

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH “F”: NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. Nos. 4985, 4986, 4987 & 4988/Del/2018
(Assessment Years: 2004-05, 2005-06, 2006-07 & 2008-09)

Shri Vijay Pal Garg, TU – 70, Pitampura, New Delhi – 110 088. PAN: ADQPG3144E	Vs.	ACIT, Central Circle : 5, New Delhi.
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(Appellant)		(Respondent)
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Assessee by :	Shri Lalit Mohan, Advocate;
Department by:	Shri T. Kipgen, [CIT] – D. R.;
Date of Hearing :	22/11/2021
Date of pronouncement :	27/01/2022

ORDER

PER AMIT SHUKLA, J. M.

These aforesaid appeals have been filed by the assessee against the impugned order dated 19.02.2013, passed by the ld. Commissioner of Income Tax (Appeals)–XXXI, New Delhi [hereinafter as ‘CIT (Appeals)’] for the quantum of assessment passed under Section 153A / 143(3) of the Income Tax Act, 1961 (the Act) for assessment years 2004-05, 2005-06, 2006-07 and 2008-09. First, we will take up the appeal for assessment year 2004-05.

ITA. No. 4985/Del/2018 :

2. The assessee has raised the following grounds of appeal:-

“1. That the learned Commissioner of Income Tax (Appeals)-31, New Delhi has erred both in law and on facts in upholding the initiation of proceedings u/s 153 A of the Act and, framing of assessment u/s 153A/143(3) of the Act since no incriminating material was found as a result of search conducted on the appellant and therefore, both the notice issued and, assessment framed were without jurisdiction and, deserved to be quashed as such.

1.1 That additions made and sustained are without jurisdiction since they are not based on any material found as a result of search on the appellant, as has been also held by the judgments of Hon’ble Delhi High Court in the case of CIT vs. Kabul Chawla reported in 380 ITR 573 and Pr. CIT vs. Meeta Gutgutia reported in 395 1TR 526.

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding disallowance a claim of deduction of Rs.1,08,000/- out of Rs.6,89,008/- representing interest paid on loans raised for business purposes and eligible for deduction u/s 36(l)(iii) of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has upheld the disallowance by failing to appreciate the fact and circumstances of the case of the appellant, statutory provisions of law and evidence on record, including the submissions filed by the appellant.

2.2 That the finding recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect, contrary to evidence on record and, therefore disallowance sustained is entirely vitiated.

3. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs.2,00,000/- out of Rs.2,50,000/- on account of low household withdrawals. “

3. The facts in brief are that certain seizure action was taken under Section 132 of the Act on 7th January, 2010 in the case of assessee as well as on the group companies named as M/s. Gee Ispat Pvt. Ltd. Accordingly, notice under Section 153A of the Act was issued on 8.11.2010. In response, the assessee submitted that the return filed on 12.09.2005 should be considered as return filed in compliance to notice under Section 153A of the Act. The ld. Assessing Officer without referring to any material or any incriminating document found during the course of search, proceeded to make disallowance of interest as well as certain expenses on account of personal use and house-hold expenses. He made disallowance of 8,32,704/- us 36(1)(iii); Adhoc disallowance of expenses of Rs.24,080/- for personal use; Disallowance of house-hold expenses of Rs.1,00,000/- was made on ad-hoc basis; and an addition of Rs.29,098/- for Miscellaneous income on the ground that there was a revised computation of income declaring total income of Rs.2,45,860/-.

4. Before the ld. CIT (Appeals) the assessee challenged that assessment and the addition made in the assessment order contending that additions can be made only on the basis of incriminating material found during the course of search and the additions have been made without any material found during the course of search and in support reliance was placed on various decisions. However, the ld. CIT (Appeals) held that there is no requirement that the assessment should be based on any material found during the course of search. The relevant observations of the ld. CIT (Appeals) reads as under:-

“3.1.4 U/s 153 A assessing officer is duty bound to issue notices

requesting for filing returns separately for each of the six assessment years immediately preceding assessment year relevant to the previous year in which search has been conducted or requisition u/s 132A has been made. There is a mandate in the section to assess or reassess the income for all such assessment years. Thus AO is required to assess the income afresh. The legislature in their wisdom have deemed it fit not to restrict the assessment under 153A to undisclosed income found during the search. There is no requirement that assessment can be done only if evidences relating to undisclosed income have been seized. There is also no requirement that assessment needs to be based only on the evidences gathered in the course of action u/s 132 or requisition u/s 132A. Further the assessment u/s 153A is not comparable to the Block assessment under chapter XIV-B where there was a concept of assessment of undisclosed income for the block period as a whole. “

5. After hearing both the parties and on perusal of the impugned order, we find that there is undisputed fact that the assessee had originally filed his return of income on 12.09.2005. The said return had attained finality and the income stood assessed on the return of income disclosed at Rs.2,06,730/-. At the time of search on 7.01.2010, the assessment for the assessment year 2004-05 had attained finality and, therefore, it should be reckoned as ‘unabated assessment’ in terms of *second proviso* to Section 153A of the Act. It is an admitted fact that no incriminating material was found from the search which could form the basis of the addition as made in the assessment order. The Assessing Officer had made routine disallowance of expenses based on information already disclosed along with the return of income. It is now well-settled law that in

the case of unabated assessment, where the assessments have become final before the date of search, no addition can be made without any incriminating material or documents found during the course of search. This has been held so by the Hon'ble jurisdictional High Court in the case of **CIT Vs. Kabul Chawla reported in 380 ITR 573** and **Pr. CIT Vs. Meeta Gutgutia reported in 395 ITR 526**.

6. This fact has also not been challenged by the ld. CIT (Appeals) and that the addition cannot be based on the material found during the course of search. Accordingly, the additions made by the Assessing Officer are beyond the scope of assessment proceedings under Section 153A of the Act.

7. In so far as the appeals pertaining to assessment years 2005-06, 2006-07 and 2008-09 in ITA. Nos. 4986, 4987 & 4988/Del/2018, exactly similar grounds has been raised and similar grounds and facts are permeating in these years also.

8. In these years also returns of income were filed on 12.09.2005, 8.09.2008 and 3.10.2006 declaring an income of Rs.2,06,730/-, 4.42,513/- and Rs.3,46,480/- respectively, which had also attained finality on the date of search on 7th January, 2010. Here again the Assessing Officer has made routine disallowances on account of disallowance of interest, house-hold expenses and ad-hoc disallowance for personal use. Since similar finding is there by the ld. CIT (Appeals) for these years also our finding given above will apply for these years. Accordingly, the appeals for the above three years also stand allowed.

9. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on : **27/01/2022.**

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 27/01/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	20.1.2022
Date on which the typed draft is placed before the dictating member	21.1.2022
Date on which the typed draft is placed before the other member	27.1.2022
Date on which the approved draft comes to the Sr. PS/ PS	27.1.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.1.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.1.2022
Date on which the final order is uploaded on the	27.1.2022

website of ITAT	
date on which the file goes to the Bench Clerk	27.1.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	