

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.4971, 4972 & 4975/DEL/2017  
Assessment Years 2009-10, 2010-11 & 2013-14

<b>ACIT,</b> Central Circle-8, Room No.333, ARA Centre, Jhandewalan Extension, New Delhi.	vs.	<b>Surya Fresh Foods Ltd.,</b> E-67, LFG, Masjid Moth, Greater Kailash-III, New Delhi
TAN/PAN: AAICS4670F		
(Appellant)		(Respondent)

Appellant by:	Shri H.K. Chaudhary, CIT-DR		
Respondent by:	Shri Satyam Sethi, Adv.		
Date of hearing:	23	12	2021
Date of pronouncement:	11	01	2022

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The above captioned appeals have been filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-XXIV, New Delhi [for short “CIT(A)”] dated 30.05.2017 arising from the order passed by the Assessing Officer under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (for short “Act”) concerning Assessment Years 2009-10, 2010-11 and 2013-14. Since the issues involved in all these cases are similar and interconnected, therefore, these appeals were heard together and are being disposed of by way of this common order.

2. Briefly stated, a search and seizure operation under Section 132 of the Act was carried out on Priya Gold group of cases including the assessee herein on 16.02.2014. Consequently, notices under Section 153A was issued for the

various assessment years in question and the assessment was framed u/s.153A r.w. Section 143(3) of the Act.

3. The assessee challenged the various additions and disallowances made in the search assessment before the CIT(A). The CIT(A) took note of the legal position as enunciated by the judicial precedents and held that the additions made by the Assessing Officer in the search assessment cannot be sustained in the proceedings completed under Section 153A in the absence of any incriminating document recovered in the course of search action. The CIT(A) found that the legal position is squarely covered in favour of the assessee in plethora of decisions including *CIT vs. Kabul Chawla, (2015 61 taxmann.com 412 (Del.)*.

4. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal in respect of the captioned assessment years, i.e., Assessment Years 2009-10, 2010-11 and 2013-14.

5. When the matter was called for hearing, the Id. counsel for the assessee in the Revenue's appeal pointed out that it is a matter of record that the additions made under Section 80IB of the Act etc are *de hors* any incriminating material found, if any, in the course of search. The additions/disallowances made are in the nature of routine re-appreciation of facts which is not permissible in 153A assessments without showing any connection with any incriminating material found in the course of search. It was simultaneously pointed out that the assessments pertaining to Assessment Years 2009-10 and 2010-11 were not pending at the time of search and stood abated at that point of time. Consequently, it was not permissible for the Assessing Officer to assess any income without showing any connection with the incriminating material found as a result of search operations in the light of the decisions of the Hon'ble Delhi High Court in the case of Kabul Chawla

(supra) and many other decisions. It was pointed out that the legal position is settled, and therefore, the additions made by the Assessing Officer in Assessment Years 2009-10 and 2010-11 are not sustainable in the eyes of law as rightly held by the CIT(A). He thus submitted that no interference with the order of the CIT(A) is called for in so far as Assessment Years 2009-10 and 2010-11 are concerned. He however fairly submitted that the Assessment Year 2013-14 was unabated at the relevant time of search, and therefore, legal position laid down by the judicial precedents are not applicable to the unabated assessments. Ld. counsel thus submitted that the action of the CIT(A) for Assessment Year 2013-14 may possibly be revisited.

6. Ld. Departmental Representative (for short "DR") for the Revenue, on the other hand, contended that as far as Assessment Year 2013-14 is concerned, the relief granted by the CIT(A) is grossly opposed to the legal position laid down in *Kabul Chawla* (supra) and other decisions. It was submitted that legal position enunciated in these decisions related to only those assessment years which stood abated and were not pending at the time of search initiated under Section 132 of the Act. It was thus submitted that the adjudication carried out by the CIT(A) granting relief to the assessee for the Assessment Year 2013-14 is totally unsustainable in law as fairly admitted on behalf of the assessee. It was thus urged that the additions/disallowances made in Assessment Year 2013-14 requires to be tested on merits regardless of discovery of any incriminating material in search. It was thus submitted that having regard to the factual position and the law governing the controversy, the order of the CIT(A) for A.Y. 2013-14 requires to be cancelled and the issue be restored back to the file of the CIT(A) for fresh adjudication on merits.

