

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.6182/Del./2018  
Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Madhusudan Packaging LLP [Erstwhile M/s. Madhusudan Packaging (P) Ltd.,] 304, Roots Tower, Community Centre, District Centre, Laxmi Nagar, New Delhi. PIN - 110 092 PAN ABFFM0975J
(Appellant)		(Respondent)

Cross Objection No.11/Del./2019  
in  
ITA.No.6182/Del./2018 - Assessment Year 2011-2012

M/s. Madhusudan Packaging LLP [Erstwhile M/s. Madhusudan Packaging (P) Ltd.,] 304, Roots Tower, Community Centre, District Centre, Laxmi Nagar, New Delhi. PIN - 110 092 PAN ABFFM0975J	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6171/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	Ms. Rajgopal Agarwal, 58, Madhuban, Preet Vihar, New Delhi – 110 092. PAN ACXPA3779R
(Appellant)		(Respondent)

Cross Objection No.208/Del./2018

In

ITA.No.6171/Del./2018 - Assessment Year 2010-2011

Ms. Rajgopal Agarwal, 58, Madhuban, Preet Vihar, New Delhi – 110 092. PAN ACXPA3779R	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6173/Del./2018

Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Murli Infratech LLP [Erstwhile M/s. Murli Infratech Pvt. Ltd.], 303, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM0089B
(Appellant)		(Respondent)

Cross Objection No.210/Del./2018  
 in  
 ITA.No.6173/Del./2018 - Assessment Year 2011-2012

M/s. Murli Infratech LLP [Erstwhile M/s. Murli Infratech Pvt. Ltd.], 303, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM0089B	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6174/Del./2018  
 Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. RGS Printers LLP [Erstwhile M/s. RGS Printers Pvt. Ltd.], 302, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN AADAR4267L
(Appellant)		(Respondent)

C.O.No.211/Del./2018  
 in  
 ITA.No.6174/Del./2018 - Assessment Year 2011-2012

M/s. RGS Printers LLP [Erstwhile M/s. RGS Printers Pvt. Ltd.], 302, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi - 110 092.PAN AADAR4267L	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6187/Del./2018  
 Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. MRS Projects LLP [Erstwhile M/s. MRS Projects (P) Ltd.], 303, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM7764B
(Appellant)		(Respondent)

Cross Objection No.12/Del./2019  
 in  
 ITA.No.6187/Del./2018 - Assessment Year 2011-2012

M/s. MRS Projects LLP [Erstwhile M/s. MRS Projects (P) Ltd.], 303, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM7764B	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6175/Del./2018  
 Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Murli Agritech LLP [Erstwhile M/s. Murli Agritech Pvt. Ltd.], 304, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM0090G
(Appellant)		(Respondent)

Cross Objection No.212/Del./2018

in

ITA.No.6175/Del./2018 - Assessment Year 2011-2012

M/s. Murli Agritech LLP [Erstwhile M/s. Murli Agritech Pvt. Ltd.], 304, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN ABFFM0090G	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6178/Del./2018

Assessment Year 2010-2011

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	Ms. Kavita Agarwal, 58, Madhuban, Preet Vihar, New Delhi PIN – 110 092. PAN ACXPA3774C
(Appellant)		(Respondent)

Cross Objection No.215/Del./2018

in

ITA.No.6178/Del./2018 - Assessment Year 2010-2011

Ms. Kavita Agarwal, 58, Madhuban, Preet Vihar, New Delhi PIN – 110 092. PAN ACXPA3774C	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6179/Del./2018  
 Assessment Year 2011-2012

The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. KMS Associates LLP, [Erstwhile M/s. KMS Associates (P) Ltd.], 303, 3 <sup>rd</sup> Floor, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN – 110 092. PAN AARFK6485A
(Appellant)		(Respondent)

Cross Objection No.9/Del./2019  
 in

ITA.No.6179/Del./2018 - Assessment Year 2011-2012

M/s. KMS Associates LLP, [Erstwhile M/s. KMS Associates (P) Ltd.], 303, 3 <sup>rd</sup> Floor, Roots Tower, Community Centre, District Centre, Laxmi Nagar, Delhi. PIN 110 092 PAN AARFK6485A	vs.,	The ACIT, Central Circle 19, Rom No.104, 1 <sup>st</sup> Floor, 2-E ARA Centre, Jhandewalan Extn., New Delhi.
(Appellant)		(Respondent)

ITA.No.6930/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Room No.104, ARA Centre, E-2 Jhandewalan Extn., New Delhi – 110 055.	vs.,	Shri Gopal Agarwal, A-58, Madhuban, Preet Vihar, New Delhi – 110092 PAN ACXPA3778Q
(Appellant)		(Respondent)

ITA.No.5854/Del./2018  
 Assessment Year 2010-2011

Shri Gopal Agarwal, A-58, Madhuban, Preet Vihar, New Delhi – 110092 PAN ACXPA3778Q	vs.,	The ACIT, Central Circle 19, ARA Centre, Jhandewalan Extn., New Delhi – 110 055.
(Appellant)		(Respondent)

ITA.No.6181/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Room No.104, 1 <sup>st</sup> Floor, 2E ARA Centre, Jhandewalan Extn., New Delhi – 110 055.	vs.,	Ms. Suman Agarwal, A-58, Madhuban, Preet Vihar, New Delhi – 110092 PAN ACXPA3776A
(Appellant)		(Respondent)

ITA.No.6183/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Room No.104, 1 <sup>st</sup> Floor, 2E ARA Centre, Jhandewalan Extn., New Delhi – 110 055.	vs.,	Ms. Sabhyata Agarwal, 58, Madhuban, Preet Vihar, New Delhi – 110092 PAN AKIPB4440M
(Appellant)		(Respondent)

ITA.No.6185/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Room No.104, 1 <sup>st</sup> Floor, 2E ARA Centre, Jhandewalan Extn., New Delhi – 110 055.	vs.,	Ms. Mamta Agarwal, A-58, Madhuban, Preet Vihar, New Delhi – 110092 PAN ACXPA3775.
(Appellant)		(Respondent)

ITA.No.6186/Del./2018  
 Assessment Year 2010-2011

The ACIT, Central Circle 19, Room No.104, 1 <sup>st</sup> Floor, 2E ARA Centre, Jhandewalan Extn., New Delhi – 110 055.	vs.,	Shiv Kumar Agarwal, 58, Madhuban, Preet Vihar, New Delhi – 110092 PAN ACMPA9618G
(Appellant)		(Respondent)

For Revenue :	Shri H.K. Chaudhary, CIT-DR
For Assessee :	Shri Gautham Jain, Advocate

Date of Hearing :	24.09.2020
Date of Pronouncement :	06.10.2020

**ORDER**

**PER BENCH :**

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

2. Learned Representatives of both the parties have mainly argued in the case of M/s. Madhusudan Packaging LLP in ITA.No.6182/Del./2018 for the A.Y. 2011-2012 and C.O.No.11/Del./2019 and have submitted that the issue in remaining group appeals are same, therefore, the Order in this case may be followed in other appeals.

2.1. We, therefore, decide the appeal of assessee in the case of M/s. Madhusudan Packaging LLP as under.

ITA.No.6182/Del./2018 - M/s. Madhusudan Packaging LLP  
and  
C.O.No.11/Del./2019 – Assessment Year 2011-2012

3. 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 Departmental Appeal is filed on 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.”*

4. The Assessee in the Cross Objection has challenged that the impugned assessment order is invalid since approval obtained under section 153D is not in accordance with Law and that the Ld. CIT(A) should have deleted the addition on merits.

5. Briefly the facts of the case are that a search and seizure operation under section 132(1) of the I.T. Act was conducted by the Investigation Wing of the Department on 08.07.2015 in the case of K.R. Pulp and Papers Ltd., Group of cases and the case of assessee was also covered u/s

132(1) of the Act. Accordingly, notice under section 153A was issued in different years and, in response to the notice, return of income was filed by assessee. In the assessment year under appeal, it was observed by A.O. that the assessee has received share capital and share premium ranging from Rs.40/- to Rs.190/- from non-descript companies based in Kolkata and Delhi and the said shares were subsequently repurchased by family members of Directors/Promoters or group companies from those Kolkata based non-descript companies at very nominal rate. In this regard, A.O. referred a document found during the course of search from Jalalabad Road, Shahjahanpur which has been reproduced by him in the assessment order and the said seized documents mentions about the details of companies/entities who have transferred their shares to other companies/entities of the group. The A.O. further observed that the shares originally purchased by the Kolkata based non-descriptive company at higher premium ranging from Rs.50/- to Rs.200/- per share were subsequently sold to the group companies/entities at much

less price than the value of money paid by them at the time of issue of shares. The difference between the value of shares repurchased by group entities and as originally allotted to Kolkata based companies, has been treated by A.O. as income of the assessee for the year under consideration. The details of such purchase/sale of shares and conclusion drawn by A.O. have been mentioned in the assessment order. The A.O. has taken the amount paid by the assessee at Rs.1,15,500/- and has taken value paid by the seller for acquisition of the shares at Rs.2,03,00,000/-. If the difference was considered as unaccounted income earned of Rs.2,01,84,500/- which was added to the income of assessee.

6. The assessee challenged the addition before the Ld. CIT(A). The assessee has raised several grounds of appeal before him and it was briefly explained that the A.O. while making the addition in the case of assessee on account of alleged unexplained investment has not referred to any incriminating material as a result of search. The

documents referred by the A.O. in the assessment order merely tabulated the names of the transferor and transferee of the shares and the dates along with number of shares and has nothing to do with the allotment of share capital by the assessee. Therefore, apparently, it could not be treated as any evidence much less incriminating material found during the course of search. It was further submitted that A.O. has failed to appreciate that the purchase of shares at high premium by seller of shares is not a relevant consideration. The assessee relied upon Judgment of Hon'ble Jurisdictional High Court in the case of CIT vs., Five Vision Promoters (Pvt.) Ltd., 380 ITR 289 (Del.). It was also submitted that the shares subsequently sold at a reduced price was not germane to the question of genuineness of investment in share capital of assessee, hence, no addition could be made. It was also submitted that issue is covered by Judgment of Hon'ble Jurisdictional High Court in the case of CIT vs., Kabul Chawla reported in 380 ITR 573 (Del.) wherein it has been held that *"no addition can be made in the case of completed assessment if no incriminating*

*evidence/document is found during the course of search proceedings for that year.”* The Ld. CIT(A) considering the explanation of assessee in the light of material on record deleted the entire addition. His findings in paras 6 to 8 of the impugned order are reproduced as under :

“6. *I have considered the facts of the case, basis of addition made by AO and submissions of appellant. As it is reflected from assessment order, a search and seizure operation was conducted by the Investigation Wing of the Department in the cases of M/s K. R. Pulp and Papers Ltd. Group and during the searches, the appellant's case was also covered u/s 132(1) of the I.T. Act. Accordingly, the notices u/s 153A of the Act were issued by AO and, in reply, appellant filed returns of income. It is also clear from the assessment order that the addition has been made on account of unexplained investment u/s 69B of I. T. Act. The basis of addition has been made the documents seized*

*during the search proceedings, which have been reproduced in the assessment order and treated by AO as incriminating material. However, the perusal of the said documents reveal that it is nothing but the list of transfer of shares for the period from 01.04.2010 to 31.03.2011 in respect of different companies of the group wherein, in four columns, the date of transfer of shares, name of transferor company, number of shares and in the last column, the name of transferee company has been mentioned. There is nothing incriminating in these details which could indicate that there was any evasion of tax on the part of any of these companies/entities. These details are merely plain details which do not lead to any adverse findings in the case of appellant. The' basis of addition made by AO is also not the details mentioned in these papers rather post-search enquiries made by him during the regular course of hearings as in*

*any other case taken up for scrutiny u/s 143(3) of I. T. Act.*

6.1. *In such situation, when no incriminating evidence is found and assessment in this year is a completed assessment, can any addition/disallowance be made, the issue has been dealt with and answered by Hon'ble Jurisdictional High Court in the case CIT vs Kabul Chawla, as mentioned by appellant in its submissions. Hon'ble Court has taken a view in such cases that although section 153A 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section only on the basis of the seized*

*material. It is further opined by Hon'ble Court that completed assessment can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found 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. In the subsequent decisions also, Hon'ble Court has substantiated the aforesaid view. In the case Pr. CIT vs Ram Avtar Verma 395 ITR 252, Hon'ble Court has reiterated the aforesaid finding that if the assessments are completed on the date of search and no incriminating material is found during the search, assessment u/s 153A of the Act is invalid. Similar view has been taken by Hon'ble Court in another case i.e. Pr. CIT vs Meeta Gutgutia 395 ITR 526 also wherein assessments were completed on the*

*date of search but no incriminating material pertaining to those completed assessment years were found during search, Hon'ble Court has held that invocation of section 153A for those years was invalid.*

*6.2. Now the facts of the appellant are to be examined in the light of this legal position. It is clear from the assessment order as well as submissions of the appellant that search and seizure action 132(1) of the Act was undertaken by the Department in the case of appellant as on 08.07.2015 and on that date, assessment of A.Y. 2011-12 was completed assessment as the time period to issue notices u/s 143(2) for aforesaid year had already expired. Further, as mentioned above, no incriminating material was found in the case of the appellant during the search proceedings for making assessment in this year. Therefore, on both the counts no addition could have been made by AO by disturbing the income disclosed in the return*

*filed by appellant. In such situation, the addition made by AO, as mentioned above, for A.Y. 2011-12, is not sustainable and deserves to be deleted. I, therefore, delete the addition made by him and allow the grounds taken by the appellant.*

7. *All other grounds taken by appellant on merit remain academic only, therefore, need do not adjudication.*
8. *In the result, appeal is allowed.”*

7. The Ld. D.R. relied upon the Order of the A.O. and submitted that the word ‘incriminating material’ is not mentioned in Section 153A of the I.T. Act, in which, assessment have been framed. He has submitted that list of transfer of shares found during the course of search has not been disputed by the authorities below, therefore, it is incriminating material in nature. The Ld. CIT(A) has not gone into the merits of the addition because it is based on actual transactions. He has submitted that the Order of the ITAT in Group Cases may not be relied upon though the seized material is same. He has submitted that in the case

of Kabul Chawla (supra), no paper was seized because addition was made of the deemed dividend and in the case of Pr. CIT vs., Meeta Gutgutia 395 ITR 526 (Del.) no incriminating material was discussed. The Ld. D.R. submitted that the Ld. CIT(A) did not decide the nature of the documents. The Ld. CIT(A) has not seen those entries/documents, therefore, reliance on the decision of Kabul Chawla (supra) is not proper. He has submitted that in the case of Kabul Chawla (supra), the Hon'ble Jurisdictional Delhi High Court has not considered its earlier decisions in the case of CIT vs., Chetan Das Laxhman Das 25 taxmann.com 227 (Del.) and Fila Tex India Ltd., vs., CIT 49 taxmann.com 465 (Del.). The Ld. D.R. also relied upon Judgment of Hon'ble Kerala High Court in the case of E.N. Gopakumar vs., CIT 75 taxmann.com 215 (Kerala) and Judgment of Hon'ble Allahabad High Court in the case of CIT vs., Rajkumar Arora 52 taxmann.com 172 in which the issue have been decided against the assessee. The Ld. D.R., therefore, submitted that the Order of the Ld. CIT(A) may be reversed.

8. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and also filed consolidated synopsis. Learned Counsel for the Assessee submitted that for assessment year under appeal no assessment was pending on the date of search which fact is not disputed. He has submitted that the seized paper which is list of transfer of shares since 01.04.2010 to 31.03.2011 which is the basis for making the impugned addition was seized during the search of the factory premises of Jalalabad Road, Shahjahnapur, which fact is also mentioned in the assessment order. He has submitted that the seized paper is merely list of transfer of shares reflecting the date of transfer, name of the transferee, number of shares, which could not be considered as incriminating material in nature. No evidence of any on-money paid by assessee has been found during the course of search. The A.O. merely made addition on presumption. Since no list was seized from the premises of assessee, therefore, it could not be considered as any evidence against the assessee muchless no

incriminating material found during the course of search. He has submitted that in the Group Cases of ACIT vs., Madho Gopal Agarwal and ACIT vs., M/s. Kapis Impex LLP, the Departmental Appeals have been dismissed by the Tribunal vide Orders Dated 13.01.2020 and 30.06.2020. The Orders of the Tribunal are reproduced as under :

**“IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH “E” NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT**

**&**

**AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.6184/DEL/2018

Assessment Year 2010-11

ACIT, Central Circle-19, New Delhi.	v.	Madho Gopal Agarwal, 58, Madhuban, Preet Vihar, New Delhi.
TAN/PAN: ACXPA 3780E		
(Appellant)		(Respondent)

Appellant by:	Ms. Pramila M. Biswas, CIT-D.R
Respondent by:	S/Shri Gautam Jain & Piyush K. Kamal, Adv.
Date of hearing:	02   01   2020
Date of pronouncement:	13   01   2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

*The aforesaid appeal has been filed by the Revenue against the impugned order dated 17.07.2018 passed by Commissioner of Income Tax (Appeals)-XXVII, New Delhi for the quantum of assessment passed u/s.153 r.w.s. 143(3) for the Assessment Year 2010-11. In the grounds of appeal, the Revenue has raised the following effective 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 stipulate any such conditionality on A.O.”*

2. *The facts in brief qua the grounds raised by the Revenue are that a search and seizure operation was carried out u/s.132 on 08.07.2015 in the case of KR Pulp & Papers Ltd. Group wherein the assessee was also covered. Ld. Assessing Officer observed that the group companies have received share capital and share premium ranging from Rs.40/- to Rs.190/- from non descript companies based at Kolkata and Delhi and the said shares were subsequently repurchased by the family members of the directors including the assessee. The Ld. Assessing Officer also noted that during the course of search and seizure operation incriminating document were found from the premises of the assessee, the scanned copy of which has been reproduced in the assessment order. The said document mentions details of*

companies/entities. Thereafter, he has also referred to the details of shares acquired by the assessee from the various entities, which were as under:

Name of Scrip	PAN	No. of shares acquired	Amount paid by assessee Date of payment (A)	Date of transfer of the shares	Name of Seller	No. of Shares	Value (Rs.) paid by Seller for acquisition of shares (B)
KR Pulp & Papers Ltd.	AAACK5861C	4,00,000	1,00,000	13.01.2009	Canton Iron & Steel Pvt. Ltd.	1,00,000	50,00,000
			22.10.2009				
			98,000	16.03.2009	Blue Print Securities	1,00,000	50,00,000
			06.10.2009				
			98,000	16.03.2009	Bahar Paper Pvt. Ltd.	1,00,000	50,00,000
			1,02,000	30.04.2008	Cosmos Real Estates Pvt.	1,00,000	50,00,000
			06.10.2009				
			398000			4,00,000	2,00,00,000

3. After detailed discussion, he held that the assessee has acquired shares from Kolkata based company who has acquired shares from KR Pulp & Paper Pvt. Ltd. and its group companies at a very high premium of value at Rs.50/- and this entire arrangement was made to transfer/raised capital from M/s. KR Pulp & Paper Pvt. Ltd., group company of KR Pulp & Papers adopting route of share

*premium from Kolkata based companies and accordingly amount of Rs.1,96,02,000/- was made. The relevant observation and the finding of the Assessing Officer read as under:*

*“As it is clear from the above chart that 400000 shares were acquired by the companies like M/s Bahar Paper Pvt. Ltd., Blue Print Securities Pvt. Ltd. etc. of Rs.2,00,00,000/- from M/s KR Pulp & Papers Ltd, group company of KR Pulp & Papers. These shares were acquired by Mr. Madho Gopal Agarwal, from mostly Kolkata based company, these Kolkata based company acquired share of from M/s KR Pulp & Papers Ltd, group company of KR Pulp & Papers at very high premium value like 50. This entire arrangement was made to transfer/raise capital for from M/s KR Pulp & Papers Ltd, group company of KR Pulp & Papers via adopting route of share premium from Kolkata based Companies. So the difference amount Rs.1,96,02,000/- (2,00,00,000 - 3,98,000)*

*considered as amount expended on making investment exceeds the amount recorded in this behalf in books of account maintained by the assessee for which assessee has not any satisfactory explanation, so the difference amount of Rs. 1,96,02,000/- is treated as unexplained investment u/s 69B of the I T Act, 1961 and is added to the total income of the assessee for the year under consideration. Penalty proceedings u/s. 271(1)(c) of the Income-tax Act, 1961 have been initiated separately for furnishing inaccurate particulars.*

**(Addition: Rs. 1,96,02,000/-)**

4. *Before the Ld. CIT (A) apart from merits, it was submitted that the impugned addition made by the Assessing Officer is beyond the scope of Section 153A, because no incriminating material or evidence was found, as result of search and no statement was obtained or recorded during the search qua this issue. Accordingly, in view of the judgment of Hon'ble Jurisdictional High Court in the case of **CIT vs.***

**Kabul Chawla, 380 ITR 573 (Del.),** no addition can be made.

5. Ld. CIT (A) observed that the seized document which has been referred by the Assessing Officer is not incriminating at all because it only gives details of list of transfer of shares for the period from 01.04.2010 to 31.03.2011 in respect of different companies of group wherein in the columns the date of transfer of shares, name of transferor company, number of shares and the name of transferee company has been mentioned. There is nothing incriminating in the details which could indicate that there is any evasion of tax on the part of any of these companies. Thus, he held that no incriminating material or evidence was found for the impugned assessment year which is an unabated assessment, i.e., where assessment stands completed, no addition can be made in view of the judgment of Hon'ble Jurisdictional High Court in the case of **CIT vs. Kabul Chawla (supra)** and **PCIT vs. Meeta Gutgutia, (2017) 325 ITR 526**. The relevant conclusion of the Ld. CIT (A) reads as under :

“6.2 Now the facts of the appellant are to be examined in the light of this legal position. It is clear from the assessment order as well as submissions of the appellant that search and seizure action u/s.132(1) of the Act was undertaken by the Department in the case of appellant as on 08.07.2015 and on that date, assessment of A.Y. 2010-11 was completed assessment as the time period to issue notices u/s.143(2) for aforesaid year had already expired. Further, as mentioned above, no incriminating material was found in the case of the appellant during the search proceedings for making assessment, in this year. Therefore on both the counts, no addition could have been made by AO by disturbing the income disclosed in the return filed by appellant. In such situation, the addition made by AO, as mentioned above, for A.Y. 2010-11, is not sustainable and deserves to be deleted. I, therefore, delete the

*addition made by him and allow the grounds taken by the appellant.”*

5. *Before us, the ld. CIT-DR submitted that the Assessing Officer in the impugned assessment order has incorporated the seized documents which pertain to transfer of shares only, and therefore, addition made by the Assessing Officer with regard to the share premium is within the scope and purview of Section 153. Hence, it cannot be held that no incriminating material has been found.*

6. *On the other hand, ld. counsel for the assessee, Mr. Gautam Jain submitted that from a bare perusal of the seized document, copy of which has been placed in the paper book from pages 41 to 43, it can be seen that these are only list of transfer of shares and that too pertains for period from 01.04.2010 to 31.03.2011, i.e., relevant to the Assessment Year 2011-12 and not for the impugned Assessment Year, i.e., Assessment Year 2010-11, therefore, even if it is said to be a material then also it does not pertain to the same assessment year in question. Accordingly the principle laid down by the Hon'ble Jurisdictional High Court in the case of*

**Kabul Chawla (supra) and Meeta Gutgutia (supra)** are squarely applicable.

7. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. The sole issue before us is, whether the additions made by the Assessing Officer was based on any incriminating material found during the course of search or not; and whether addition is sustainable in view of the judgment of Hon'ble Jurisdictional High Court in the case of **Kabul Chawla (supra) and Meeta Gutgutia (supra)**. From the perusal of the seized documents placed in the paper book at pages 41 to 43, it is quite evident that, firstly, the document merely shows transfer of shares in respect of different companies of group wherein date of transfer of shares, name of transferor company, number of shares and the name of transferee company has been mentioned and; secondly, it pertains to the period from 01.04.2010 to 31.03.2011 which is relevant to the Assessment Year 2011-12 and not for the impugned Assessment Year 2010-11. Ld. CIT(A) has given a very

*categorical finding that the basis of addition made by the Assessing Officer is not based in any incriminating material found during the course of search. Admittedly at the time of search, i.e., on 08.07.2015 assessment for the Assessment Year 2010-11 had attained finality and was not a pending assessment. Once in terms of 2<sup>nd</sup> proviso to Section 153A, if assessment has attained finality and is unabated, then any addition over and above the earlier assessed income can be made only on the basis of incriminating material found during the course of search. Here, in this case, admittedly no such incriminating material has been found qua the assessment year in question, therefore, the finding of the ld. CIT (A) is affirmed as the same is conformity with the principle laid down by the Hon'ble Jurisdictional High Court in the case of **Kabul Chawla (supra) and Meeta Gutgutia (supra)**.*

8. *In the result, the appeal of the Revenue is dismissed”.*

“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

<i>The ACIT, Central Circle-19, Room No.104, ARA Centre, E-2, Jhandewalan Extn., New Delhi.</i>	<i>vs.</i>	<i>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</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

*Cross Objection No.10/Del./2019*

*Arising out of*

*ITA.No.6180/Del./2018 - Assessment Year 2011-2012*

<i>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</i>	<i>vs.</i>	<i>The ACIT, Central Circle-19, Room No.104, ARA Centre, E-2, Jhandewalan Extn., New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Revenue :</i>	<i>Shri J.K. Mishra, D.R.</i>
<i>For Assessee :</i>	<i>Shri Gautam Jain, Advocate.</i>

<i>Date of Hearing :</i>	<i>29.06.2020</i>
<i>Date of Pronouncement :</i>	<i>30.06.2020</i>

### **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

*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.*

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.*

8.1. He has submitted that same seized documents have been considered in these Orders of the Group concern and it was held that the seized paper is not incriminating material in nature and as such, no addition could be made and Order of the Ld. CIT(A) in deleting the addition have been confirmed. He has, therefore, submitted that the issue is covered by Judgments of Hon'ble Jurisdictional High Court in the cases of Kabul Chawla (supra) and Meeta Gutgutia (supra), which have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department reported in 96 taxmann.com 468 (SC). He has submitted that both the earlier decisions of the Hon'ble Delhi High Court referred to by the Ld. D.R. have been considered by

the Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra).

8.2. Learned Counsel for the Assessee submitted that in case Departmental Appeal is dismissed, the cross objection and appeal of the Assessee would become infructuous.

8.3. In the case of assessee Shri Gopal Agarwal in ITA.No.5854/Del./2018 though the assessee has raised one more ground challenging the addition of Rs.65 lakhs, but, no arguments have been made during the course of hearing of the appeal and even there is no reference to the same in the consolidated written synopsis filed for all the Assesseees.

9. We have considered the rival submissions and perused the material on record. The Hon'ble Jurisdictional Delhi High Court in the case of CIT vs., 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”*

9.1. The Hon'ble Jurisdictional Delhi High Court in the case of Pr. CIT vs., Meeta Gutgutia (supra) 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.”*

9.2. 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). In the case of Kabul Chalwa (supra) the Hon'ble Jurisdictional Delhi High Court has considered its earlier decisions in the case of CIT vs., Chetan Das Laxhman Das (supra) and Filatex India Ltd., (supra). As against the decision of Hon'ble Jurisdictional Delhi High Court, no preference could be given to the Judgments of Hon'ble Kerala High Court and Hon'ble Allahabad High Court. It is an admitted fact that on the date of search no assessment was pending in the case of assessee for the assessment year under appeal. It is also not in dispute that during the course of search list of transfer of shares since 01.04.2010 till 31.03.2011 was found and recovered from Jalalabad Road, Shahjahanpur which is not

the address of the assessee. Thus, no material was found during the course of search in the case of assessee. Further, such list could not be considered as incriminating material in nature. The seized paper merely reflect the date, name of transferor and transferee and number of shares. The document does not speak of any unexplained investment made by any of the assessees. No material was found during the course of search so as to indicate any unaccounted investment made by assessee. In Group Cases of Madho Gopal Agarwal and M/s. Kapis Implex LLP (supra), the Tribunal has considered the identical seized paper and held that *“since it is not incriminating material in nature, therefore, no addition could be made against the assessee and Departmental Appeals have been dismissed.”* Same grounds of appeal have been raised in the present Departmental Appeal as have been considered in the above cases. No evidence of any unaccounted investment have been found during the course of search. The A.O. made addition merely on presumption. Thus, it is clear that when no assessment was pending in the case of assessee for the

assessment year under appeal on the date of search and no incriminating material was found during the course of search so as to make the impugned addition, therefore, the issue is covered in favour of the assessee by the Judgments of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) and Meeta Gutgutia (supra) as well as covered by the Orders of the Delhi Tribunal in the group cases of Madho Gopal Agarwal (supra) and M/s. Kapis Impex LLP (supra). We, therefore, do not find any justification to interfere with the Orders of the Ld. CIT(A). We confirm his Order and dismiss the Departmental Appeal.

10. Since the issue raised in the cross objection has not been decided by the Ld. CIT(A) and we have dismissed the Departmental Appeal, therefore, the cross objection is left with academic discussion only and have become infructuous. Therefore, the same is accordingly dismissed.

Remaining Departmental Appeals, Cross Objections of the assessee and one appeal of assessee in the case of Shri Gopal Agarwal in ITA.No.5854/Del./2018.

11. In the Departmental Appeals, the issue is same as have been decided above in the case of M/s. Madhusudan Packaging LLP. The Cross Objection of the Assessee is also on the same grounds as have been considered in this case.

12. Therefore, following the reasons for decision in the case of M/s. Madhusudan Packaging LLP, we dismiss the Departmental Appeals as well as Cross Objections filed by the Assessee.

13. In the case of Shri Gopal Agarwal in ITA.No.5854/Del./2018 which is appeal filed by Assessee, similar grounds have been raised as have been raised in the Cross Objections by other Assessee. But, one more ground is also raised with regard to addition of Rs.65 lakhs confirmed by the Ld. CIT(A) under section 50C of the I.T.

Act, 1961. Learned Counsel for the Assessee, however, did not argue this ground during the course of hearing of the appeal as well as did not make any submissions in the consolidated written synopsis filed on record. In this view of the matter, we do not find any reason to interfere with the findings of the Ld. CIT(A) and appeal of assessee in this case is also dismissed.

14. In the result, all the Departmental Appeals and Cross Objections of the Assessee and Appeal of assessee in the case of Shri Gopal Agarwal in ITA.No.5854/Del./2018 are dismissed.

Order pronounced in the open Court.

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

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> October, 2020

VBP/-

Copy to

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

//By Order//

Asst. Registrar : ITAT : Delhi Benches : Delhi.  
Delhi.