

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA Nos.5136 & 5137/Del./2016  
Assessment Years: 2009-10 & 2010-11

|   |            |  |
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| ACIT,<br>Central Circle-8,<br>New Delhi | <b>Vs.</b> | M/s Prateek Buildtech Pvt.<br>Ltd.,<br>G-50, Lower Ground Floor,<br>Lajpat Nagar-III,<br>Delhi |
| <b>PAN :AADCP7864P</b>                  |            |  |
| <b>(Appellant)</b>                      |            | <b>(Respondent)</b>  |

|               |                            |
|---------------|----------------------------|
| Appellant by  | Smt. Mamta Kochar, CIT(DR) |
| Respondent by | Shri P.C. Yadav, Adv.      |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 28.08.2020 |
| Date of pronouncement | 28.08.2020 |

**ORDER**

**PER O.P. KANT, AM:**

These two appeals by the Revenue are directed against two separate orders, both dated 29/07/2016 passed by the learned CIT(Appeals)-24, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11. As identical grounds have been raised permeating from the same set of facts and circumstances, both the appeals were heard together and disposed off by way of this consolidated order. In view of the identical grounds raised, for the sake of brevity, we are

reproducing the grounds raised in ITA No.5136/Del/2016 for assessment year 2009-10 as under:

1. *The order of learned CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in quashing the order u/s 153A of the Act.*
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 Mr. Kabul Chawla as Sec. 153A does not restrict the assessment to incriminating documents.*
4. *The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

**2.** Briefly stated facts of the case are that, in the case of the assessee, a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted on 04/04/2012. Consequently, search assessment in terms of section 153A read with section 143(3) of the Act were completed on 24/03/2015 for assessment years 2009-10 & 2010-11 along with other relevant assessment years. In the assessments completed for assessment years 2009-10 & 2010-11, the Assessing Officer made addition for the amount of share premium received as unexplained cash credit. The assessee in the appeal filed before the Ld. CIT(A) challenged the addition on legal grounds as well as on merit. The Ld. CIT(A) decided the appeal on legal ground holding that in view of the decision of Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawala (2016) 380 ITR 573 (Delhi), no addition could have been made in case of non-abated cases in absence of any incriminating material unearthed

during the search. The relevant finding of the Ld. CIT(A) in assessment year 2009-10 is reproduced as under:

*“4.1.4 The law laid down by the jurisdictional High Court is unequivocal that in non-abated cases, no additions can be made u/s 153A in the absence of incriminating material unearthed during search. It has been held by the Hon’ble ITAT Delhi in ACIT Vs. PACL India Ltd. (ITA No. 2637/Del/2010), dt. 20.06.2013 and Smt. Aradhana Kashyap V. DCIT (ITA No.982 & 983/Del/2014), Dt. 05.08.2015 that where the time period for issuing notice u/s 143(2) had already expired prior to the date of search, proceedings do not get abated by virtue of proviso to Section 153A. I am therefore of the view that on this ground alone, the additions in respect of share capital, in the absence of an material unearthed during search that these are bogus, could not have been made by the A.O. under the provisions of section 153A. Therefore, treating the additions as lacking jurisdiction u/ 153A, I delete the additions. This ground of appeal succeeds.”*

**3.** Before us, the Revenue has challenged this action of the Ld. CIT(A).

**4.** We have heard rival submission of both the parties on the issue in dispute and perused the relevant material on record. In our opinion, the Ld. CIT(A) has followed binding precedent on the issue in dispute and, therefore, we do not find any error in the order of the Ld. CIT(A). We also find that existence of both the conditions of the decision in the case of Kabul Chawla (supra) i.e. non-abated cases (no pending assessment as on the date of the search) and no incriminating material found or unearthed during the course of the search, have not been disputed by the learned DR before us in both assessment years. The only contention of the Revenue is that the assessment u/s 153A is not restricted to incriminating material and the Assessing Officer is free to make addition on the issues other than incriminating material also. In

view of the issue in dispute covered by the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla(supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute in both appeals. The grounds raised by the Revenue in both appeals are accordingly dismissed.

**5.** In the result, both appeals of the Revenue are dismissed.

***Order pronounced in the open court on 28<sup>th</sup> August, 2020.***

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

Dated: 28<sup>th</sup> August, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi