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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 1144/DEL/2019 [A.Y 2013-14]
ITA No. 1145/DEL/2019 [A.Y 2014-15]
ITA No. 1146/DEL/2019 [A.Y 2015-16]
ITA No. 1147/DEL/2019 [A.Y2016-17]

M/s KRBL Infrastructure Ltd 5190, Lahori Gate Delhi	Vs.	The A.C.I.T Central Circle -7 New Delhi

PAN: AACCK 9643 G

(Applicant) (Respondent)

Assessee By : Shri Vinod Kumar Bindal, CA
Ms. Pinky Sharma, ITP

Department By : Ms. Aashna Paul, CIT- DR

Date of Hearing : 06.07.2022
Date of Pronouncement : 11.07.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned four appeals by the assessee are preferred against four separate orders of the CIT(A) - 24, New Delhi dated

30.01.2019 pertaining to assessment years 2013-14 to 2016-17 respectively.

2. The captioned appeals have common issues and the underlying facts in issues are identical. Therefore, we are disposing off all these appeals by this common order for the sake of convenience and brevity.

ITA No. 1144/DEL/2019 [Assessment Year 2-13-14]

3. The assessee has challenged the addition of Rs. 7,67,83,000/- made by the Assessing Officer u/s 68 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] out of which Rs. 7 crores is loan taken from M/s Index Securities and Research Pvt Ltd. and Rs. 67.83 lakhs is the amount of interest paid on the said loan.

4. A perusal of the assessment order shows that the entire addition has been made on the assumption that the loan taken from M/s Index Securities and Research Pvt Ltd. is not genuine.

5. **B**riefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Act was carried out on KRBL Group of cases on 30.03.2016 and accordingly, Assessment Year 2013-14, though part of block period, is a concluded Assessment Year. It is a settled proposition of law by the decision of the Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573 and Meeta Gutgutia 395 ITR 526 squarely apply wherein it has been held as under:

> *"60. In Kabul Chawla (supra), the Court also took note of the decision of the Bombay High Court in Commissioner of Income Tax v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 58 taxmann.com 78 (Bom) which accepted the plea that if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment under Section 153A and 153C of the Act. The legal position was thereafter summarized in Kabul Chawla (supra) as under:*
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> *"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:*
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> *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.*
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> *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.

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."

61. It appears that a number of High Courts have concurred with the decision of this Court in Kabul Chawla (supra) beginning with the Gujarat High Court in Principal Commissioner of Income Tax v. Saumya Construction Pvt. Ltd. (supra). There, a search and seizure operation was carried out on 7th October, 2009 and an assessment came to be framed under Section 143(3) read with Section 153A(1)(b)

in determining the total income of the Assessee of Rs. 14.5 crores against declared income of Rs. 3.44 crores. The ITAT deleted the additions on the ground that it was not based on any incriminating material found during the course of the search in respect of AYs under consideration i.e., AY 2006-07. The Gujarat High Court referred to the decision in Kabul Chawla (supra), of the Rajasthan High Court in Jai Steel (India), Jodhpur v. ACIT (supra) and one earlier decision of the Gujarat High Court itself. It explained in para 15 and 16 as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub- section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that

such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, sub- section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is "well settled as held by the Supreme Court in a catena of decisions that the heading or the Section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section

153. the intention of the Legislature is clear, viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment In case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition, in other words, the assessment should connected With something round during the search or requisition viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition' or disallowance can be made only on the basis of material collected during the search or requisition, in case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated, in case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has

abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

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19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of an the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as. the assessment in respect of each of the six assessment years is a separate and distinct assessment.

Under section 153A of the Act, assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court In the case of CIT v. Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years ; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year."

62. Subsequently, in Principal Commissioner of Income Tax- 1 v. Devangi alias Rupa (supra), another Bench of the Gujarat High Court reiterated the above legal position following its earlier decision in Principal Commissioner of Income Tax v. Saumya Construction P. Ltd. (supra) and of this Court in Kabul Chawla (supra). As far as Karnataka High Court is concerned, it has in CIT v. IBC Knowledge Park P. Ltd. (supra) followed the decision of this Court in Kabul Chawla (supra) and held that there had to be incriminating material

qua each of the AYs in which additions were sought to be made pursuant to search and seizure operation. The Calcutta High Court in CIT-2 v. Salasar Stock Broking Ltd. (supra), too, followed the decision of this Court in Kabul Chawla (supra). In CIT v. Gurinder Singh Bawa (supra), the Bombay High Court held that:

"6...once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

63. Even this Court has in CIT v Mahesh Kumar Gupta (supra) and The Pr.

Commissioner of Income Tax-9 v. Ram Avtar Verma (supra) followed the decision in Kabul Chawla (supra). The decision of this Court in Pr. Commissioner of Income Tax v. Kurele Paper Mills P. Ltd. (supra) which was referred to in Kabul Chawla (supra) has been affirmed by the Supreme Court by the dismissal of the Revenue's SLP on 7th December, 2015.

The decision in Dayawanti Gupta

64. That brings us to the decision in Dayawanti Gupta (supra). As rightly pointed out by Mr. Kaushik, learned counsel appearing for the Respondent, that there are several distinguishing features in that case which makes its ratio inapplicable to the facts of the present case. In the first place, the Assessees there were engaged in the business of Pan Masala and Gutkha etc. The answers given to questions posed to the Assessee in the course of search and survey proceedings in that case bring out the points of distinction. In the first place, it was stated that the statement recorded was under Section 132(4) and not under Section 133A. It was a statement by the Assessee himself. In response to question no. 7 whether all the purchases made by the family firms, were entered in the regular books of account, the answer was:

"We and our family firms namely M/s Assam Supari Traders and M/s Balaji Perfumes generally try to record the transactions made in respect of purchase, manufacturing and sales in our regular books of accounts but it is also fact that some time due to some factors like inability of accountant, our busy schedule and some family problems, various purchases and sales of Supari, Gutka and other items dealt by our firms is not entered and shown in the regular books of accounts maintained by our firms."

65. Therefore, there was a clear admission by the Assessees in Dayawanti Gupta (supra) there that they were not maintaining regular books of accounts and the transactions were not recorded therein.

66. Further, in answer to Question No. 11, the Assessee in Dayawanti Gupta (supra) was confronted with certain documents seized during the search. The answer was categorical and reads thus:

"Ans:- I hereby admit that these papers also contend details of various transactions include purchase/ sales/ manufacturing trading of Gutkha, Supari made in cash outside Books of accounts and these are actually unaccounted transactions made by our two firms namely M/s Asom Trading and M/s. Balaji Perfumes."

67. By contrast, there is no such statement in the present case which can be said to constitute an admission by the Assessee of a failure to record any transaction in the accounts of the Assessee for the AYs in question. On the contrary, the Assessee herein stated that, he is regularly maintaining the books of accounts. The disclosure made in the sum of Rs. 1.10 crores was only for the year of search and not for the earlier years. As already noticed, the books of accounts maintained by the Assessee in the present case have been accepted by the AO. In response to question No. 16 posed to Mr. Pawan Gadia, he stated that there was no possibility of manipulation of the accounts. In Dayawanti Gupta (supra), by contrast, there was a chart prepared confirming that there had been a year-wise non-recording of transactions. In Dayawanti Gupta (supra), on the basis of material recovered during search, the additions which were made for all the years whereas additions in the present case were made by the AO only for AY 2004-05 and not any of the other years. Even the additions made for AYs 2004-05 were subsequently deleted by the

CIT(A), which order was affirmed by the ITAT. Even the Revenue has challenged only two of such deletions in ITA No. 306/2017.

68. In para 23 of the decision in Dayawanti Gupta (supra), it was observed as under:

"23. This court is of opinion that the ITAT's findings do not reveal any fundamental error, calling for correction. The inferences drawn in respect of undeclared income were premised on the materials found as well as the statements recorded by the assessees. These additions therefore were not baseless. Given that the assessing authorities in such cases have to draw inferences, because of the nature of the materials - since they could be scanty (as one habitually concealing income or indulging in clandestine operations can hardly be expected to maintain meticulous books or records for long and in all probability be anxious to do away with such evidence at the shortest possibility) the element of guess work is to have some reasonable nexus with the statements recorded and documents seized. In tills case, the differences of opinion between the CIT (A) on the one hand and the AO and ITAT on the other cannot be the sole basis for disagreeing with what is essentially a factual surmise that is logical and plausible. These findings do not call for interference. The second question of law is answered again in favour of the revenue and against the assessee."

