

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : D : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.4566/Del/2017  
Assessment Year: 2012-13

Krishna Gopal Saraf,  
2<sup>nd</sup> Floor, P-5, Private Colony,  
Srinivaspuri,  
New Delhi.

Vs. ACIT,  
CC-28,  
New Delhi.

PAN: ADJPS1407P

(Appellant)

(Respondent)

Assessee by	:	Shri Parth Davar, Advocate
Revenue by	:	Ms Ranu Mukherjee, CIT-DR
Date of Hearing	:	22.06.2022
Date of Pronouncement	:	28.07.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 22.04.2017 of the CIT(A)-29, New Delhi, relating to Assessment Year 2012-13.

2. As agreed to by both the parties, first of all, we heard the arguments of both the sides on ground No.2 of the assessee which reads as under:-

*“2. BECAUSE there being no incriminating material found during the course of search and seizure action that illegally took place under section 132(1) in the case of the ‘appellant’ on the basis of illegal*

*warrant of authorization, variation between the returned income and assessed income as made up of:-*

*Credit card payment : Rs.2,11,580*

*Is wholly illegal and beyond the jurisdiction conferred on the ACIT, under section 153A r.w.s. 143(3) of the Act, in the instant case.”*

3. The Id. Counsel for the assessee submitted that the payments made by the assessee through credit cards were out of duly explained sources filed by him during the course of assessment proceedings and also during appellate proceedings before the CIT(A) and the Id.CIT(A) has erred in confirming the addition of Rs.2,11,580/- made by the ACIT. The Id. Counsel vehemently pointed out that the observations of the Id.CIT(A) in para 11.1 of the impugned order are incorrect as the assessee had duly placed before him the sources of payments made through credit cards of HDFC Bank and ICICI Bank. Thus, the addition sustained by him is incorrect and, therefore, the same deserves to be deleted.

4. Replying to the above, the Id.CIT-DR strongly supported the assessment as well as the first appellate order and submitted that no bank account or cash flow statement was submitted, therefore, the payments made in cash to ICICI bank account credit card during the year under consideration remained unexplained and the assessee had not provided the purpose of such payments nor the statement of credit card show that such payment is made either for his personal expenditure or for business purposes. She also submitted that the assessee could not

satisfactorily explain the source of such payments and, therefore, the addition amounting to Rs.2,11,580/- has to be sustained.

5. Placing rejoinder to the above, the Id. AR submitted that the addition made by the AO and confirmed by the Id.CIT(A) does not hold good as there was no incriminating material found during the course of search and seizure action. Therefore, in view of the judgment of the Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Kabul Chawla, reported in 380 ITR573 and PCIT vs. Meeta Gutgutia, reported in 325 ITR 526, the addition made and confirmed by the CIT(A) in the case of concluded assessment cannot be held as sustainable. The Id. AR further explained that for AY 2012-13, the assessee filed his return of income u/s 139 of the Act on 16.02.2013 and the last date available for the AO for issuing notice u/s 143(2) was 31.09.2013 and no notice had been issued by the AO u/s 143(2) of the Act. Therefore, on the date of search i.e., on 07.03.2014, the assessee's case for AY 2012-13 has to be treated as completed assessment or non-abated assessment, therefore, no addition could have been made in the hands of the assessee in absence of any incriminating material unearthed during the search and seizure operation u/s 132 of the Act. The Id. AR also submitted that the search was illegal as it was conducted on the basis of illegal warrant of authorization.

6. We have heard the rival arguments of both the sides and perused the relevant material on record. First of all, we make it clear that the Tribunal has no right to hear on the challenge of the assessee to the validity of the search and seizure operation u/s 132 of the Act and this is an issue which falls within the ambit of the jurisdiction of the Hon'ble High Court under Article 226 and 227 of the Constitution of India. Therefore, the second limb of ground No.2 challenging the validity of search and seizure action on the basis of illegal warrant of authorization is dismissed.

7. Now, we take up the legal contention of the assessee that no addition can be made in the hands of the assessee as there was no incriminating material in the hands of the AO while making addition in a completed assessment or non-abated assessment year 2012-13.

8. From a careful reading of the relevant assessment order dated 29.03.2016 passed u/s 143(3) r.w. section 153A of the Act, we clearly observe that in para 5, the AO noted that from the information report obtained in the case of the assessee, it was found that credit card payment of Rs.2,11,580/- has been made by the assessee during the relevant assessment period and, thereafter, the AO concluded the said payment to be unexplained expenditure and the same was added to the total income of the assessee as earned from undisclosed sources. The relevant operative para 5 of the assessment order reads as follows:-

*“5. From the AIR (Assessee Information Report) obtained in the case of the assessee it was found that credit card payments of Rs.2,11,580/- is made by the assessee during the year under assessment. The assessee was asked to explain the source of these payments but the assessee has not filed any explanation for the same. The onus of explaining the source of such expenditure was on the assessee which he failed to discharge. Thus, the above payment of Rs.2,11,580 is treated as unexplained expenditure and added to the total income of the assessee from undisclosed sources.”*

9. In view of the above, it is very much clear that there was no incriminating material in the hands of the assessee which was found or unearthed during the search and seizure operation conducted on 07.03.2014. Since the assessee filed the return for AY 2012-13 on 16.02.2013 and the last date for issuing notice u/s 143(2) was 30.09.2013, on the date of search i.e., on 07.03.2014, the assessment for AY 2012-13 was completed or non-abated. Therefore, in view of the judgment of the Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra) and Meeta Gutgutia (supra), no addition can be made in the hands of the assessee in absence of any incriminating material found or seized during the course of search and seizure operation u/s 132 of the Act. Therefore, the addition made by the AO and confirmed by the Id.CIT(A) cannot be held as sustainable. Accordingly, the first limb of ground No.2 of the assessee is allowed and the AO is directed to delete the addition. Since, by the earlier part of this order, we have granted relief to the assessee on the first limb of legal ground No.2, therefore, the other grounds of the assessee have become infructuous and we are not adjudicating upon the same as having become infructuous.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28.07.2022.

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 28<sup>th</sup> July, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi