

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER  
ITA.No.1218/Del./2017  
Assessment Year 2012-2013

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| The ACIT, Central Circle 19,<br>Room No.104, 1 <sup>st</sup> Floor, 2-E<br>ARA Centre, Jhandewalan<br>Extn., New Delhi. | vs. | Shri Surendra Kumar<br>Gupta, D-12/23, Block-D,<br>Pkt.12, Rohini, Sector-8,<br>New Delhi – 110 085.<br>PAN ACFPG7737B |
| (Appellant)   |     | (Respondent)   |

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| For Revenue :  | Shri H.K. Choudhary, CIT-DR |
| For Assessee : | Shri Rakesh Gupta, Advocate |

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| Date of Hearing :       | 30.09.2020 |
| Date of Pronouncement : | 30.09.2020 |

**ORDER**

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

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-28, New Delhi, Dated 02.12.2016, for the A.Y. 2012-2013, on the following grounds :

1. *“On the facts and in the circumstances of the case, the CIT(A) has erred in law in holding that the Assessing Officer could not have proceeded to frame assessment u/s 153A of the Act as no incriminating documents or assets were found during the search without appreciating that the provisions of section 153A of the Act does not stipulates any such conditionality.*
2. *That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.3,59,45,000/- made on account of unexplained cash deposit u/s 68 of the Act, without properly appreciating the facts and circumstances of the case.”*

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

3. Briefly the facts of the case as noted in the impugned order are that in this case original return of income was filed by the assessee on 30.09.2012 declaring

an income of Rs.7,36,020/-. The assessment was completed under section 143(1) of the Act vide order dated 31.12.2012. Subsequently search and seizure action under section 132 of the Income Tax Act was carried out on 15.02.2014 in the business premises of the assessee. Accordingly notice under section 153A of the Act was issued and in compliance thereto, assessee filed return of income declaring total income of Rs.7,36,020/- but assessment was completed at Rs.3,66,81,020/- by making addition of Rs.3,59,45,000/ under section 68 of the I.T. Act, 1961.

4. The assessee challenged the addition before the Ld. CIT(A). the written submissions of the assessee is reproduced in the impugned order in which the assessee explained that addition has been made in an arbitrary manner on account of cash deposits made into bank account, but, no incriminating material was seized from the possession of the assessee during the course of search. The A.O. has refused to follow the Judgment of Hon'ble Jurisdictional High Court in the case of CIT vs., Kabul Chawla 380 ITR 573 (Del.) in which it was held that

*“completed assessment can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material found during the course of search.”* In this case, cash was found deposited in the bank account which were deposited out of the cash withdrawn. Therefore, no addition could be made in assessment year under appeal under section 153A of the I.T. Act, 1961. The Ld. CIT(A) noted in his finding that in this case under consideration, the A.O. has made addition of Rs.3,59,45,000/- on account of cash deposits made in the bank account of the assessee company treating the same as unexplained without issuing any show cause notice or giving any opportunity to explain the same. He has noted that since the addition is made without referring any incriminating material found during the course of search, therefore, no addition could be made against the assessee under section 153A of the I.T. Act, 1961, in view of Judgment of Hon’ble Jurisdictional High Court in the case of CIT vs., Kabul Chawla (supra). The Ld. CIT(A), accordingly deleted the addition.

5. The Ld. D.R. relied upon the Order of the A.O. and relied upon Judgment of Hon'ble Kerala High Court in the case of E.N. Gopakumar vs., CIT 75 taxmann.com 215 (Ker.) and Judgment of Hon'ble Allahabad High Court in the case of CIT vs., Rajkumar Arora 52 taxmann.com 172 (Ald.) which have been decided against the assessee on the above legal proposition. The Ld. D.R. also submitted that there is no reference to the word 'incriminating material' under section 153A of the I.T. Act, 1961. Therefore, addition was wrongly deleted.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that no cash was found during the course of search. The A.O. merely made addition on account of cash found deposited in the bank account of the assessee and asset was completed on the date of search, therefore, addition was rightly deleted by the Ld. CIT(A).

7. We have considered the rival submissions and perused the Orders of the authorities below. The Hon'ble Jurisdictional High Court in the case of CIT vs., Kabul Chawla (supra) held as under :

8. *“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 Jurisdictional Delhi High Court in the case of Pr. CIT vs., Meeta Gutgutia 395 ITR 526 (Del.) 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 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 SLP of the Department in the case of Meeta Gutgutia have been dismissed by the Hon'ble Supreme Court reported in 96 taxmann.com 468 (SC). Since in this case assessment was already completed prior to the date of search as not disputed by the authorities below and no material was found during the course of search, therefore, the issue is covered in favour of the assessee by the above Judgments of Hon'ble Jurisdictional Delhi High Court. No preference can be given to the Judgments of Hon'ble Kerala

High Court and Hon'ble Allahabad High court as against the Judgments of Hon'ble Jurisdictional Delhi High Court. In view of the above, the Departmental appeal stands dismissed.

8. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

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

VBP/-

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.