<b>31.01.2020</b>
<b>Date on which the final order is uploaded on the website of ITAT</b>	<b>31.01.2020</b>
date on which the file goes to the Bench Clerk	<b>31.01.2020</b>
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	