7. As regards Assessment Years 2009-10 and 2010-11 are concerned, the ld. DR for the Revenue referred to the scheme of the assessment under Section

153A of the Act and submitted that once a search has been initiated under Section 132 of the Act, what is required to be assessed is the total income of the assessee, i.e., both disclosed and undisclosed. It was further contended that present scheme under Section 153A of the Act is in departure with the old scheme of the block assessment where the additions/adjustments could be made only on the basis of incriminating documents found in the course of search. No such legal requirement of presence of incriminating document *per se* could be read in the present scheme of search assessment in operation. The ld. CIT-DR referred to the judicial precedents in the case of *E.M. Gopa Kumar vs. CIT*, 75 *taxmann.com* 215 (Ker.) and *Canara Housing Development Company vs. DCIT* (2011) 49 *taxmann.com* 98 (Kar) to buttress the aforesaid contention on behalf of the Revenue. Ld. CIT-DR accordingly contended that no merit in the claim of the assessee could be drawn that additions/disallowances in unabated assessments are unsustainable in the absence of incriminating material. It was thus submitted that the relief granted by the CIT(A) on such legal ground are totally devoid of any legitimacy.

8. We have carefully considered the rival submissions and the legal ground raised. It is a matter of record that the assessment concerning Assessment Years 2009-10 and 2010-11 stood concluded and were not pending at the time of search. Hence, the CIT(A) has rightly applied the position of law governing the field that while making the assessment under Section 153A of the Act, the Revenue is not entitled to interfere with already concluded (and not abated) assessment passed either under Section 143(1) or under Section 143(3) of the Act and not pending at the time of search, in the absence of any incriminating documents unearth, as a result of search. This legal position is affirmed and answered in favour of the assessee by large number of judicial precedents of different jurisdiction. A reference is made to the decisions rendered in *CIT vs. Kabul Chawla* (2016) 380 *ITR* 573 (Del.);

*Pr.CIT vs. Meeta Gutgutia, (2017) 395 ITR 526 (Del); Pr.CIT vs. Somia Construcrction Pvt. Ltd. (2016) 387 ITR 529 (Guj.)* and so on. The SLP of the Revenue against the decision of the Hon'ble Delhi High Court was dismissed by the Hon'ble Supreme Court in *Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC)*. Having regard to the binding judicial precedent available in favour of the assessee rendered by the Hon'ble Delhi High Court in the case of *Kabul Chawla and Meeta Gutgutia*, the plea raised on behalf of the Revenue appears to be without merit in the case of concluded assessment concerning Assessment Years 2009-10 and 2010-11. We thus see no legal infirmity with the order of the CIT(A) in ITAs No.4971/Del/2017 and 4972/Del/2017.

9. In the result, the appeals of the Revenue in ITAs No. 4971/Del/2017 and 4972/Del/2017 concerning Assessment Years 2009-10 and 2010-11 are dismissed.

10. We now advert to ITA No.4975/Del/2017 concerning Assessment Year 2013-14. The CIT(A) has adjudicated the legal ground in favour of the assessee on the ground that presence of incriminating document is required for the purposes of additions/disallowances in 153A assessment. While doing so, the CIT(A) has failed to take note of the fact that assessment for Assessment Year 2013-14 was pending and was not concluded at the time of search carried on 16.02.2014. Consequently, the pending assessment for Assessment Year 2013-14 stood abated in terms of 2<sup>nd</sup> proviso to Section 153A of the Act. The CIT(A) thus misdirected himself in law and on facts in applying the ratio of the judicial precedents in *Kabul Chawla* and others in favour of the assessee in the case of unabated assessment as well. The order of the CIT(A) holding lack of jurisdiction to assessee regular income under Section 153A is thus set aside and the matter is restored to the file of the CIT(A) for fresh adjudication of the controversy on aspects of merits in accordance with law after giving proper

opportunity to the assessee.

11. In the result, the appeal of the Revenue in ITA No.4975/Del/2017 is allowed for statistical purposes.

12. In the combined result, ITAs No.4971/Del/2017 and 4972/Del/2017 are dismissed and ITA No.4975/Del/2017 is allowed for statistical purposes.

**Order pronounced in the open Court on 11<sup>th</sup> January, 2022.**

Sd/-

**[CHALLA NAGENDRA PRASAD]**

**JUDICIAL MEMBER**

DATED: 11<sup>th</sup> January, 2022

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]**

**ACCOUNTANT MEMBER**