

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH.YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.20 to 24/Del/2020
Assessment Year: 2011-12 to 2015-16

Kartikay Nayyar, C/o Anil Jain DD & Co. Co - 611, Surya Kiran Building KG Marg, New Delhi PAN No.ALXPN4900G	Vs.	ACIT Central Circle – 20 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Anil Jain, CA
Respondent by	Ms. Parvinder Kaur, CIT (DR)

Date of hearing:	21/06/2022
Date of Pronouncement:	21/06/2022

ORDER

PER N. K. BILLAIYA, AM:

ITA No. 20/Del/2020 to 24/Del/2020 are five separate appeals by the assessee preferred against five separate orders of the CIT(A)-27, Delhi dated 18.10.2019, 16.10.2019, 16.10.2019, 16.10.2019 and 16.10.2019 for A.Y.2011-12 to 2015-16.

2. Since common grievance are involved in all these appeals with different quantum, all these appeals were heard together are

disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in respect of all these appeals relate to the addition made by the AO on account of foreign travelling expenses as unexplained expenditure u/s. 69 C of the Act in Assessment Order framed u/s. 153 A of the Act.

4. Briefly stated the facts of the case are that a search and seizure operation was conducted by the Investigation Wing of the Department on 18.11.2016 in Nayyar Group of cases. The assessee's residential premises were also covered. Notice u/s. 153 A was issued and served upon the assessee in response to which the assessee filed his return of income.

5. During the assessment proceedings it came to the notice of the AO that the assessee has visited foreign countries. Accordingly he estimated the expenses and made the addition in the captioned assessment years.

6. Assessee challenged the assessment before the CIT(A) but without any success.

7. Before us the counsel for the assessee vehemently stated that since the search took place on 18.11.2016. The assessment years under consideration are completed assessment years and, therefore, any addition to be made u/s.153A of the Act has to be made on the basis of any incriminating material found at the time of search as held by the Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573 and Meeta Gugutia in ITA No.306 of 2017.

8. Per contra though the DR strongly supported the findings of the AO but could not controvert the fact that the impugned additions are de-hors incriminating material.

9. We have carefully considered the orders of the authorities below. The undisputed fact is that all the captioned assessment years are completed assessment since the date of search is 18.11.2016. It is not in dispute that the impugned additions are devoid of any incriminating material whatsoever found at the time of search. There is not even a whisper of any incriminating evidence found at the time of search basis which the AO made the addition. The ratio laid down by the Hon'ble High Court of Delhi in the case of Kabul Chawla squarely apply on the facts of the case. The Hon'ble High Court concluded by holding as under :-

"37. On a conspectus of Section 153 A(1) of the Act, read with the provisions 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 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

ii. *Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs 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 AY 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 AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

iv. *Although Section 153 A 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 AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

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.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

10. Finding parity of facts with the facts considered by the Hon'ble Delhi High Court in the case of Kabul Chawla (supra). We have no hesitation in directing the AO to delete the addition from all the captioned assessment years.

11. All the appeals under consideration are accordingly allowed.

The order is pronounced in the open court on 21.06.2022.

Sd/-
(YOGESH KUAMR US)
JUDICIAL MEMBER

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

*NEHA, Sr. Private Secretary

Date:- 21.06.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21.06.2022
Date on which the typed draft is placed before the dictating Member	21.06.2022
Date on which the typed draft is placed before the Other member	21.06.2022
Date on which the approved draft comes to the Sr.PS/PS	21.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	21.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	21.06.2022
Date on which the final order is uploaded on the website of ITAT	24.06.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	