

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.1600/Del./2018  
Assessment Year: 2009-10

ACIT, Central Circle-3, New Delhi	<b>Vs.</b>	M/s. Bhushan Steel Ltd., F-Block, 1 <sup>st</sup> Floor, International Trade Tower, Nehru Place, New Delhi
<b>PAN :AAACB1247M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

ITA No.1491/Del./2018  
Assessment Year: 2009-10

M/s. Bhushan Steel Ltd., Bhushan Centre, Hyatt Regency Complex, Bhikaji Kama Place, New Delhi	<b>Vs.</b>	ACIT, Central Circle-3, New Delhi
<b>PAN :AAACB1247M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

ITA No.1601/Del./2018  
Assessment Year: 2010-11

ACIT, Central Circle-3, New Delhi	<b>Vs.</b>	M/s. Bhushan Steel Ltd., F-Block, 1 <sup>st</sup> Floor, International Trade Tower, Nehru Place, New Delhi
<b>PAN :AAACB1247M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

ITA No.1492/Del./2018  
Assessment Year: 2010-11

M/s. Bhushan Steel Ltd., F-Block, 1 <sup>st</sup> Floor, International Trade Tower, Nehru Place, New Delhi	<b>Vs.</b>	ACIT, Central Circle-3, New Delhi
<b>PAN :AAACB1247M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Shri Satpal Gulati, CIT (DR)
Assessee by	Shri Ashwani Kumar, Adv.

Date of hearing	23.02.2021
Date of pronouncement	11.03.2021

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

These Cross Appeals by the Revenue and the assessee are directed against a common order dated 29/12/2017 in the case of the assessee along with other group entities, passed by the Learned CIT(Appeals)-23, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11 respectively. The appeals being connected to same assessee, these were heard together and disposed off by way of this consolidated order for convenience.

**2.** The grounds raised in the appeal of the Revenue (ITA No. 1600/Del/2018) and appeal of the assessee (ITA No. 1491/Del/2018) for assessment year 2009-10 are reproduced as under:

**2.1** Grounds of appeal of the Revenue:

1. *The order of learned CIT(A) is not correct in law and on facts.*

2. *On the facts and circumstances of the case, Ld. CIT(A) has erred in law in by relying upon the order of the Hon'ble High Court in the case of Kabul Chawla.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the assessment order framed u/s 153A of the Income-tax Act, 1961.*
4. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

## **2.2** Grounds of appeal of the assessee:

- (1) *That the order dated 29-12-2017 passed u/s 250 of the Income-tax Act, 1961 (hereinafter called "the Act") by the Ld Commissioner of Income-tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assistant Commissioner of Income Tax, Central Circle-3, New Delhi in making an addition/disallowance of Rs. 14,00,06,089/- (comprised of alleged bogus Zinc purchased from M/s Hindustan Zinc Limited of Rs. 13,59,00,614/- and transport expenses paid to M/s Mewat Transport Company of Rs. 41,05,475/-) while computing the income under the normal computational provisions of the Act.*
- (2) *That the order dated 29-12-2017 passed u/s 250 of the Act by the Ld. Commissioner of Income-tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified to reject the results shown by the audited books of accounts, estimate the profit on the basis of best judgement method by applying the provisions of Section 144 of the Act and arbitrarily enhancing the income of the Appellant Company by Rs. 233,47,93,910/- (by enhancing the declared net profit rate by 5% on the basis of the results declared by M/s Tata Steel Ltd) to be telescoped against the additions already made in the assessment order without considering the circumstances, operating conditions and other facts relevant to the case.*
- (3) *That the order dated 29-12-2017 passed u/s 250 of the Act by the Ld. Commissioner of Income-tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified to direct the Ld Assessing Officer u/s 150(1) of the Act, to examine the case of the Appellant Company u/s 147/148 of the Act independently and in case the conditions under relevant sections are found to be satisfied, to initiate proceedings notwithstanding anything contained in Section 149 subject to provisions of Section 150(2) of the Act.*
- (4) *That the order dated 29-12-2017 passed u/s 250 of the Act by the Ld. Commissioner of Income-tax (Appeals)-23, New Delhi is against law and facts on the file in as much as he was not justified to initiate penalty proceedings u/s 271(1 )(c) of the Act for alleged concealment and furnishing of inaccurate particulars of*

*income on the ground that the top management of the Appellant Company was allegedly involved in planned and deliberate activities thereby resulting in alleged under reporting (because of alleged siphoning off) of the profits of the Appellant Company and alleged, non-reflection of true state of affairs in the books of account.*

**3.** Briefly stated facts of the case are that the assessee company was engaged in manufacturing of steel products and filed its regular return of income on 10/11/2010 declaring income of ₹ 258,11,09,012/-. Subsequently, a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at the premises of the assessee on 13/06/2014 along with other group concerns. Consequently, notice under section 153A of the Act was issued on 04/02/2015 and in response thereon, the assessee filed a copy return of income dated 10/11/2010. The scrutiny proceedings under section 153A of the Act were commenced and statutory notices under the Act were issued and complied with. In the assessment order under section 153A read with section 143(3) of the Act was passed on 30/12/2016 after making additions of ₹ 14,00,06,089/-. On further appeal, the Ld. CIT(A), not only upheld the addition on merit but also made enhancement, however, he allowed the legal grounds in favour of the assessee quashing the assessment. Aggrieved, both the Revenue and the assessee are in appeal before the Tribunal raising the grounds as reproduced above.

**4.** Before us, both the parties appeared through Video Conferencing facility.

**5.** At the outset, Learned Counsel of the assessee submitted that Ld. CIT(A) has allowed the legal ground, i.e., in absence of an incriminating material found during the course of search, no addition can be made u/s. 153A of the Act in the completed assessments, following the decision of the jurisdictional High Court in the case of **CIT vs. Kabul Chawla (2016) 380 ITR 0573 (Del)**. The learned Counsel submitted that in view of no incriminating material found during the course of the search at the premises of the assessee, no additions can be sustained in the case of the assessee and if the order of the Learned CIT(A) is upheld on legal ground on legal ground, then the appeals of the assessee would be rendered infructuous.

**6.** The Learned CIT(DR), on the other hand, relied on the order of the lower authorities on the ground raised on merit by the assessee.

**7.** We have heard rival submission of the parties and perused the relevant material on record. The main issue of the addition by the AO in the year under consideration is disallowance of deduction claimed by the assessee in respect of purchase of Zinc from M/s Hindustan Zinc Ltd (HZL), Haridwar and transport expenses paid to M/s Mewar Transport Company. The Assessing Officer made addition in respect of the above two items based on the evidence gathered in the search carried out by the Director General of Central Excise Department, Khopoli Unit at the premises of the assessee and subsequent order passed by the Customs and Central Excise Settlement Commission. The Ld. CIT(A) allowed the legal ground in favour of the assessee observing as under:

*“10.1 Vide ground no. 2, the appellant has contested that assumption of jurisdiction u/s 153A is not as per law because no incriminating material was found during the search qua the additions made during this A.Y. The appellant relied upon various judgments as stated in the written submission. During the hearing the AR mainly relied upon the ratio of Hon’ble Delhi High Court in case of Kabul Chawla 61 taxmann.com 412 (Del-HC).*

*10.2 In CIT (C)-III vs. Kabul Chawla (Delhi) [2015] 61 taxmann.com 412 (Delhi), 234 Taxman 300 the Hon’ble jurisdictional High Court of Delhi have held that an assessment has to be made under this section only on the basis of seized material and in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made, and that completed assessments can be interfered with by the AO 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, and concluded that since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. This judgment has been considered in all the existing judgments on the matter, some of which have been referred to by the AR in his arguments.*

*10.3 Hon’ble Delhi High Court in a recent judgment delivered in case of Principal Commissioner of Income-tax, Central -2, New Delhi Vs. Meeta Gutgutia [2017] 82 taxmann.com 287 (Delhi) has held that invocation of section 153A by revenue for assessment years 2000-01 to 2003-04 was without any legal basis where there was no incriminating material qua each of those assessment years. The relevant portion of the judgment is reproduced as under:*

*"38. It appears that the seized cash was added to the income during the year of search and not in relation to any of the other AYs i.e., AYs 2000-01 to 2004-05. The documents as stated by the Revenue in its Memorandum of Appeal in ITA No. 306/2017 viz., Annexures A1, A3 to A5 stated to pertain to AY 2003-04, 2005-06, 2004-05, and 2005-07 respectively have neither been described as such or in any detail by the Revenue either in these appeals. They have not been referred to or discussed in any of the orders of the AO or the CIT (A). Although it was repeatedly urged by Mr. Manchanda that there were "hundreds of seized documents", what is necessary to examine is whether they were in fact 'incriminating documents'. Any and every document cannot be and is in fact not an incriminating document. The legal*

*position, as will be discussed shortly, is that there can be no addition made for a particular AY without there being an incriminating material qua that AY which would justify such an addition. Therefore, the mere fact there may have been documents pertaining to the above AYs does not satisfy the requirement of law that there must be incriminating material. In any event, the aforementioned documents i.e., A1, A3, A4 and A5 pertain to only some of the AYs with which we are concerned i.e., AYs 2003-04, and 2004-05. The Court is unable to accept the submissions of Mr. Manchanda that there was incriminating material other than what has been discussed in the orders of the AO, CIT (A) and the ITAT for the AYs in question.*

*39. It requires to be noticed at this stage that for AY 2004-05, the ITAT has proceeded on the basis that there was incriminating material and that finding has become final since there is no appeal before this Court by the Assessee. It is another matter that the ITAT rejected the plea of the Revenue that for the said AY the CIT (A) wrongly deleted five of the additions made by the AO for that AY on such incriminating material. Consequently, this Court has to only examine the justification for invocation of Section 153A by the Revenue for AYs 2000-01 to 2003-04.” (emphasis supplied).*

*10.3.1 In view of the above stated judicial pronouncements, it is held that the AO was not within the jurisdiction bestowed on him by law to make the impugned addition and, therefore, ground no.2 is allowed and the impugned (re-assessment order) under reference is accordingly quashed, the additions confirmed (as above) and enhancement made (as above) would not have operational effect (due to allowing of this ground.)”*

**7.1** The Revenue is aggrieved with the above finding of the Learned CIT(A). As far as grounds no. 2 & 3 of the appeal of the Revenue is concerned, we have to examine, whether the ratio of the decision in the case of the **Kabul Chawla** (supra) is applicable on the facts of the assessee in the year under consideration. In the said decision, the Hon’ble High Court has held that in absence of incriminating material found during the course of search, no addition can be made u/s 153A of the Act in

completed assessments. Thus, for applicability of the ratio of the **Kabul Chawla** (supra), two conditions as under are required to be fulfilled:

- (i) No assessment proceedings were pending as on the date of the search.
- (ii) No incriminating material is found during the course of the search under section 132 of the Act.

**7.2** As far as first condition is concerned, it is admitted position that no assessment was pending on the date of the search. The only dispute is regarding the second condition, i.e., no incriminating material was found during the course of the search. The fact that no incriminating material was found during the course of the search is evident from the order of lower authorities as under :

- (i) The Assessing Officer in para 4.1 of the assessment order has mentioned as how the said evidences were gathered through a tax evasion petition received during assessment proceedings. The relevant para of the assessment order is reproduced for ready reference:

*“4.1 During the course of assessment proceedings this office received a Tax Evasion petition (TEP) in which it was stated that M/s BSL was engaged in availing CENVAT credit of central excise duty paid on Zinc Ingots bought from M/s Hindustan Zinc Ltd (HZL), Haridwar in a fraudulent manner and Zinc so purchased was sold in open market at Delhi/Aligarh/Agra and CENVAT credit was availed at their Khopali Plant, at Maharastra on the basis of invoices only & without using the same in manufacturing of finished good. Further in this TEP, it was mentioned that a search action was conducted by Directorate General of Central Excise Intelligence at various premises of M/s BSL on 20.03.2013. In this search, it was found that M/s BSL was availing the CENVAT credit in fraudulent manner without*

*actually using Zinc purchased from M/s HZL. Further in this TEP it was also stated that M/s BSL paid this central excise duty after the order of Hon'ble Custom & Excise Settlement commission of Rs.24,01,19,291."*

- (ii) In para 4.3 of the assessment order, the Assessing Officer has mentioned the order of the Customs and Central Excise Settlement Commission is the basis of show cause notice issued to the assessee for disallowing the purchase of Zinc ingots from M/s HZL and transport expenses paid to M/s Mewar transport company. There is no reference of any incriminating material found during the course of the search action under section 132 at the premises of the assessee.
- (iii) The Ld. CIT(A) in para 10.3.2 of the impugned order has also clearly mentioned that source of the information leading to addition was only tax evasion petition and therefore, he directed the Assessing Officer to examine the case for reopening under section 147/148 of the act.

**7.3** Thus, the only source of information is the tax evasion petition received during assessment proceeding. The Learned DR also could not rebut the finding of the Ld. CIT(A) that no incriminating material was found during the course of the search under section 132 of the Act and the case is squarely covered by the decision of the Hon'ble High Court in the case of Kabul Chawla (supra).

**7.4** In view of the above discussion, we uphold the finding of the Ld. CIT(A) on the issue in dispute and the grounds No. 1 and 2 of the appeal of Revenue are accordingly dismissed.

**8.** The ground No. 3 & 4 of the appeal of the Revenue being general in nature are dismissed as infructuous. Hence, the appeal of the Revenue is dismissed.

**9.** As we have already held that no addition could have been made in the instant assessment year, in absence of an incriminating material found during the course of the search under section 132 of the Act, the addition sustained on merit by the Ld. CIT(A) are rendered only of the academic nature and therefore, we are not required to adjudicate upon the grounds raised by the assessee. The Learned Counsel of the assessee also did not press for adjudication of those ground being rendered infructuous in view of our finding on the appeal of the revenue.

**10.** Accordingly, the grounds of the appeal of the assessee are dismissed as infructuous. Hence, the appeal of the assessee is dismissed.

**11.** In ITA No. 1601/Del./2018 for assessment year 2010-11, also the Revenue has raised identical grounds, which are reproduced as under:

1. *The order of learned CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, Ld. CIT(A) has erred in law in by relying upon the order of the Hon'ble High Court in the case of Kabul Chawla.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the assessment order framed u/s 153A of the Income-tax Act, 1961.*
4. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

**12.** The grounds raised in the appeal of the assessee (ITA No. 1492/Del/2018) for assessment year 2010-11 also identical to the ground raised by the assessee in assessment at 2009-10.

**13.** Thus, following our finding in assessment year 2009-10, the appeals of the Revenue and the assessee for assessment year 2010-11 are accordingly dismissed.

**14.** In the result, the appeals, both of the Revenue and the assessee, are dismissed.

***Order pronounced in the open court on 11<sup>th</sup> March, 2021***

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

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

Dated: 11<sup>th</sup> March, 2021.

RK/-(D<sup>TDS</sup>)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi