

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI
(Through Video Conferencing)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.518/Del/2017
निर्धारणवर्ष/Assessment Year:2011-12

ACIT Central Circle-04, Room No. 331, ARA Centre, Jhandewalan Extn., New Delhi.	बनाम Vs.	Sundeeep Gupta R/o A-43, Phase-II, Noida Extension, Uttar Pradesh.
		PAN No. AADPG8124E
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Sh. H.K. Choudhary, CIT (DR)
निर्धारितकीओरसे /Assessee by	Sh. Ashish Goel, Adv.

सुनवाईकीतारीख/ Date of hearing:	10.08.2021
उद्घोषणाकीतारीख/Pronouncement on	10.08.2021

आदेश / O R D E R

PER MADHUMITA ROY, J.M.

1. The instant appeal filed by the Revenue is directed against the order dated 24.11.2016 passed by the Ld. CIT(A)-23, New Delhi arising out of the order dated 30.03.2016 passed by the ACIT, Central Circle-4, New Delhi u/s 153A/143(3) of the Act for AY 2011-12.
2. Deletion of addition of Rs. 4,62,96,186/- made by the Assessing Officer on account of gain on sale of investment is the subject matter before us.

3. The Ld. CIT(A) has passed the impugned order quashing the reassessment order relying upon the order passed in the case of the brother of the assessee Sh. Sameer Gupta which was confirmed by the Ld. Tribunal in appeal preferred by the Revenue in ITA No. 514 & 515/Delhi/2017 for AYs 2011-12 and 2012-13 respectively. In fact the Revenue has also filed an appeal in assessee's family relative case of Late Smt. Bhawna Gupta through the legal heir Sh. Sameer Gupta, being ITA No. 516/Del/2017, wherein the Hon'ble Tribunal relying upon the judgment passed by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Kabul Chawla, reported in 61 taxman.com 412 (234 taxmann 300) dismissed the same.
4. Apart from that at the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the assessment of the assessee in respect of the AY 2012-13 has been allowed by the Ld. CIT(A) on the same set of facts, a copy whereof has also been filed before us.
5. The Ld. DR has however, failed to controvert such contention made by the Ld. Counsel of the assessee. We have perused the order passed by the Ld. Tribunal in ITA No. 519/Del/2017 the relevant portion whereof is as follows: -

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.”

6. Having regard with the facts and circumstances of the case and particularly the order passed by the Hon'ble Tribunal in assessee's own case for AY 2012-13 on the identical issue as above, we find no error and/or ambiguity in the order passed by the Ld. CIT(A) in allowing the appeal preferred by the assessee so as to warrant interference. Hence, Department's appeal is found to be *devoid* of any merit and thus, dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 10/08/2021.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

Dated: 10th August, 2021
*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi