

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "D" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
ITA.No.6180/Del./2018  
Assessment Year 2011-2012

The ACIT, Central Circle-19, Room No.104, ARA Centre, E-2, Jhandewalan Extn., New Delhi.	vs.	M/s. Kapis Impex LLP (Erstwhile M/s. Kapis Impex (P) Ltd.), 301, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi – 110 092. PAN AARFK7460P
(Appellant)		(Respondent)

Cross Objection No.10/Del./2019  
Arising out of  
ITA.No.6180/Del./2018 - Assessment Year 2011-2012

M/s. Kapis Impex LLP (Erstwhile M/s. Kapis Impex (P) Ltd.), 301, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi – 110 092. PAN AARFK7460P	vs.	The ACIT, Central Circle-19, Room No.104, ARA Centre, E-2, Jhandewalan Extn., New Delhi.
(Appellant)		(Respondent)

For Revenue :	Shri J.K. Mishra, D.R.
For Assessee :	Shri Gautam Jain, Advocate.

Date of Hearing :	29.06.2020
Date of Pronouncement :	30.06.2020

## **ORDER**

**PER BHAVNESH SAINI, J.M.**

The Departmental Appeal as well as Cross Objection by Assessee are directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 12.07.2018, for the A.Y. 2011-2012. The Revenue has raised the following grounds :

- 1. "The Ld. CIT(A) has erred in law and on facts of the case in holding that the seized documents on basis of which the AO made the addition, was not incriminating in nature even though the seized documents clearly established the orchestrated and contrived nature of transactions and therefore were clearly incriminating.*
- 2. The Ld. CIT(A) has erred in law and on facts of the case in determining the quality of incriminating material as the same is beyond the ambit of the ratio of Kabul Chawla 61 taxman.com 412 (Delhi).*

3. *The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not be interfered by the AO without incriminating material. On the contrary, for making the assessment u/s 153A of the Act, 1961, the Act does not stipulates any such conditionality on A.O.”*

2. Briefly the facts of the case are that a search and seizure and survey operation under section 132/133A of the I.T. Act were conducted on 08.07.2015 and subsequent date in the case of assessee along with other cases of M/s. K.R. Pulp and papers Ltd., Group at various residential and business premises. Notice under section 153A was issued on 03.03.2017. During the course of search operation various incriminating documents were found and seized which indicates M/s. K.R. Pulp and papers Ltd., and its group received bogus capital and share premium from non-descript companies based in Kolkata. The assessee company is one of the company of M/s. K.R. Pulp and

papers Ltd., which is managed and controlled by Shri Madho Gopal Agarwal and Shri Raj Gopal Agarwal and Shri Sri Gopal Agarwal. Statement of Shri Gopal Agarwal was recorded on 08.07.2015. During post-search enquiry, statement of Shri Madho Gopal Agarwal was also recorded. During the year assessee acquired many shares. The A.O. issued show cause notice as to why the addition of Rs.1,57,09,500/- should be made on account of unexplained investment under section 69B of the I.T. Act, 1961. The assessee explained before the A.O. that notice is vague, non-specific and in violation of principles of natural justice and relied upon Judgments of Hon'ble Delhi High Court in the cases of Kabul Chawla 380 ITR 573 (Del.) and in the case of Pr. Commissioner of Income Tax vs., Meeta Gutgutia 395 ITR 526 (Del.). The A.O. stated that these decisions cannot be accepted because the Departmental SLP is pending before the Hon'ble Supreme Court. The A.O. considering the material on record did not accept the explanation of assessee and made addition of

Rs.1,52,09,500/- on account of unexplained investment under section 69B of the I.T. Act, 1961.

2.1. The assessee challenged the addition before the Ld. CIT(A). The assessee has raised various submissions and also submitted that case is covered in favour of the assessee by the Judgments of Hon'ble Delhi High Court in the cases of Kabul Chawla and in the case of Meeta Gutgutia (supra). The Ld. CIT(A) accepted the contention of assessee and noted that no incriminating material were found in the case of the assessee during the course of search proceedings for making the assessment in assessment year under appeal. Therefore, no addition could be made. The appeal of assessee was allowed.

3. The Revenue is in appeal. The assessee has also filed cross objection in support of the Order of the Ld. CIT(A) as well as challenging that the assessment framed is not in accordance with Law because approval obtained under section 153D has been granted without application of mind.

4. We have heard the Learned Representatives of both the parties through video conferencing and perused the material available on record.

5. The Ld. D.R. relied upon the Order of the A.O.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-3 which is copy of the acknowledgment of return of income filed originally on 28.09.2011. He has also submitted that on identical facts in the case of ACIT, Central Circle-19, New Delhi vs., Shri Madho Gopal Agarwal, New Delhi in ITA.No.6184/Del./2018 for the A.Y. 2010-2011 the Departmental Appeal has been dismissed vide Order Dated 13.01.2020 on the identical issue.

7. We have considered the rival submissions and perused the material on record. It is not in dispute that original return of income was filed by assessee for the assessment year under appeal on 28.09.2011 [PB-3]. The search has been conducted in the case of assessee on

08.07.2015 and on the date of search, the assessment under appeal was completed as the time period to issue notice under section 143(2) for this year was also expired. It is apparent from the record that no incriminating documents/material were found in the case of assessee during the search proceedings for making the assessment in this case under section 153A of the I.T. Act, 1961. No incriminating material is produced before us so as to indicate any infirmity in the Order of the Ld. CIT(A) for deleting the addition. The Hon'ble Delhi High Court in the case of Kabul Chawla (supra) held as under :

*“Completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed 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”*

7.1. The Hon'ble Delhi High Court in the case of Meeta Gutgutia (supra) has held as under :

“69. What weighed with the Court in the above decision was the “habitual concealing of income and indulging in clandestine operations” and that a person indulging in such activities “can hardly be accepted to maintain meticulous books or records for long.” These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in **Dayawanti Gupta** (supra), therefore, do not detract from the settled legal position in **Kabul Chawla** (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the

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*Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.*

### *Conclusion*

*72. To conclude :*

*(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.”*

7.2. The Departmental Appeal in the case of MGA on identical facts have already been dismissed by ITAT, Delhi F-Bench, Delhi vide Order Dated 13.01.2020. Copy of the Order is placed on record. The issue is, therefore, covered by Judgment of Hon'ble jurisdictional Delhi High Court in the above cases. No infirmity is pointed out in the Order of Ld. CIT(A). No interference is called for. Appeal of the Revenue is, therefore, dismissed.

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8. During the course of hearing, the Learned Counsel for the Assessee submitted that he is not pressing the cross objection. The cross objection of the assessee is, therefore, dismissed as not pressed.

9. In the result, appeal of the Revenue and Cross Objection of the Assessee are dismissed.

Order pronounced in the open Court.

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 30<sup>th</sup> June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.