

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1832/Del/2020
(Assessment Year : 2007-08)

DCIT Central Circle – 15, New Delhi PAN No. AABPN 9048 C (APPELLANT)	Vs.	Sudha Nagar D-3/10, Pashchimi Marg, Vasant Vihar, New Delhi-110 057 (RESPONDENT)
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Assessee by	Shri Akshat Jain, Adv.
Revenue by	Shri H. K. Choudhary, CIT-D.R.

Date of hearing:	27.07.2022
Date of Pronouncement:	05.08.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 28.02.2020 passed by the Commissioner of Income Tax (Appeals)-26, New Delhi relating to Assessment Year 2007-08.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is an individual who had filed her return of income u/s 153A of the Act on 29.02.2012 disclosing income of

Rs.4,76,930/-. The assessment was initially framed u/s 153A/144 of the Act on 26.03.2013 determining the total income at Rs.2,00,66,245/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 23.07.2014 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee and Revenue carried the matter before the Tribunal. The Tribunal vide order dated 01.12.2017 set aside the order of CIT(A) and restored the matter back to the AO with certain directions. Consequent to the directions of the Tribunal, AO passed order u/s 254/153A/143(3) vide order dated 31.12.2018 determining the total income at Rs.1,65,49,830/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 28.02.2020 in Appeal No.10499/18-19 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *That the Ld CIT(A) has erred in law in relying on the ratio held in Kabul Chawla ITA No.709/2014 Dated 28.05.2015 (Delhi) and Meeta Gutgutia 395 ITR 526 in holding that completed assessment cannot be interfered by the AO without incriminating material and completely ignoring the fact that for making the assessment u/s 153A of the Act, 1961, the Income Tax Act does not stipulate any such conditionality on AO.*
2. *That the Ld CIT(A) has erred in law in ignoring the judgements of the Hon’ble Kerla High Court in the cases of Mr. K. N. Gopa Kumar vs CIT Central (2017) 390 ITR 131, Mr. K. P. Ummer vs. CIT vide order dated 19.02.2019. and CIT vs. P. Sasi Kumar 73 Taxmann.com 173 wherein it is clearly held by the Hon’ble High Court that the condition of incriminating material found and seized is not mandatory for making additions u/s 153A of the I.T. Act.*

3. *That the Ld CIT(A) has erred on facts and in law in quashing the assessment on technical grounds and not deciding on the various issues on merits.*
4. (a) *That the Ld CIT(A) is erroneous and not tenable in law and on facts.*
 (b) *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

4. AO in the order framed u/s 154 r.w 143(3) of the Act had made addition of Rs.3,62,900/- by disallowing the Agriculture income shown by assessee and made addition of Rs.1,52,25,000/- being addition u/s 68 of the Act. When the matter was carried before CIT(A), CIT(A) while deciding the issue in assessee’s favour deleted the addition made by AO by observing as under:

*“6.3 In view of the above assessment orders, it is observed that the additions have been made by AO not on the basis of any incriminating material/ evidence found during the search proceedings. Since the assessment years under consideration are completed assessment years, any addition/disallowance ought to have been made by AO on the basis of such incriminating material/evidence as found during the search proceedings in view of various decisions, including CIT vs. Kabul Chawla (supra), of Hon’ble Jurisdiction High Court. In view of this, the aforesaid additions made by AO are not sustainable & deserve to be deleted as made during the regular course of assessment proceedings, and not in the basis of incriminating material/evidence found during the search proceedings. **I, therefore, delete the aforesaid additions made by AO and allow the respective grounds taken by appellant. However, if in future the ratio-decidenti of the decision of Hon’ble High court gets reversed, the appeal will revive on these issues.”***

5. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

6. Before us, Learned DR supported the order of AO.

7. Learned AR on the other hand reiterated the submissions made before the lower authorities and further submitted that the additions made by AO were not on the basis of any incriminating material or evidence found during the course of search proceedings and CIT(A) rightly followed the decision of Hon'ble Delhi High Court in the case of **Kabul Chawla reported in 380 ITR 573**. He thus supported the order of CIT(A).

8. We have heard the rival submissions and perused the material available on record. We find that CIT(A) while deleting the addition has given a finding that the assessment years under consideration were completed assessment years and the additions made by AO were not on the basis of any incriminating material or evidence found during the course of search proceedings. He thereafter by relying on the decision of Jurisdictional High Court in the case of Kabul Chawla (supra) held that no addition could have been made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor has Revenue pointed to any contrary binding decision in its support. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

9. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on 05.08.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 05.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI