

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 6170/DEL/2018
[Assessment Year: 2012-13]**

The A.C.I.T
Central Circle - 19
New Delhi

Vs.

M/s K.R. Pulp & Paper Ltd
304, Roots Tower, Community Centre
District Centre, Laxmi Nagar
New Delhi

PAN: AAACK 5861 C

**CO No. 207/DEL/2018
A/o ITA No. 6170/DEL/2018
[Assessment Year: 2012-13]**

M/s K.R. Pulp & Paper Ltd
304, Roots Tower, Community Centre
District Centre, Laxmi Nagar
New Delhi

Vs. The A. C.I.T.
Central Circle - 19
New Delhi

PAN: AAACK 5861 C

[Appellant]

[Respondent]

Date of Hearing : 29.06.2020

Date of Pronouncement : 30.06.2020

Assessee by : Shri Gautam Jain, Adv

Revenue by : Shri J.K. Mishra, DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue and cross objection by the assessee are preferred against the order of the CIT(A) - 27, New Delhi dated 25.07.2018 pertaining to A.Y 2012-13.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in law in relying upon the decision of the Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573 and in holding that completed assessment could not be interfered by the Assessing Officer without incriminating material.

3. Briefly stated, the facts of the case are that search and seizure operations alongwith survey operation were conducted on 08.07.2015. Accordingly, statutory notices were issued and served upon the assessee.

4. In response to the notice u/s 153A of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short], the assessee filed return of income declaring NIL income on 08.03.017. Assessment was

framed u/s 153A r.w.s 143(3) of the Act vide order dated 29.12.2017 and total income was assessed at Rs. 1,65,75,808/- after making additions u/s 69C of the Act.

5. The assessee vehemently agitated the assessment order before the Id. CIT(A) and strongly contended that the assessment order is devoid of any incriminating material found at the time of search and, therefore, the assessment is bad in law. Strong reliance was placed on the judgment of the Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573 and Meeta Gutgutia 395 ITR 526.

6. After considering the facts and submissions, the Id. CIT(A) held as under:

"I have considered the facts of the case, basis of addition made by AO and submissions of appellant. As it is reflected from assessment order, a search and seizure operation was conducted by the Investigation Wing of the Department in the cases of M/s K. R. Pulp and Papers Ltd. Group and during the searches, the appellant's case was also covered u/s 132(1) of I.T. Act. Accordingly, the notices u/s 153A of the Act were issued by AO and, in reply, appellant filed returns of income. It is also clear from the assessment order that the addition has been made on account of bogus purchases as inquired during the assessment proceedings. However, no addition/disallowance has been made on the basis of

any incriminating evidence found during the search proceedings. The assessment order does not speak about finding of any incriminating documents/evidence during the search proceedings in the case of appellant. The only basis of addition made by AO is that the appellant has made bogus purchases.

6.1. In such situation, when no incriminating evidence is found and assessment in this year is a completed assessment, can any addition/disallowance be made, the issue has been dealt with and answered by Hon'ble Jurisdictional High Court in the case CIT vs Kabul Chawla, as mentioned by appellant in its submissions. Hon'ble Court has taken a view in such cases that although section 153A 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section only on the basis of the seized material. It is further opined by Hon'ble Court that completed assessment can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. In the subsequent decisions also, Hon'ble Court has substantiated the aforesaid view. In the case Pr. CIT vs

Ram Avtar Verma 395 ITR 252, Hon'ble Court has reiterated the aforesaid finding that if the assessments are completed on the date of search and no incriminating material is found during the search, assessment u/s 153A of the Act is invalid. Similar view has been taken by Hon'ble Court in another case i.e. Pr. CIT vs Meeta Gutgutia 395 ITR 526 also wherein assessments were completed on the date of search but no incriminating material pertaining to those completed assessment years were found during search, Hon'ble Court has held that invocation of section 153A for those years was invalid.

6.2 Now the facts of the appellant are to be examined in the light of this legal position. It is clear from the assessment order as well as submissions of the appellant that search and seizure action 132(1) of the Act was undertaken by the Department in the case of appellant as on 08.07.2015 and on that date, assessment of A.Y. 2012-13 was completed assessment as the time period to issue notices u/s 143(2) for aforesaid year had already expired. Further, as mentioned above, no incriminating material was found in the case of the appellant during the search proceedings for making assessment in this year. Therefore, on both the counts, no addition/disallowance could have been made by AO by disturbing the income disclosed in the return filed by appellant. In such situation, the addition/disallowance made by AO, as mentioned above, for A.Y. 2012-13, is not sustainable and deserves to be deleted. I, therefore, delete the addition made by him and allow the grounds taken by the appellant."

7. Before us, the ld. DR could not bring out any factual error in the findings of the ld. CIT(A) nor could point out any incriminating material, which formed basis of addition u/s 69C of the Act.

8. Per contra, the ld. counsel for the assessee relied upon the findings of the ld. CIT(A).

9. We have given thoughtful consideration to the orders of the authorities below. The facts on record show that assessment was framed u/s 143(3) of the Act vide order dated 25.03.2015 and search was conducted on 08.07.2015. In our considered opinion, completed assessment can only be reopened in a search case when there is some incriminating material found during the course of search. Otherwise the ratio laid down by the Hon'ble High Court of Delhi in the case of *Kabul Chawla* 380 ITR 573 and *Meeta Gutgutia* 395 ITR 526 squarely apply on the facts of the case in hand wherein the Hon'ble High Court has held that completed assessment can be interfered with by the Assessing Officer while making assessment u/s 153A of the Act only on the basis of some incriminating material unearthed during the course of search. Accordingly, Ground raised by the revenue is dismissed.

10. The cross objections of the assessee have not been pressed. Accordingly, the cross objections stand dismissed as not pressed.

11. In the result, the appeal of the revenue in ITA No. 6170/DEL/2018 as well as the cross objections in CO No. 207/DEL/2018 of the assessee stand dismissed.

The order is pronounced in the open court on 30.06.2020.

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Dated: 30th June, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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