

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos.5652, 5653 & 5654/Del/2017
Assessment Years: 2008-09, 2009-10 & 2010-11

Sh. Ashok Kumar Tyagi, F-6, 2 nd Floor, Vijay Chowk, Laxmi Nagar, New Delhi	Vs.	ACIT, Circle-28, New Delhi
PAN :AANPT3482G		
(Appellant)		(Respondent)

Appellant by	Sh. Sachin Jain, CA
Respondent by	Sh. Satpal Gulati, CIT(DR)

Date of hearing	19.01.2022
Date of pronouncement	17.03.2022

ORDER

PER SAKTIJIT DEY, JM:

These appeals are filed by the same assessee and arise out of a common order dated 17.05.2017 passed by learned Commissioner of Income Tax (Appeals)-31, New Delhi, pertaining to assessment years 2007-08 to 2013-14. However, presently we are concerned with assessment years 2008-09, 2009-10 and 2010-11.

2. We have heard Sh. Sachin Jain, learned counsel appearing for the assessee and Sh. Satpal Gulati, learned CIT(DR), appearing for the Revenue.

3. The controversy in the present appeal is regarding sustainability of additions made on account of certain items of income, which apparently was not made based on seized materials.

4. Briefly the facts, more or less common in all these appeals, are, the assessee is a resident individual. The assessee filed his return of income for the impugned assessment years in regular course under section 139(1) of the Income-tax Act, 1961 (for short 'the Act'). A search and seizure operation under section 132 of the Act was conducted in assessee's residential premises on 12.02.2013. Consequent to search and seizure operation, proceedings under section 153A of the Act were initiated for the preceding six assessment years, including the assessment years under dispute in the present appeals. In response to notices, issued under section 153A of the Act, assessee filed his return of income offering additional income as well as agricultural income. While completing the assessment under section 153A read with section 143(3) of the Act, the Assessing Officer held that the

assessee did not furnish any supporting evidence to prove the agricultural income. Accordingly, he treated the agricultural income offered by the assessee as income from other sources. In assessment year 2010-11, in addition to treating the agricultural income as income from other sources, the Assessing Officer also disallowed the loss of Rs.1,50,000/- shown against income from house property. The assessee contested the aforesaid decision of the Assessing Officer, inter alia, on the ground that in absence of any incriminating/seized material, no addition can be made in assessments under section 153A of the Act. However, this argument of the assessee did not find favour with learned Commissioner (Appeals).

5. Having considered rival submissions and on perusal of the orders of the departmental authorities, more specifically, observations made by the Assessing Officer in the assessment orders, we are convinced that the addition of agricultural income as income from other sources was not based on any incriminating/seized material found as a result of search. Even, the disallowance of loss claimed against house property income is also not with reference to any seized material. It is a fact on record that on the date of search, the assessment proceedings

relating to the impugned assessment years did not abet. Therefore, as per the ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Kabul Chawla (2016) 380 ITR 0573 (Del), in a proceeding under section 153A of the Act, addition has to be made on the basis of seized/incriminating materials found as a result of search. Since, the decision of the Assessing Officer to treat the agricultural income as income from other sources and disallowance of loss claimed against house property income are not based on incriminating/seized material, no such addition/disallowance could have been made by the Assessing Officer. Accordingly, we delete the addition/disallowance made on account of agricultural income and set off of loss against house property income. In view of our decision above, various other grounds raised by the assessee having become academic, are not adjudicated.

6. In the result, the appeals are allowed, as indicated above.

Order pronounced in the open court on 17th March, 2022

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

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 17th March, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi