

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

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

**I.T.A. No.6678 and 6679/Del/2016  
Assessment Year: 2010-11 and 2011-12**

**ACIT, Central Circle-19  
New Delhi**

**(Appellant)**

**vs. RBRL Agro Commodities Ltd.  
4088-94, Naya Bazar,  
New Delhi 110006  
(PAN No. AADCR8630F  
(Respondent)**

**Department by: Ms. Sushma Singh, Sr. DR  
Assessee by: Shri Somil Agarwal, Adv.**

**Date of Hearing: 05.8.2020  
Date of Pronouncement: 14.8.2020**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

These two appeals are filed by the Revenue challenging the orders dated 19/10/2016 passed by the learned Commissioner of Income Tax (Appeals)-28, New Delhi ("Ld. CIT(A)"), in the case of M/s RBRLAgro commodities Ltd ("the assessee"), for the assessment years 2010-11 and 2011-12.

2. Brief facts of the case are that the assessee filed their returns of income for the assessment years 2010-11 and 2011-12 on 30/9/2010 and 28/9/2011 respectively and the same was processed under section 143(1) of the Income Tax Act, 1961 (for short "the Act").

Subsequently the investigation wing of the Department conducted search and seizure operations under section 132 of the Act in Sharp Group of cases on 20/1/2014, and according to the Revenue the assessee's business premises was also covered under section 132 (1) of the Act, pursuant to which notice under section 143(2) of the Act and 143(1) of the Act were issued.

3. In respect of the assessment year 2010-11 the learned Assessing Officer made two additions, namely, Rs. 91,87,000/- on account of cash deposited in the bank account and Rs. two crores on account of unsecured loan, and in respect of the assessment year 2011-12 addition of Rs. 3,85,44,000/- was made on account of cash deposited in the bank account by way of order is passed under section 153A of the Act/143(3) of the Act.

4. Aggrieved by such additions, assessee preferred appeals before the Ld. CIT(A). Ld. CIT(A), in the impugned orders, categorically observed that as on the date of search the assessments for the respective years already stood completed and since no incriminating material suggesting earning of any undisclosed income during the years under consideration was unearthed during the course of search, in view of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 61 taxman.com 412 (Delhi), no addition could have been made to the income already assessed. He, therefore, deleted the impugned addition.

5. Revenue is, therefore, aggrieved by such a finding of the Ld. CIT(A) and is in appeals before us contending that the impugned

orders are erroneous and the result of improper appreciation of facts and circumstances of the case. It is the argument of the Ld. DR that at the time of search, the assessee handed over certain bank statements which establish a direct nexus of the cash deposit made in the bank account and research and the unsecured loans. According to her since such relevant bank statement was given at the time of search under section 132 (4) of the Act on 20/1/2014, is not a case of no incriminating material so as to attract the ratio of the decision in *Kabul Chawla (supra)*. She also placed reliance on several decisions in support of her argument that there is no condition in section 153A of the Act that additions should strictly be made on the basis of evidence found in the course of search or other post search material or information available with learned Assessing Officer which can be related to evidence found.

6. Per contra, it is the submission on behalf of the assessee that in this matter the assessee filed their returns of income for the assessment years 2010-11 and 2011-12 on 30/9/2010 and 28/9/2011 respectively, the time to issue notice under section 143(2) of the Act expired long prior to the date of search and therefore in the absence of any incriminating material, no addition could be made. He further submits that no material is placed before the Ld. CIT(A) or before this Tribunal to show that any bank statement pertaining to the years under consideration were seized during the search and the statement of the assessee recorded under section 132 (4) of the Act shows that the information relating to the years subsequent to the years under consideration was sought and therefore, no reference could be placed

on the statement of the assessee to conclude that any incriminating material was seized at the time of search.

7. In reply, Ld. DR submitted that in this case it is not the mere statement of the accused that the Revenue wants to make use against the assessee, but it is the statement coupled with the bank statement relating to the years under consideration and therefore, the authorities have a right to scrutinize all the material that has come to the possession of the Revenue during the search and post research enquiries. She submitted that the Ld. CIT(A) erred in not considering the same.

8. We have gone through the record in the light of the submissions made on either side. The search Panchnama and the impounding order under section 133A (3) (ia) of the Act clearly show that at the time of search the authorities seized Annexures 1 to 4 enumerated therein. Such material includes bunch of loose papers (pages 1 to 130), stock register (pages 1 to 40), delivery notebook (ages 1 to 23) and delivery Chalan book (pages 1 to 94). On a perusal of this material be found that there is nothing incriminating against the assessee.

9. The statement of one Mr. Sudesh Bansal, son of Chiranji Lal Bansal, however, shows that he was asked to explain the difference in cash found and cash as per the book and also to state how much stock and cash of M/s RBRL Agro commodities Ltd is as per books as on that day. While answering the question with reference to the cashbook as on 16/1/2014 and deposit in bank as on 17/1/2014 and 18/1/2014, he provided the copy of bank account. With reference to this Ld. AR

submitted that the entries in the cashbook as well as the bank statement related to these dates do not pertain to the years under consideration and therefore cannot be treated as incriminating material.

10 Revenue, however, produced before us the search Punchnama along with appraisal report and seized documents, and also the bank statement for the assessment year 2009-10 and 2010-11 along with the details of unsecured loan. According to the Revenue such statements were furnished by Mr Sudesh Bansal at the time of recording his statement under section 132 (4) of the Act. Basing on this, Ld. DR argues that, no doubt, mere statement under section 132 (4) of the Act does not constitute any incriminating material on its own, but when such a statement is coupled with the document which has a bearing on the fact in issue, it cannot be said that is a case of no incriminating material being seized.

11. We have gone through the bank statements for the assessment years 2009-10 and 2010-11. The impugned orders do not refer to these statements. No doubt, the statement recorded under section 132 (4) of the Act on its own, without any corroborating evidence does not constitute incriminating material. In this case, however, the statement is coupled with bank statement and such bank statements are for the relevant assessment years. In *CIT vs. Chethan das Lachman das* (2012) 25 taxmann.com 227 and in *Kabul Chawla* (supra) the Hon'ble jurisdictional High Court made a reference not only to the evidence found during the course of search, but also to the other post search material or information available with the Ld. AO to make an addition

under this section. This aspect missed the attention of the Ld. CIT(A). Since such statements are produced before us in the paper book vide Annexure A-5, we are of the considered opinion that it requires consideration before reaching a conclusion as to whether or not there is any incriminating material in this case. Since the Ld. CIT(A) did not advert to this aspect at all in the impugned orders and no finding is returned as to the impact of these bank statements on the fact in issue, we are of the considered opinion that an error had crept in, in the order of the learned Ld. CIT(A).

12. With this view of the matter, we set aside the impugned orders and remand issue to the file of the Ld. CIT(A) to consider the bank statements that were handed over by the assessee at the time of the search and recording of the statements under section 132 (4) of the Act, to reach a conclusion according to law. Ld. CIT(A) will afford an opportunity to the assessee while considering this issue and consider the submissions, if any, made by the assessee on this aspect.

13. In the result, appeals of the Revenue are allowed for statistical purpose.

**Order pronounced in the Open Court on 14<sup>th</sup> August, 2020.**

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

**Sd/-  
(K.NARASIMHA CHARY)  
JUDICIAL MEMBER**

Dated: 14<sup>th</sup> August, 2020.

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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