69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section

153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

Conclusion

72. To conclude:

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.

(ii) Question (ii) is answered in the affirmative i.e., in favour of the Assessee and against the Revenue. It is held that with reference to AY 2004-05, the ITAT was correct in confirming the orders of the CIT(A) to the extent it deleted the additions made by the AO to the taxable income of the Assessee of franchise commission in the sum of Rs. 88 lakhs and rent payment for the sum of Rs. 13.79 lakhs."

6. Addition in the case of a concluded assessment can be made only on the basis of incriminating material found at the time of search and a perusal of the assessment order of Assessment Year 2013-14 shows that there is no reference to any incriminating material found at the time of search. Therefore, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi [supra] we direct the Assessing Officer to delete the impugned addition of Rs. 7,67,83,000/- in Assessment Year 2013-14.

7. Coming to the merits of the case, the entire basis for the impugned additions in the captioned Assessment Years is the loan taken from M/s Index Securities and Research Pvt Ltd. by the assessee.

8. In the judgment of the Hon'ble High Court of Delhi in the case of PCIT, Central -2 Vs. M/s Index Securities and Research Pvt Ltd. ITA No.566/2017 with ITA No. 571/2017 order dated 24.09.2017, the quarrel was in respect of the addition made by the Assessing Officer amounting to Rs. 48.51 crores representing the share application money received from 16 investors for Assessment Year 2008-09, addition of Rs. 55 crores representing share application money received from two investors, Rs. 3.24 crores representing unsecured loan received from one lender. The Assessing Officer had made addition of Rs. 50 crores representing share application money received from one investor for Assessment Year 2010-11.

9. The total addition was more than Rs. 150 crores. Such being the case of the Revenue before the Hon'ble High Court of Delhi, in the appeals under consideration, the Revenue cannot say that M/s Index Securities and Research Pvt Ltd. does not have capacity to lend Rs. 7

crores in Assessment Year 2013-14 and Rs. 3.85 crores in Assessment Year 2015-16 to the assessee.

10. A perusal of the documentary evidences brought on record in the form of paper book show that the assessee has returned Rs. 67.83 lakhs to M/s Index Securities and Research Pvt Ltd. on 06.04.2013 and Rs. 75.60 lakhs on 31.03.2014 through A/c payee cheque of Kotak Mahindra Bank Ltd.

11. Further, during the period 01.04.2016 to 31.03.2017, the assessee has repaid Rs. 13.30 crores to M/s Index Securities and Research Pvt Ltd.

12. A perusal of the assessment order shows that nowhere the Assessing Officer nor the ld. CIT(A) have taken any adverse view in respect of documentary evidences furnished by the assessee. The entire addition has been made on the basis of statement of third parties on the basis of which the Assessing Officer came to the conclusion that the assessee is a beneficiary of accommodation entries but nowhere any evidence has been brought on record to demonstrate

that the assessee has, in fact, purchased cheques by paying cash to M/s Index Securities and Research Pvt Ltd.

13. The assessment framed in the case of M/s Index Securities and Research Pvt Ltd. and as mentioned elsewhere, the quarrel before the Hon'ble High Court of Delhi conclusively proves that M/s Index Securities and Research Pvt Ltd. is an identified person having sufficient funds to lend the money to the assessee and since the transactions have been made through banking channel and as mentioned hereinabove, loan taken from M/s Index Securities and Research Pvt Ltd. have been repaid by the assessee. Interest payment was subject to tax deducted at source.

14. Considering these plethora of evidences, we have no hesitation to conclude that the assessee has conclusively discharged the burden cast upon it by provisions of section 68 of the Act. We, accordingly, direct the Assessing Officer to delete the impugned additions from the respective Assessment Years.

15. In the result, all the four appeals of the assessee in ITA Nos. 1144 to 1147/DEL/2019 are allowed.

The order is pronounced in the open court on 11.07.2022.

Sd/-	**Sd/-**
[ASTHA CHANDRA] **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 11th July, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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