

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.Nos.413, 414, 415, 416, 417 & 418/Del./2017
Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

&

ITA.Nos.420, 421, 422, 423, 424 & 425/Del./2017
Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

Smt. Sneh Lata Sawhney, 6, Link Road, Jangpura Extension, New Delhi – 110 024 PAN AQKPS8457P	vs.	The Dy. CIT, Central Circle – 7, Jhandewalan, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Advocate & Sh Shrey Jain, Advocate.
For Revenue :	Sh Abhishek Kumar, Sr. DR

Date of Hearing :	13.07.2022
Date of Pronouncement :	22.07.2022

ORDER

PER BENCH :

All the above appeals filed by the Assessee are directed against the different Orders of the Ld. CIT(A)-25, New Delhi, Dated 25.10.2016, for the A.Ys. 2006-2007 to 2011-2012 on quantum assessments and Orders Dated

26.10.2016 challenging the levy of penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 for the A.Ys. 2006-2007 to 2011-2012.

2. Since common issues are involved in all the above appeals, the appeals were heard together and are being disposed of by the consolidated order for the sake of convenience. First, we cull-out the facts from the quantum appeal for the A.Y. 2006-07 in ITA.No.413/Del./2017.

3. Briefly the facts of the case are that the assessee is an individual stated to be having income from interest and other sources. The A.O. has noted that a search and seizure operation under section 132 of the I.T. Act, 1961 was carried-out on Mr. Bhushan Lal Sawhney and other group cases on 28.07.2011. Consequently, notice under section 153A of the I.T. Act, 1961 dated 16.05.2012 was issued to the assessee asking her to file the return of income for the A.Y. 2006-07. In response to the aforesaid notice, assessee filed her return of income for the A.Y. 2006-07 on 07.06.2012 declaring an income of Rs.9,56,805/-.

The case was taken-up for scrutiny. Thereafter, assessment was framed under section 153A read with Section 143(3) of the I.T. Act, 1961 vide order dated 02.03.2015 and the total income determined by the A.O. was at Rs.9,28,10,980/-.

3.1. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 25.10.2016 in Appeal Number 691/14-15/29/16-17 dismissed the appeal of assessee.

4. Aggrieved by the order of the Ld. CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds :

1. *“That the Learned Commissioner of Income Tax (Appeals) [Ld. CIT (A)] has erred on facts and in law in confirming the assessment u/s 153A r.ws. 143(3) of the Income Tax Act, 1961 (Act) as made by the Ld. Assessing officer (Ld. AO) on protective basis on a total income of Rs 9,28,10,981/- as against Rs 9,56,805/- income returned (Nil undisclosed income) pursuant to notice u/s 153A.*

2. *That the Ld. CIT (A) has erred on facts and in law in not quashing the order passed by the Ld. AO u/s 153A r.w.s 143(3) of the Act as the same is barred by limitation under section 153B. The assessment order is dated 02.03.2015 whereas the last date u/s 153B for passing such order was 31.03.2014 (2 years from the end of FY 2011-12 in which the last of the Authorizations for search under section 132 was executed. The conclusion of the search u/s 153B also took place during FY 2011-12)*
3. *That the addition of Rs 9,18,54,176/- on protective basis as sustained by the Ld. CIT(A) in respect of alleged peak balance in alleged bank account with FISBC, Geneva is in respect of an account denied by the appellant and for which there is no lawful evidence that the same constitutes any undisclosed income of the appellant.*
- 3.1. *That the above addition of Rs 9,18,54,176/- on protective basis is based upon unauthenticated, unverified photocopied documents supplied to French*

government by a criminal which cannot be used as evidence for making addition in assessment. The addition based upon information from investigation wing without any independent enquiry by Ld. AO to establish that the appellant is the beneficial owner of alleged bank account is not legally tenable. Refer 2005 (100) ECC 62 Truwoods Pvt. Ltd. and Shri Sanjiv Agarwal Vs. Commissioner of Custom, Common Cause (A registered society) and others Vs Union of India and others (SC) [TS-22-SC-2017].

3.2. *That the appellant has not been confronted with or provided the copies of information said to be received under DTAA regarding alleged HSBC bank account of the appellant based upon which addition has been made by Ld. AO on protective basis. The addition and assessment are without compliance with principles of natural justice. The addition so made without providing lawful opportunity of rebuttal deserves to be deleted. Refer 125 ITR 713 (SC) Kishinchand Chellaram Vs.*

CIT, 295 ITR 105 (DEL) CIT Vs. Dharm Pal Prem Chand Ltd, 306 ITR 27 (DEL) CIT Vs. Rajesh Kumar.

- 3.3. *That the addition of alleged peak balance of Rs.9,18,54,176/- on protective basis is liable to be deleted as the same has not been shown to be credited during the AY 2006-07. Aspect of opening balance has not been considered. Refer 301 ITR 404 (Raj) CIT vs Parmeshwar Bohra.*
- 3.4. *That the said addition as made of Rs 9,18,54,176/- on protective basis is not sustainable as the Ld. AO has not specified the provisions of the Act under which such addition is made.*
- 3.5. *That the assessments being complete u/s 143(3) or 143(1) there was no jurisdiction to make the assessment u/s 153A nor to make the addition as made therein as no incriminating material was unearthed during the course of search. As such, the addition is liable to be deleted. Refer 380 ITR 573 CIT (Central 3) Vs. Kabul Chawla.*

4. *That the addition as made and sustained results in double taxation. The same alleged addition has been made on substantive basis in the hands of the Appellant's husband. Double taxation and double addition of the same alleged amount is not permissible under the Act. Refer 118 ITR 50 (SC) State of UP & Others Vs. Raza Buland Sugar Co. Ltd., 262 ITR 500(Raj.) CIT Vs. Taj Oil Traders.*
5. *That the said addition as made by the Ld. AO on protective basis and as sustained by the Ld. CIT (A) are based on suspicion, conjectures and surmises and bald, hostile third party material & statements which are self evidently incorrect and stand retracted, without lawful evidence in the form of cogent material on substantive basis, without providing copies, without opportunity of cross examination and without compliance with the provisions of the Act. As such, the addition and assessment deserve to be quashed. Refer 37 ITR 0151 (SC) Omar Salay Mohamed Sait vs.CIT, 65 Taxmann.com 29 (CAL) CIT, Kolkata -XV Vs. Tara*

Chand Mahipal, 296 ITR 101 (P& H) CIT Vs. Ramesh Bhayana, 352 ITR 480 (SC) CIT Vs. S. Khader Khan Son, 64 Taxmann.com 107 (DEL) CIT Vs. Sunil Agarwal.

6. *That the addition on protective basis as made by the Ld. AO and as sustained by the Ld. CIT (A) are based on erroneous views and/or non-appreciation of the facts and law involved including non applicable case laws without properly considering or rebutting or appreciating the material, explanations & case laws cited. The addition as made is contrary to much case law in the appellant's favour.*
7. *That the assessment as made is without appreciating the evidentiary value of statement on oath by the appellant. That in absence of substantive basis or cogent material, the Ld. A.O. has not discharged his onus for making the erroneous addition as made. It is the Ld. A.O who is averring an affirmative which is denied by the Appellant. Onus of proving the affirmative is on the Ld. A.O.*

8. *That the Ld. AO has erred in charging interest u/s 234A of Rs 3,09,419/-, u/s 234B of Rs 3,31,07,870/- and u/s 234D of Rs 192/-.*

9. *That the grounds of appeal as herein are without prejudice to each other.*

10. *That the appellant craves the right to add, amend or withdraw any ground of appeal at or before the time of hearing of appeal.”*

5. During the course of assessment proceedings, the A.O. noted that as per the information available from Investigation Wing, Mr. Bhushan Lal Sawhney was having a Bank A/c bearing No.xxxxxx52687 with HSBC, Geneva, Switzerland and with profile name Mr. Bhushan Lal Sawhney and Smt. Sneh Lata Sawhney with client profile code 5094191436. The A.O. noted that assessee was the wife of Mr. Bhushan Lal Sawhney who was also beneficiary of the aforesaid Bank A/c, but, she had not declared this account in her return of income. The A.O. has tabulated month-wise balance in the account at para-5.4 of the assessment order and noted that the maximum outstanding

balance in January, 2006 was at US Dollars \$20,43,474 equivalent to Rs.9,18,54,176/- which was not disclosed in the income tax return of the assessee. The A.O. noted that the amount US Dollars at \$20,43,474 was assessed in the hands of Mr. Bushan Lal Sawhney, husband of the assessee on substantive basis and protective assessment of the same amount was made in the hands of the assessee viz., Smt. Sneh Lata Sawhney. Further, on the aforesaid addition the A.O. also levied penalty under section 271(1)(c) of the I.T. Act, 1961. The order of A.O. on quantum and penalty was upheld by Ld. CIT(A). Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us.

6. Before us, at the outset, the Learned Counsel for the Assessee submitted that the addition of the same amount was made in the hands of the husband of the assessee by order dated 02.03.2015 passed under section 153A read with section 143(3) of the I.T. Act, 1961 and the Ld. CIT(A) had confirmed the addition made by the A.O. in the case of husband of the assessee Mr. Bhushan Lal Sawhney. He pointed out to the aforesaid order placed at

pages 1 to 35 of the PB and submitted that against the order of the Ld. CIT(A), the assessee carried the matter in appeal before the Tribunal and the Tribunal vide consolidated order dated 01.06.2021 for the A.Ys. 2006-07 to 2011-12 in ITA.Nos.427 to 432/Del./2017 has allowed the appeals of the assessee by holding that no addition could be made of on any unexplained bank deposit or interest thereon in any of the assessment years. The Tribunal, thus, deleted the entire addition. He pointed out to the copy of the aforesaid order placed at pages 41 to 77 of the PB. He, therefore, submitted that since similar addition made arising out of the same deposit and in the same bank account in the case of husband of assessee has been deleted and since the facts of the case are identical, no addition is called for. He, therefore, prayed that the addition may be deleted.

7. The Ld. D.R. on the other hand relied upon the orders of the lower authorities.

8. We have heard the Learned Representatives of both the parties and perused the material on record. The

issue in the present appeal is with reference to additions made of the amount deposited in Bank A/c maintained with HSBC, Geneva, Switzerland.

8.1. We find that similar addition arising out of the same bank deposits in the same bank account was made in the case of husband of the assessee Mr. Bhushan Lal Sawhney has been deleted by the ITAT, Delhi Benches, Delhi vide order dated 01.06.2021 in ITA.Nos.427 to 432/Del./2017 for the A.Ys. 2006-07 to 2011-12 wherein the Tribunal observed as under :

“8.1. Considering the totality of the facts and circumstances of the case above, it is also clear that during the course of search no incriminating material was found against the assessee for maintaining any such bank accounts with HSBC, Geneva, Switzerland. Whatever information was supplied by the Swiss Authorities subsequently to the Revenue Authorities in India, no such information was provided for the period prior to 01.04.2011. Therefore, it is clear that no information have been

provided by the Swiss Authorities that assessee maintained any bank account with HSBC, Geneva, Switzerland in assessment years under appeals i.e., 2006-2007 to 2011-2012. Therefore, it is clear that no incriminating material was found against the assessee so as to make any addition against the assessee. The Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra) held as under :

“vii. Completed assessments can be interfered with by the A.O. while making the assessment under section 153A 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”

8.2. *The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia (supra) in paras 69 to 72 has held as under :*

“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 153 A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.”

8.2.1. *The above Judgment is confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. Therefore, on this reason alone no addition could be made of any unexplained bank deposits or interest earned thereon in any of the assessment years. In view of the above, we set aside the Orders of the authorities below and delete the entire additions. In view of the above, there is no need to decide the remaining grounds of appeals which are left with academic discussion only. Accordingly, all the appeals of the Assessee are allowed.*

8.2. Before us, no distinguishing facts in the present case and the case of assessee's husband i.e., Mr. Bhushan Lal Sawhney has been pointed-out by the Ld. D.R. In such a situation, since the facts of the present case are identical to that of Mr. Bhushan Lal Sawhney, the husband of assessee,

therefore, following the reasons for decision by the ITAT, Delhi Benches, Delhi in its order dated 01.06.2021 (supra) in the case of husband of assessee Mr. Bhushan Lal Sawhney, no addition is called for in the hands of the assessee. In view of the above, we set aside the orders of the authorities below and delete the entire addition. Since we have set aside the addition, we are of the view that there is no need to decide the remaining grounds of appeals and the other grounds raised by the assessee are not adjudicated. Accordingly, **ITA.No.413/Del./ 2017 of the assessee for the A.Y. 2006-07 is allowed. .**

8.3. Since the facts are identical in the remaining quantum appeals i.e., ITA.Nos.414 to 418/Del./2017 for the A.Ys. 2007-08 to 2011-12, respectfully following the aforesaid order of the Tribunal dated 01.06.2021 (supra) and the decision taken by us in the quantum appeal in ITA.No.413/Del./2017 for the A.Y. 2006-07 in the case of assessee hereinabove, **we allow the quantum appeals for the A.Ys. 2007-08 to 2011-12.**

9. **In the result, ITA.Nos.413 to 418/Del./2017 for the A.Ys. 2006-07 to 2011-12 are allowed.**

ITA.Nos.420, 421, 422, 423, 424 & 425/Del./2017 :

A.Ys. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 :

10. In all these appeals, assessee challenged the levy of the penalty under section 271(1)(c) of the I.T. Act, 1961 in all the assessment years under appeals i.e., 2006-2007 to 2011-2012.

11. Learned Counsel for the Assessee has placed on record copy of the notice issued by A.O. under section 274 read with Section 271(1)(c) of the I.T. Act, 1961 Dated 02.03.2015 issued by the A.O. before levy of the penalty for assessment years under appeals in which the A.O. has mentioned "*have concealed the particulars of your income or furnished inaccurate particulars of such income*". He has, therefore, submitted that A.O. was not sure as to for which limb of Section 271(1)(c) of the I.T. Act the penalty proceedings are initiated i.e., whether penalty is to be initiated for concealment of particulars of income or

furnishing inaccurate particulars of such income. Therefore, the show cause notices are illegal and bad in law and liable to be quashed. He has submitted that issue is covered by the Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs., Sahara India Life Insurance Company Ltd., [2021] 432 ITR 84 (Del.). He, therefore, submitted that penalty is not leviable in any of the assessment years under appeals.

12. The Ld. D.R. on the other hand relied upon the Orders of the authorities below.

13. After considering the rival submissions, we are of the view that no penalty is leviable in any of the assessment years under appeals. In assessment years under appeals since quantum addition have already been deleted by us on quantum appeals (supra), therefore, no basis is left for levying of penalty under section 271(1)(c) of the I.T. Act. Thus, no penalty could be levied against the assessee. In view of the above discussion, we set aside the Orders of the authorities below and cancel the penalty in all the

assessment years under appeals. **Accordingly, appeals of the assessee are Allowed.**

14. **In the result, ITA.Nos.420, 421, 422, 423, 424 & 425/Del./2017 for the A.Ys. 2006-07 to 2011-12 of the Assessee are allowed.**

15. **To sum-up, all the appeals of the Assessee are allowed.**

Order pronounced in the open Court on 22.07.2022.

Sd/-
(MS. ASTHA CHANDRA)
JUDICIAL MEMBER
Delhi, Dated 22nd July, 2022

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.