

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 5636/Del/2017 : Asstt. Year : 2009-10

ACIT, Central Circle-6, New Delhi-110055	Vs	KAD Housing Pvt. Ltd., 151, Savita Vihar, Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AACCK4705B		

CO No. 28/Del/2018 : Asstt. Year : 2009-10

KAD Housing Pvt. Ltd., 151, Savita Vihar, Delhi-110092	Vs	ACIT, Central Circle-6, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AACCK4705B		

Assessee by : Sh. Rajesh Jain, CA

Revenue by : Ms. Shivani Singh, CIT DR

Date of Hearing: 15.09.2021

Date of Pronouncement: 22.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue and the Cross Objection by the assessee against the order of Id. CIT(A)-24, New Delhi dated 29.06.2017.

2. Following ground have been raised by the revenue:

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

2. On the facts and circumstances of the case, the Id. 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 Id. CIT (A) has erred in law by holding that addition u/s 153A cannot be made without incriminating material gathered during the course of search.

4. On the facts and circumstances of the case, the Id. CIT (A) has erred in law in deleting the addition of Rs.2,66,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Act.”

3. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on Santohs/KM/VMI Group by the Investigation Wing, New Delhi of the department on 27.06.2013. Warrant of authorization was also issued in the case of the assessee. Notice u/s 153A was issued on 14.11.2014. In compliance with the notice u/s 153A, the assessee filed return declaring income of Rs.28,41,290/- on 11.04.2015.

4. Pertinent facts of the case are that since the search was conducted on 27.06.2013 relevant to the A.Y. 2014-15, the assessment for the A.Y. 2009-10 is deemed to be an unabated assessment leading to a legal proposition that no addition can be made in the absence of any documents or any other incriminating material found and seized during the search. From the assessment order, we find that the assessment has been based on the details filed in the balance sheet on account of unsecured loans for which no documents or any other material has been found and seized during the search.

5. The Id. CIT (A) while deleting the addition relied on the legal proposition of the Hon'ble Jurisdictional High Court in the case CIT Vs Kabul Chalwa 61 Taxmann 412 and held that in the absence of any incriminating material no addition could be made for the instant year.

6. In the said judgment, the Hon'ble High Court of Delhi has particularly referred to its earlier decisions in the case of CIT vs. Anil Kumar Bhatia (213) 352 ITR 493, Madugula Venu vs. DIT (213) 29 taxmann.com 200 (Delhi), CIT vs. Chetan Das Lachman Das in ITA 2021/2010 dated 07.08.2012 and Filatex India Ltd. vs. CIT (2014) 49 taxmann.com 465. It has also dealt with certain other decisions such as M/s Canara Housing Development Company vs. DCIT ITA No. 38/2014 dated 25.07.2014, CIT vs. Kurele Papers Mills Pvt. Ltd. ITA No. 369/2015 dated 06.07.2015, Jai Steel (India), Jodhpur vs. ACIT (2013) 36 taxmann.com 523 and CIT vs. Continental Warehousing Corporation (Nhava Sheva) 58 taxmann.com 78. After considering all the law as explained in these decisions, the Hon'ble Delhi High Court, in its judgment in the case of Kabul Chawla, has laid down the summary of the legal position as below:

"Summary of the legal position

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six A.Ys. immediately preceding

the previous year relevant to the A. Y. in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such A.Ys. will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant A.Y. in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six A.Ys "in which both the disclosed and the undisclosed income would be brought to tax."

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each A. Y. on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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."

7. Since, the decision of the Id. CIT (A) is in consonance with the judgment of the Hon'ble Jurisdictional High Court, we hereby decline to interfere with the order of the Id. CIT (A).

8. As regards to the Cross Objection filed by the assessee is concerned, since we have already dismissed the appeal of the revenue, the Cross Objection filed by the assessee becomes infructuous and hence dismissed.

9. In the result, the appeal of the revenue and the Cross Objection of the assessee are dismissed.

Order Pronounced in the Open Court on 22/09/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 22/09/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR