

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 7773/Del/2017
Assessment Year: 2009-10**

**ACIT, Central Circle-205,
New Delhi.**

vs.

**Alchemist Capital Ltd.,
SCO 52-53, Sector 9-D,
Chandigarh.**

**PAN : AABCT5925F
(Appellant)**

(Respondent)

Appellant by : Sh. Satpal Gulati, CIT/DR
Respondent by: None

Date of hearing: 07/07/2021
Date of order : 16/07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 17/10/2017 passed by the learned Commissioner of Income Tax (Appeals)-279, New Delhi ("Ld. CIT(A)") in the case of Alchemist Capital Ltd ("the assessee") for the assessment year 2009-10, the Revenue filed this appeal.

2. Brief facts of the case are that a search & seizure and survey operation u/s. 132/133A of the Income-tax Act ("the Act" for short) was conducted by the Investigation Wing of the department on 20.06.2014 in M/s. Alchemist Group of cases; that a notice u/s.153A was issued; that

the assessee filed return of income; that during the assessment proceedings, Id. Assessing Officer observed that the assessee is a non-banking Financial Company and mainly engaged in the business of financing by advancing loans; that during the year opening balance of preference shares issued by company was at Rs.163,07,52,640/- and the closing balance was at Rs.158,89,30,540/-; that these preferential shares were redeemable and redeemed during the year for Rs.555.90 crores against the face value of Rs.165.21 crores, but no interest was charged on such redemption of preferential share.; and that the Assessing Officer, therefore, taking into account the advances recoverable as on 01.04.2008 at Rs.157,93,39,876/- and balance as on 31.03.2009 at Rs.155,14,81,523/- as per balance sheet, and taking the average of both the figures at Rs.156,54,10,699/-, computed the receivable interest amount at Rs.3,54,35,130/- for the year. According to the Assessing Officer, the interest rate charged by the assessee on those advances comes to 2.26% per annum which shows that the assessee has deliberately received very nominal interest on advances given to the group companies whereas it has borne the cost of fund received as preferential share @ 7.87% per annum on redemption; that the assessee has deliberately under-recovered the income from its associate companies to the extent of 5.61% as against the cost accrued to the assessee company at 7.87%, thereby the under-recovered interest @5.61% on the average advance recoverable from the associate companies at Rs.1,56,54,10,699/- which comes to Rs.8,78,19,540/-. The Assessing Officer added such amount to the income of the assessee. Assessing Officer also made addition of Rs.6,95,82,594/- and

Rs.40,64,627/- on account of loss on shares/derivatives and also u/s. 14A of the Act read with Rule 8D.

3. Assessee preferred appeal before the CIT(A) and argued that no incriminating material was recovered at the time of search & seizure or survey operation and therefore, no addition could be made qua the assessment year in respect of which such material was not recovered. Assessee further argued that assessment of this year was complete, as the period to issue notice u/s. 143(2) had expired. Ld. CIT(A) considered all these facts in the light of the decision in the case of CIT vs. Kabul Chawla, (2016) 380 ITR 0573 (Del) and allowed the contention of the assessee. Revenue is, therefore, before us in this appeal.

4. When the matter is called, there is no representation from the assessee. Notice was sent to the address given in form No. 36. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Non-service of notice is solely attributable to the conduct of assessee. In these circumstances, we proceed to decide the appeal basing on the material available on record.

5. Learned DR relied on the order of Assessing Officer.

6. We have gone through the records in the light of submissions made by Id. DR. There is no dispute of the fact that the search & seizure operation in this case took place on 20.06.2014, by which date the time

period to issue notice u/s. 143(2) for assessment year 2009-10 stood expired. There is also no dispute that no incriminating material was found during the search and seizure operation to base any addition qua this assessment year.

7. In CIT vs. Kabul Chawla (supra), Hon'ble Delhi High Court held that the assessment cannot be made arbitrarily without any relevance or nexus with the seized material and the assessment in such cases has to be made only on the basis of incriminating material found during the search and completed assessments cannot be interfered with arbitrarily. In such circumstances, the finding of the Id. CIT(A) cannot be interfered with.

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

Order pronounced in the open court on this 16th day of July, 2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 16/07/2021
'aks'