

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

(THROUGH VIDEO CONFERENCE)

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

And

SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.519/Del./2017

ASSESSMENT YEAR : 2012-13

Asst. Commissioner of
Income Tax,
Central Circle 04,
New Delhi

Vs.

Sh. Sundeep Gupta
R/o. A-43,
Phase-II,
Noida Extension,
Uttar Pradesh-201305
(PAN :AADPG8124E)
(RESPONDENT)

(APPELLIANT)

REVENUE BY : Shri Ved Jain, CA
ASSESSEE BY : Sh. H.K.Choudhary, CIT(DR)

Date of Hearing : 15.07.2021

Date of Order : 29.07.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Asst. Commissioner of Income Tax, New Delhi
(hereinafter referred to as 'the revenue') by filing the present
appeal sought to set aside the impugned order dated 24.11.2016
passed by the Commissioner of Income-tax (Appeals)-23, New

Delhi qua the assessment year 2012-13 on the grounds inter alia that :

“1. The order of Ld. CIT(A) is not correct in law and facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 9,78,54,242/- made by the Assessing Officer on account of gain on sale of investment.

3. The appellant craves, leave to add, amend any/ all grounds of appeal before or during the course of hearing of the appeal.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of search and seizure operations conducted on 03.10.2013 u/s 132 of the Act in Jakson Group of companies, statement of assessee was recorded and consequently proceedings u/s 153A were initiated. In response to the notice issued u/s 143A, assessee filed return of income on 05.01.2015 at the income of Rs. 3,91,84,350/- same as declared in the return income. Assessing Officer noticed that assessee along with M/s. Jakson Group namely Sh. Sameer Gupta, Sh. Bhawana Gupta and Smt. Anita Gupta has huge capital gains from the sale of shares and have claimed exempt income on the same. AO observed that the assessee adopted a modus operandi by claiming bogus LTCG by pre arranged trading in shares of various non-descript listed company aiming at availing income tax exempt as long term capital gain. Declining the contention raised by the assessee, AO proceeded to made addition of Rs. 9,78,54,242/- by

way of disallowance of long term capital gain claimed as exempt income.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition by allowing the appeal. Feeling aggrieved revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. It is also not in dispute that Ld. CIT(A) has decided issue in controversy in favour of the assessee by following his own order passed in case of Smt. Sameer Gupta brother of the assessee in A.Y. 2011-12 and 2012-13. It is also not in dispute that during the course of search proceedings, no “incriminating material” was found against the assessee. It is also not in dispute that during the course of search proceedings statement of assessee was recorded on oath. It is also not in dispute that order passed by Ld. CIT(A) in case of Smt. Sameer Gupta and Bhawana Gupta has been upheld by the coordinate bench of Tribunal as well as by the Hon’ble Delhi High Court.

6. Ld. DR for the revenue in order to challenge the impugned order passed by Ld. CIT(A) relied upon the order passed by the AO. However on the other hand Ld. AR for the assessee supported the order passed by Ld. CIT(A) and further contended that the order followed by CIT(A) passed in case of Smt. Sameer Gupta and Smt. Bhawana Gupta has already been confirmed by Tribunal in *ITA No. 516/Del/2017, ACIT Vs. Late Smt. Bhawna Gupta* *ITA No. 522/Del/2017, ACIT Vs. Smt. Anita Gupta, ITA No. 514, 515/Del./2017, ACIT Vs. Sameer Gupta* dated 31.07.2018 & 23.08.2017 which has been further confirmed by Hon'ble High Court vide order passed in *ITA No. Pr. Commissioner of Income Tax (Central)-1 Vs. Sameer Gupta* dated 02.02.2018, *ITA No. 169/2018 & CM Appl. 5356/2018* dated 12.02.2018. This factual position has not been controverted by Ld. DR for the revenue.

7. Ld. CIT(A) decided the issue in favour of the assessee by following his own order passed in case of Sameer Gupta by returning findings as under :-

“Ground nos. 02, 03, 04, 05 & 09 are similar to that taken in the appeals in the \ case of Sh. Sameer Gupta, brother of appellant, in AYs 2011-12 & 2012-13 and have been considered by me at paras- 4.1 to 4.4 in my order dt. 23.11.2016 in A.Nos. 180 & 188/16-17 wherein on similar facts I have held that the impugned re-assessment orders cannot be sustained and I have **quashed** the re-assessment order in those cases. The facts of the matter in this case in both the years are the same/similar and therefore reiyng on my order in the case of Sh. Sameer Gupta (supra) I hold similarly injhese two appeals as well.

4.3 The facts of the matter taken in **ground no. 08** relating to addition of Rs. 4,56,37,110/- and Rs.9,78,54,242/- u/s 68 in the AYs 2011-12 and 2012-13 respectively on account of gain on sale of shares are also similar to that of the case of Sh. Sameer Gupta for AYs 2011-12 & 2012-13 (supra) considered at paras-4.5 to 4.5.4 therein. During the appellate proceedings the appellant was asked to submit a detailed statement in excel sheet of the date-wise purchase and sale of these shares alongwith the rate of purchase and sale as also the payment details with copy of the bank statement. The same have been submitted with WS for AY 2011-12 at pages-139-140 and pages-176-179 for AY 2012-13 of the respected PBs filed with WS on 23.11.2016 which are enclosed as Annx.1 and Annx. 2 to this order. On perusal of these details it is observed that the shares of the two companies were purchased at the same rate at one go while these have been sold on different dates at varying rates, that of SVEL @ Rs.193/- on 19.01.2011 to @ Rs.143.60 on 03.02.2011 and that of CFSL @ Rs.141.50 on 11.04.2011 to @ Rs. 163.90 on 28.06.2011. It is also noted that the sale rate is not constant and while that of SVEL was sold @ Rs193.50 on 19.01.2011 it was later sold even @ Rs. 174.50 on 24.01.2011, @ Rs.182/- on 27.01.2011 and at further reduced rates upto Rs.143.60 on 03.02.2011 and similarly those of CFSL were sold even @ Rs.141.50 on 25.05.2011, increasing to Rs.156/- on 05.05.2011 and again @ Rs.148.50 on 10.05.2011, Rs.141.85 on 09.06.2011, Rs.156/- on 17.06.2011, Rs.140/- on 21.06.2011 & Rs. 163.90 on 22.06.2011. The corresponding date-wise receipts have also been credited in the appellant's bank account no. 13741000025837 with HDFC Bank New Delhi. For the detailed discussion and reasons at paras-4.5 to 4.5.4 of my order of Sh. Sameer Gupta (supra) wherein I have held that the addition has been made in both the-years on presumptions_and surmises sans any material evidence or fact relevant to the transaction involved and therefore I have held that the additions in both the years on this account is not sustainable even on merits. I hold accordingly in the case of the appellant as well and the addition in both the assessment years are therefore **deleted.**"

8. When we examine the impugned order passed by Ld. CIT(A) quashing the assessment framed u/s 153A read with section 143(3) of the Act in the light of the fact that "no incriminating material" was found during the search operation, the entire addition has been made by the AO is on the basis of post search inquiry. There is not an iota of material nor any such ground raised by the revenue if "any incriminating material" was found and the entire

case is based upon the sole statement of Sandeep Gupta, the Ld. CIT(A) has rightly decided the issue in favour of the assessee by following decision rendered *by Hon'ble Delhi High Court in case of CIT vs. Kabul Chawala cited as 21 taxmann.com 412.* Otherwise all the transaction relating to capital gain arisen during the year under consideration have already been recorded in the books of accounts. So, in these circumstances in the absence of any incriminating material found in the course of search in the case of completed assessments no addition can be made u/s 153A read with section 143(3).

9. Coordinate bench of Tribunal while deciding case of Sameer Gupta, son of assessee arisen out of same search proceedings and key person of M/s. Jakson Group decided the identical issue in favour of the assessee by returning following findings :

“24. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has filed his original return of income on 30th March, 2012 declaring total income of Rs. 3,92,11,220/-. In response to notice u/s 153A of the IT Act, the assessee filed return in response to notice u/s 153A on 5th January, 2015 declaring the same income. The assessee in his return of income had claimed exemption of long term capital gain of Rs. 5,62,61,726/-. The assessment order was passed u/s 143(3) read with section 153A by making addition of the long term capital gain as bogus. From the order of the assessing officer, we find nowhere it is mentioned that any incriminating material was found during the

course of search. The entire addition made by the AO is based on post search inquiries. There is also no ground by the revenue that any such incriminating material was found other than the statement of Shri Sundeep Gupta at the time of search. Under these circumstances, we have to adjudicate as to whether the CIT(A) has erred in deleting the addition made by the AO in absence of any incriminating material.

25. *We find the Id. CIT(A) while deleting the addition has relied on various decisions including the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Kabul Chawala reported in 21 taxman.com 412 (234 taxman 300). Finding of the CIT(A) on this issue has already been reproduced in the presiding paragraphs. So far as the reliance by the Ld. DR in the case of Smt. Dayawanti vs. CIT (supra) is concerned, we find the facts of that case are completely different from that of the facts of the present case. In that case the son of the assessee had categorically admitted that there were unaccounted purchase and sale of various items in Supari from different parties. He had also admitted that certain purchases are unaccounted and accordingly he had surrendered certain income. However, in the present case there is no unaccounted transaction found during the course of search. The capital gain that arose from the sale of shares are already recorded in the books of accounts and no incriminating material whatsoever was found during the course of search . Therefore, the said decision in our opinion is not applicable to the facts of the present case.*

26. *It has come to our notice subsequent to the hearing that the Hon'ble Delhi High Court in the case of Pr. CIT vs. Meeta Gutgutia reported in 2017 (5) TMI 1224 has held that addition cannot be made in absence of any Incriminating material and the decision in the case of Smt. Dayawanti Gupta has been duly considered. So far as the decision of Hon'ble Kerala High Court in the case of E. N. Gopal Kumar (supra) relied by the Ld. Dr is concerned, we find the said decision is of a non-jurisdictional High Court and the Tribunal is bound by the decision of the Jurisdictional High Court. Since the Hon'ble High Court in a number of cases recently has held that addition cannot be made in order passed u/s. 153A r.w.s. 143(3) in absence of any incriminating material found during the course of search in the case of completed assessments, therefore, we do not find any infirmity in the order of the CIT(A) deleting the addition in absence of any incriminating material found during the course of search.*

27. *We further find the revenue has not challenged the vital*

legal ground on which the Ld. CIT(A) has deleted the addition. Since the Hon'ble Jurisdictional High Court has clearly held that addition in order passed u/s 143(3)/ 153A cannot be made In absence of any incriminating material and since in the instant case, there is no evidence whatsoever on record that any incriminating material was found during the course of search and since the addition was made on the basis of certain inquiries conducted subsequent to the search on the basis of return already filed, therefore, on this issue itself addition has to be deleted. We, therefore, uphold the order of the CIT(A) and dismiss the ground raised by the revenue.”

10. Revenue has challenged the order passed by the Tribunal in case of Sameer Gupta before Hon'ble Delhi High Court but their appeal has been dismissed by Hon'ble High Court by returning following findings :-

“In this case the search took place in the premises on 03.10.2013. A notice under Section 153A was issued to the assessee which re-affirmed its earlier returns. The Assessing Officer completed the Section 153A assessment by adding amounts under Section 60A to the tune of Rs. 5,62,61,726/- for AY 2011-12. The CIT (A) and the ITAT concurrently granted relief to the assessee in the appellate proceedings holding that no fresh incriminating material was seized warranting the additions during the search. Both the appellate authorities relied upon the judgment of this Court in CIT v. Kabul Chawla, 380 ITR 573.

In these circumstances, the Court is of the opinion that no question of law arises as the ratio in Kabul Chawla (supra) applied. The appeal is, therefore, dismissed”

11. In view of what has been discussed above and following the order passed by coordinate bench of Tribunal in case of Sameer Gupta and Bhawna Gupta (supra) confirmed by Hon'ble Delhi High Court, we are of the considered view that when the capital gain earned from the sale of shares were already recorded in the

books of accounts and no “incriminating material” was found during the course of search operation on “Jakson Group” being run by Sameer Gupta, Bhawana Gupta and Sandeep Gupta, addition made on the basis of sole statement of Sandeep Gupta is not sustainable in the eyes of law, particularly when all the transactions qua sale of shares and capital gain earned during the year under consideration have been duly recorded in the books of accounts. So, in these circumstances we find no illegality or perversity in the impugned order passed by Ld. CIT (A), hence, appeal filed by the revenue is hereby dismissed.

Order pronounced in open court on this 29th day of July, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 29th day of July, 2021
Binita

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.