

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "सी", नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SH. ANIL CHATURVEDI, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA Nos. 1754 & 1755/Del/2017
निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12

Gautam Bhalla,
PHB, LCG 5, Leburnum,
Sushant Lok, Gurgaon
PAN-AGMPB8807G

.....अपीलार्थी/Appellant

vs

The ACIT,
Central Circle-8,
New Delhi

..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 3584 & 3585/Del/2017
निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12

The ACIT,
Central Circle-8,
New Delhi

.....अपीलार्थी/Appellant

vs

Gautam Bhalla,
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Sushant Lok, Gurgaon
PAN-AGMPB8807G

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by:

Sh. C.S.Aggarwal, Sr.Adv. &

Sh. Ravi Pratap Mall, Adv.

प्रत्यर्थी की ओर से / Respondent by:

Ms. Sunita Singh, CIT DR

सुनवाई की तारीख / Date of Hearing : 02.07.2020	घोषणा की तारीख / Date of Pronouncement: 31.07.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

This bunch of cross-appeals are filed against the order of CIT(A)-24, New Delhi dated 07.03.2017 relating to assessment years 2010-11 & 2011-12 against the order passed under section 153A r.w.s 143(3) of the Income-tax Act, 1961 (in short 'the Act') on similar issues are heard together and are being disposed off by this consolidated order for the sake of convenience.

2. First we are taking up the assessee's appeals in both the cases.

ITA Nos. 1754 & 1755/Del/2017
Assessment Years: 2010-11 & 2011-12

3. The Ld.AR for the assessee at the outset pointed out that the CIT(A) while deciding the captioned appeal had decided the issue on merits in favour of the assessee. However, he directed the Assessing Officer to initiate proceedings u/s 148 of the Act against the assessee. The said proceedings were initiated and matter travelled to the CIT(A) and thereafter, to the Tribunal. The Tribunal held that no re-assessment proceedings can be initiated against the assessee, consequent to the directions of the CIT(A). The case of the Ld.AR for the assessee is that the issue becomes academic in nature in the present captioned appeals. Accordingly, both appeals of the assessee are dismissed being infructuous as the issue has become academic in nature.

ITA Nos. 3584 & 3585/Del/2017
Assessment Years: 2010-11 & 2011-12

4. The Revenue has filed appeals against the order of the CIT(A and the grounds of appeal raised in ITA Nos. 3584 & 3585/Del/2017 relating to Assessment Years 2010-11 & 2011-12 respectively read as under:-

ITA No. 3584/Del/2017
Assessment Year: 2010-11

1. *“The order of Ld.CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition u/s 68 of the Act amounting to Rs.4,95,00,000/-.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon’ble Delhi High Court in case of Kabul Chawla as Sec. 153A does not restrict the assessment to seized documents.”*

ITA No. 3585/Del/2017
Assessment Year: 2011-12

1. The order of Ld.CIT(A is not correct in law and on facts.
 2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition u/s 68 of the Act amounting to Rs.4,62,94,000/-.
 3. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon’ble Delhi High Court in case of Kabul Chawla as Sec.153A does not restrict the assessment to seized documents.”
5. Both these appeals filed by Revenue on similar issue were heard together and are being disposed off by this consolidated order for the sake of convenience.
6. Briefly in the facts of the case search u/s 132 of the Act was carried out at the premises of the assessee on 16.01.2013. Thereafter, notice u/s 153A of the Act was issued to the assessee. The year under appeal before us are Assessment Years 2010-11 & 2011-12. Additions were made in the hands of

the assessee u/s 68 of the Act by the Assessing Officer amounting to Rs.4,95,00,000/- and Rs.4,62,94,000/- in Assessment Years 2010-11 & 2011-12 respectively.

7. The case of the assessee before CIT(A) was that since no incriminating material had been found justifying the aforesaid additions and also because the entries in respect of the parties are available in the books of accounts, there is no merit in invoking the provisions of section 153A of the Act against the assessee. Reliance in this regard was placed on the decision of Hon'ble Delhi High Court in *Kabul Chawla* 380 ITR 573 (Del.). Applying the proposition laid down by the Hon'ble Delhi High Court in *Kabul Chawla* (supra), the CIT(A) held that since no incriminating material was found during the search, there is no merit in the aforesaid addition made in the hands of the assessee as no incriminating material was found in relation to the same. The Revenue is in appeal against the aforesaid findings of the CIT(A).

8. The issue which is raised in the present appeal is against the deletion of addition made u/s 68 of the Act. The Ld. DR for the Revenue placed reliance on the order of the Assessing Officer and pointed out that there is no merit in the observations of the CIT(A).

9. The Ld.AR for the assessee stressed that the limited issue which is raised by the Revenue authorities before the Tribunal is only whether in the absence of any incriminating material, can any addition be made in the hands of the assessee. He stressed that the Tribunal is constrained to only decide the issue which is raised before it and not go into any other aspect of the said issue.

10. We have heard the rival contentions and perused the record. The issue which is raised by the Revenue by Ground No.2 is against the deletion of addition made u/s 68 of the Act. The Ground of appeal No.2 raised by the Revenue covers all the aspects of the issue raised before the Tribunal. In Ground No.3, second aspect of issue is raised. In the facts of the case, search u/s 132 of the Act was carried out at the premises of assessee on 16.01.2013. Thereafter, proceedings u/s 153A of the Act were initiated; in response to which the assessee filed return of income and the case of the assessee was taken up for scrutiny. The Assessing Officer in the assessment order passed u/s 153A r.w.s. 143(3) made the addition u/s 68 of the Act.

11. The Hon'ble Delhi High Court (supra) while deciding the fate of the proceedings u/s 153A of the Act had elaborated on the various aspects of the assessment proceedings which can be taken u/s 153A of the Act. The issue raised before Hon'ble Delhi High Court (supra) was as under:-

“Whether the additions made to the income of the Respondent Assessee for the said AYs under Section 2(22)(e) of the Income tax Act, 1961 were not sustainable because no incriminating material concerning such additions were found during the course of search and further no assessments for such years were pending on the date of search?”

12. So the spirit of the decision of Hon'ble Delhi High Court (supra) is to consider the stage of assessment starting from the year of search and six years before it. The Hon'ble High Court very categorically observed vide para 37 as under:-

37. *“On a conspectus of Section 153A(I) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A 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." I

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made, The word 'assess' in Section 153 A is. relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction O make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each A Y on the basis of the findings of the search am~ any other material existing or brought on the record of the AO.

vii. Completed assessments! can be interfered with by the AO while making the assessment under Section 153 A 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.”

13. In such a scenario, we have to see the discovery of incriminating material vis-a-vis two stages of assessment i.e. abated and non-abated assessment. It is not the dictate of the Hon'ble High Court that in the absence of any incriminating material, in any of the years, no additions can be made. The Hon'ble High Court is very clear in its findings. So, to apply the principle laid down by the Hon'ble High Court (supra), it is the first step to find whether the proceedings had abated or non-abated and also to determine any incriminating material was found or not.

14. The Ld.AR before us has pointed out that no incriminating material was found and also that the proceedings are non-abated. In these facts and circumstances, following the dictate of Hon'ble Delhi High Court in Kabul Chawla (supra), we hold that no addition u/s 68 of the Act is warranted.

15. In the result, the appeals of the assessee are allowed and appeals of the Revenue are dismissed.

Order pronounced in the open court on 31st July, 2020.

Sd/-

(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

दिल्ली / दिनांक Dated : 31st July, 2020

** Amit Kumar **

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi