

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH: DEHRADUN
(Through Video Conferencing)**

**BEFORE,
SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1302/Del/2019
(ASSESSMENT YEAR-2010-11)**

Shri Kuldeep Singh Rawat, Village Ratanpur, Shimla Bypass Road, Dehradun. PAN-BVTPS 0381R (Appellant)	Vs.	Dy. CIT, Central Circle, Dehradun. (Respondent)
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Appellant By	Sh. K.K. Juneja
Respondent by	Sh. S.K. Chatterjee. Sr. Dr
Date of Hearing	25.09.2020
Date of Pronouncement	27.11.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 28.01.2019 passed by the Learned Commissioner of Income Tax (Appeals)-IV Kanpur, {CIT(A)} and pertains to Assessment Year 2010-11.

2.0 The brief facts of the case are that the assessee derives income from salary, business & profession and other sources. A search & seizure operation was conducted in Shri Kuldeep Singh Rawat and M/s Doon Valley Distillers/Brewers group of cases on 18.03.2016. As per the assessment order, during the course of search, certain information/documents belonging to the assessee were also found. Subsequently, notice u/s 153A(1)(a) of the Income Tax Act, 1961 (hereinafter called the Act) was issued for furnishing return of income. In response to the said notice, the return of income was filed declaring a total income of Rs.1,99,710/-. During the course of assessment proceedings, the assessee was required to explain the source of cash deposits in the bank account amounting to Rs.1,30,71,308/-. Subsequently, this amount was added to the income of the assessee being unexplained cash credits and the assessment was completed at an income of Rs.1,32,71,018/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the assessment. The Ld. CIT (A) dismissed the assessee's appeal on the ground that the assessee

had failed to substantiate the nature and source of cash deposits with cogent evidences.

2.2 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT (A) by raising the following grounds of appeal:

“1. That on the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the proceedings initiated under Section 153A of I.T. Act, which is bad in law in the absence of any incriminating material belonging to the assessee being found during the course of search.

2. That in facts and in the circumstance of the case, the AO has erroneously completed the assessment u/s 153A (1) (b)/143(3) which has been sustained by CIT (A) is unwarranted and unjustified.

3. That in fact and circumstances of the case, addition to the returned income without bringing on record any incremental material is bad at law and against established Judiciary pronouncements.

4. That in fact and circumstances of the case, the CIT (A) has sustained the additions by relying upon the decisions which has been overruled by the Hon'ble Delhi High Court and Appellate Tribunal, New Delhi

5. That in fact and circumstances of the case, the CIT (A) wrongly sustained an addition made by AO has taking only

the credit side of the bank accounts, totally ignoring debit sides of the banks, as well as the advances received from prospective buyers which are accepted by the authorities below, ignoring the same is wrong and erroneous.

6. *That in fact and circumstances of the case, an addition of Rs.1,30,71,308/- to the returned income may kindly be deleted.*

7. *That in fact and circumstances of the case, assuming the jurisdiction to pass the assessment order u/s 153A/143(3) dated 31.12.2017 is bad in law, more so when no mandatory notice u/s 143(2) has been issued within the prescribed period or before completion of the assessment.*

8. *That the charging of interest u/s 234 is wrong, the same may be directed to recalculate according to law.*

9. *The appellant craves leave to add, amend, modify, delete and or change all or any of the Grounds of Appeal on or before the date of hearing.”*

3.0 The Ld. Authorized Representative (AR) submitted that the original return of income u/s 139 of the Act was filed on 20.07.2010 and the assessment was thereafter completed on 15.10.2010 u/s 143(1) to the Act on the returned income and no notice u/s 142(1) or 143(2) of the Act was issued till the date of search.

3.1 The Ld. Authorized Representative submitted that in the assessment proceedings u/s 153A of the Act, the Assessing Officer (AO) has made addition of all the cash deposits in the bank without bringing on record any evidence regarding any incriminating material found during the course of search in the case of the assessee. It was submitted that in the absence of incriminating material, this being a search case, the Assessing Officer could not have made these additions as the same was against the settled law as propounded by the Hon'ble Delhi High Court as well as the various Benches of the Tribunal. It was submitted that no addition could have been made in absence of any incriminating material as the time limit for issuance of notice u/s 143(2) of the Act had already expired. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of *CIT vs. Singhad Technical Education Society* [2017] 397 ITR 344 (SC) wherein the Hon'ble Apex Court had held that no addition was sustainable, if no incriminating material was found during the course of search. Reliance was also placed on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla* reported in [2016] 380 ITR 573 (Del.) for the same

proposition. Reliance was also placed on numerous other orders of the Tribunal.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) submitted that the language of section 153A/153C does not require any incriminating material to be found during the course of search for the purposes of making the addition. It was also submitted that the assessee had not responded to the Assessing Officer when the assessee was required to explain the source of cash deposits. It was submitted that since the assessee had failed to explain the source, the addition was justified. The Ld. Sr. DR also relied on the judgment of the Hon'ble Kerala High Court in the case of *E.N.Gopakumar Vs. CIT reported in [2016] 75 Taxman.com 215 (Kerala)* wherein it had been held that assessment proceedings generated by issuance of a notice u/s 153 A(1)(a) can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in search u/s 132 of the Act. The Ld. Sr. DR submitted that in view of the facts and settled law, the assessee's appeal deserved to be dismissed.

5.0 In rejoinder, the Ld. Authorized Representative submitted that there was no judgment of the jurisdictional High Court i.e., Hon'ble Uttrakhand High Court on the issue and, therefore, in view of the judgment the Hon'ble Apex Court in the case of *CIT vs. Vegetable Products Ltd. reported in [1972] 88 ITR 192 (SC)*, the construction which favoured the assessee must be adopted. It was further submitted that the ITAT Bench of *Chandigarh in the case of Dy. CIT vs. Chandigarh Developers (Pvt.) Ltd. reported in [2018] TaxPub (DT) 6736 (Chd. Trib)* had considered the judgment of the Hon'ble Kerala High Court in the case of E.N. Gopakumar (supra) and had thereafter held that in the absence of any incriminating material found during the course of search, no addition could have been made. The Authorized Representative also drew our attention to the response of the assessee submitted before the Assessing Officer in response to his query and placed at page-2 of the PB and submitted that these certified copies have been taken from the assessment records and that these copies were submitted along with cash flow statement before the Assessing Officer and as such it was an incorrect statement by the Assessing Officer that no

response had been given to the query raised by the Assessing Officer. The Ld. AR also drew our attention to the reply received from the Department under the Right to Information Act, 2005 wherein it was accepted that no incriminating material belonging to the assessee had been found during the course of search. The Ld. Authorized Representative prayed that the assessee's appeal be allowed.

6.0 We have heard the rival submissions and have also perused the material on record. The essential question for our determination is whether as to the impugned addition was based on any incriminating material relating to or belonging to the assessee and found during the course of search. In this regard, it is seen that the assessee had applied under the Right to Information Act, 2005 requiring the Department to disclose if any incriminating material had been found during the course of search and whether the addition made related to any incriminating material found during the course of search. In response, vide order u/s 7(1) of the Right to Information Act, 2005, dated 25.06.2019, received from Central Circle, Dehradun the following reply has been received:

	Information Sought	Reply
Point 1	Please let the under sign know as to whether any incriminating material was found during search for the above said assessment year. If the answer is in affirmative kindly supply the copy of the same.	N.A. As per record of this office no incremental material was found during the search for the above said assessment year i.e. A.Y. 2010-11.
Point 2	That the addition as made in the assessment order relates to any incremental material found during the course of search, the copy of the same may please be supply.	N.A. As per assessment order u/s 153(i)(b) r.w.s U/s 143(3) of the Income Tax Act, 1961 for A.Y. 2010-11 passed by this office has been made in the basis of any incremental material found during the course of search.

6.1 Thus, it is apparent that even the Department has accepted that no incriminating material relating to or belonging to the assessee was found during the course of search and that the addition had been made without any incriminating material. This fact is also evident from a perusal of the assessment order as well as the First Appellate Authority's order wherein no reference has

been made to any incriminating material having been found during the course of search which was relating to or belonging to the assessee. In such a situation, the law has already been crystallized by judgment of the Hon'ble Apex Court in the case of CIT vs. Singhad Technical Education Society (supra) wherein the Hon'ble Apex Court has dismissed the Special Leave Petitions of the Revenue for the assessment years where no incriminating material was found during the course of search. Although, this judgment was rendered with reference to assessment framed u/s 153C of the Act, but all the same, the *obiter* can be imported for assessment framed u/s 153A of the Act also. Further, the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra) also supports the case of the assessee wherein pursuant to the search, a notice u/s 153 A (1) of the Act was issued to the assessee but as on the date of search, no assessment proceedings were pending for the relevant Assessment Years and the assessment had already been concluded u/s 143(1) of the Act. The Tribunal had deleted the additions on the ground that additions made for the relevant assessment years were not based on any

incriminating material found during the search operations and, therefore, the same were not sustainable. On Department's appeal before the Hon'ble Delhi High Court, the Hon'ble High Court observed that since on the date of search, the assessments already stood completed and since no incriminating material was unearthed during the search, no addition could have been made to the income already assessed. The question was answered in favour of the assessee and against the Revenue and the Revenue's appeal was dismissed. Therefore, since in the present case the assessment already stood completed and the time limit for issuance of notice u/s 142(1) or 143(2) of the Act already stood expired and further since no incriminating material was found during the course of search which could be said to be belonging to or relating to assessee, the impugned addition cannot be sustained. We also agree with the argument raised by the Ld. Authorized Representative that although the Hon'ble Kerala High Court, in the case of E.N.Gopakumar (supra), has held against the assessee on identical issue, since there is no judgment on the issue by the Hon'ble High Court of Uttarakhand (being the jurisdictional High

Court for the assessee), the judgment whose construction is favouring the assessee should be followed as laid down by the Hon'ble Apex Court in the case of CIT vs. Vegetable Products Ltd. (supra). Therefore, on a overall view of the facts of the case and the settled judicial position, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to delete the addition.

9.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 27th November, 2020.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 27/11/2020

PK/PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT DEHRADUN