

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH “B”: NEW DELHI]
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. No. 2655/Del/2018
(Assessment Year: 2010-11)

Smt. Sangeeta Kapoor, RRA Taxindia, D-28, South Extension, Part – I, New Delhi – 110 049. PAN: ABMPK7970L	Vs.	DCIT, Central Circle : II, Faridabad.
(Appellant)		(Respondent)

Assessee by :	Shri Somil Agrawal, Advocate; & Shri Deepesh Garg, Advocate.
Revenue by:	Shri Rajesh Kumar, Sr. D. R.;
Date of Hearing :	16/08/2021
Date of pronouncement :	16/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order dated 30.01.2018 passed by the Id. Commissioner of Income Tax (Appeals)-2, Gurgaon, for assessment year 2010-11 raising the following grounds of appeal:-

- “ 1. That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153 A of the Act.*
- 2. That in any case and in any view of the matter, the assessment framed under section 153A(1)(a) of the Act, is bad in law and against the facts and circumstances of the case.*
- 3. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs.3,29,000/- on account of cash deposited in the bank account as alleged income from undisclosed sources and that too in the proceedings u/s 153A of the Act.*
- 4. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the action of Ld. AO in making addition of Rs.3,29,000/- is bad in law and against the facts and circumstances of the case.*
- 5. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.”*

2. Brief facts of the case shows that assessee is an individual. There was a search and seizure in case of SRS Group conducted on 9th May 2012. During the previous year the assessee was drawing income from salary and income from house property. Therefore, notice u/s 153A(1) of the Act was issued on 06.08.2013. Assessee filed her return of income on 9/10/2013 declaring total income of ₹ 3,05,550/-. During the course of assessment the Id Assessing Officer perused the bank account and noted that assessee has deposited cash of ₹ 3,29,000/- in her bank account. The assessee was asked to explain the source of the above cash deposit, which she failed to explain or provide any documentary evidences and therefore the addition of ₹ 3,29,000/- was made to the total income of the assessee treating the same as income from undisclosed sources. Accordingly, the assessment order was passed at the total income of ₹ 6,34,550/- against the returned income of ₹ 3,05,550 where the addition of ₹ 3,29,000 was made in order passed u/s 153A read with Section 143 (3) of the income tax 1961 on 27.02.2015.
3. The assessee preferred an appeal before the learned CIT(A). The Id CIT(A) noted that the facts of the case are similar to the assessment year 2008 – 09 and therefore he confirmed the disallowance of ₹ 329,000 on account of cash deposited in the bank account as alleged income from undisclosed sources. Accordingly, appeal of the assessee was dismissed. Before the learned CIT(A) the case was also fixed for assessment year 2008-09 whereas the issue of cash deposit of ₹ 247,240 were the challenge to the assessment order passed u/s 153A was also made which was dismissed by him.
4. The learned Authorised Representative submitted a detailed paper book stating that return of income has been filed by the assessee u/s 139 (1) on 06/08/2010 for assessment year 2010-11 and subsequently the return was also filed u/s 153A of the income tax act on 09/10/2010 for assessment year 2010-11. He further relied heavily on the decision of the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla 380 ITR 573 as well as the decision in case of CIT Vs. Meeta Gutgutia 257 taxman 441 of Hon'ble Supreme Court as well as of the Hon'ble Delhi High Court reported in 395 ITR 526. He further relied on the decision of the coordinate bench in case of Sh. Bishan Bansal Vs. DCIT in ITA number 1187/Del/2017 dated 28.02.2020 and Praveen Kumar Kapoor Vs. DCIT in ITA No. 2657 – 2658/Del/2018 dated 26th July 2021, he further relied upon the decision of the Hon'ble Delhi High Court in case of Cintel India Ltd. Vs. DC 397 ITR 416. His main contention was that where notice u/s 143(2) was not issued within a period of six months from date of filing of the return, the return filed would become final and no scrutiny proceedings could be started in respect of the said return; and therefore, the assessment pursuant to the search would have been made only on unearthing any incriminating document found during the course of search. He submitted that

in the assessment order as well as in the order of the Id CIT(A) there is no mention of any incriminating material found during the course of search. He submitted that the bank account and his regular books of account which was not found during the course of the search but was perused during the course of assessment proceedings and therefore the addition made by the learned Assessing Officer deserves to be deleted. He further, referred to the order of the learned CIT(A) stating that before him this argument was raised but he rejected the contention that the decision of the Hon'ble Delhi High Court was only with the respect when the assessment proceedings has awaited. Therefore, he held that when the assessment is not abated the assessment u/s 153A can only be done on the basis of incriminating material found during the course of search. In the present case, according to him as no assessment has been completed earlier therefore, the appellant case is not covered by the decision of the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla (supra) and it would not apply to the facts of this case.

5. The learned Departmental Representative vehemently supported the order of the lower authorities and submitted that assessee has deposited cash in her bank account which could not be explained during the course of assessment proceedings therefore the lower authorities have correctly confirmed the addition.
6. We have carefully considered the rival contention and perused the orders of lower authorities as well as the orders of Hon'ble jurisdictional High Court as well as order of the coordinate benches. The facts in the present case clearly shows that assessee has filed return u/s 139 (1) of the income tax Act on 6th August 2010. Therefore, any notice could have been issued to the assessee u/s 143 (2) of the Act till 30th September 2011. In the present case the search operation took place on 9th May 2012. Therefore, the present assessment year was clearly a concluded assessment year, as the time limit for issue of notice u/s 143 (2) of the Act has already passed. Therefore, any addition that would have been made in the hands of the assessee for assessment year 2010–11 would have been made only if there is any incriminating material found during the course of search. In the present case, the learned Assessing Officer has made the addition with respect to the deposit of cash in the bank account of the assessee. Such bank account was not claimed to have been found during the course of search. Therefore, apparently the addition has been made in the hands of the assessee on the basis of the documents available with the assessing officer during the course of assessment proceedings which was not unearthed during the course of search. In view of this, the clear mandate of the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla applies to the case of the assessee. As the impugned addition made by the learned assessing officer is not emanating from incriminating documents found during the course of search,

therefore, the addition deserves to be deleted. Accordingly, we reverse the orders of the lower authorities and direct the learned assessing officer to delete the addition of ₹ 3,29,000/- being cash deposited in the bank account of the assessee.

7. Accordingly ,the addition made by the learned assessing officer u/s 153A of the income tax act is not proper and in accordance with the law. Accordingly, ground No. 1 to 4 of the appeal of the assessee are allowed.
8. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 16/09/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/09/2021.

*AK Keot *

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.