

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

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

**ITA No. 2205/Del/2017
Assessment Year: 2009-10**

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| M/s. Frontier Commercial Co. Ltd., C/o M/s. RRA Taxindia, D-28, South Extension Part-1, New Delhi. PAN : AABCF 1424D (Applicant) | vs. | DCIT, Central Circle-II, Faridabad. (Respondent) |
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| Appellant by : | Sh. Somil Agrawal, Adv. |
| Respondent by: | Sh. Jagdish Singh, Sr. DR |

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| Date of hearing: | 16/01/2020 |
| Date of order : | 14/02/2020 |

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 06/03/2017 in appeal No. IT/51/GGN/2015-16 passed by the learned Commissioner of Income Tax (Appeals)- Karnal ("Ld. CIT(A)"), for assessment year 2009-10, M/s Frontier Commercial Company Ltd. ("the assessee") preferred this appeal.

2. Brief facts of the case are that pursuant to search and seizure operation that took place in the case of SRS group of cases on 09.05.2012, notice u/s. 153C read with section 153A of the Income Tax Act, 1961 ("the Act") was issued to the assessee on 18.09.2014 and the assessee filed return of income on 17.10.2014 declaring income of

Rs.2,95,770/-. After issuing notice u/s. 143(2) and 142(1) and considering the case of the assessee, Id. Assessing Officer determined income of Rs.25,64,432/- u/s. 153A(1)(b) read with section 143(3) of the Act by making addition of Rs.9032/- by invoking the provisions of section 14A read with Rule 8D of the Rules and a sum of Rs.22,59,630/- by disallowing the freight charges.

3. Assessee preferred appeal before the Id. CIT(A) and contended that inasmuch as no incriminating document was found during the course of search proceedings, no addition could have been made by reopening the concluded assessment in view of the decision of the jurisdictional High Court in the case of Kabul Chawla, 380 ITR 573. Id. CIT(A), however, did not agree with the assessee and noted that unless the search would have carried out, the details of expenditure which was disallowed could not have come to light and therefore, placing reliance on the decision in the case of Kabul Chawla is not justified. Id. CIT(A) further observed that a different opinion was taken by Hon'ble Kerala High Court in ITA No. 169/2015 dated 22.03.2016 differing from the decision of Kabul Chawla (supra). Id. CIT(A), therefore, confirmed the addition and dismissed the appeal. Assessee is, therefore, before us in this appeal.

4. It is the submission on behalf of the assessee that in this matter the return of income for the assessment year 2009-10 was originalLY filed on 29.09.2009 and the time available to issue notice under proviso to section 143(2) expired on 30.09.2010. He, therefore, submits that even by the date of search on 09.05.2012, assessment for this year stood concluded and does not abate, in view of which in absence of any incriminating material found during the search, assessment could not

have been reopened nor any addition could have been made. He further submitted that the Assessing Officer did not dispute the purchase but doubted the freight charge which is not tenable one.

5. The Id. DR heavily relied upon the orders of the authorities below and submitted that it is only due to the search and reopening of assessment, the authorities could detect the reasons for disallowance of the amounts u/s.14A read with Rule 8D and disallowance u/s. 37(1) of the Act and therefore, it is not open for the assessee to contend that in view of the decision of jurisdictional High Court in the case of Kabul Chawla (supra), the addition cannot be sustained.

6. We have gone through the record in the light of submissions made on either side. There is no dispute as to the dates submitted on behalf of the assessee. As could be seen from page 152 of the paper book, the original return of income for the assessment year 2009-10 was filed by the assessee on 29.09.2009 and six months' period from the end of the financial year in which such return was furnished, to issue notice u/s. 143(2) expired on 30.09.2010. It is, therefore, clear that by 09.05.2012 itself, such an assessment stood concluded.

7. It is not the case of Revenue that the additions made in this matter had any reference to any particular document or material that was unearthed during the search so as to justify the reopening of assessment and the additions. 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. Thus, in the cases of concluded assessment, no addition/disallowance could be made in the absence of any incriminating material found during the course of search.

8. In view of the settled principle of law, we do not find any justification either for reopening of the concluded assessment or making any addition without any reference or nexus to the material that was seized during the search and the same cannot be sustained. Therefore, the impugned assessment order passed u/s. 153C is quashed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14th February, 2020.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 14/02/2020
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