

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7774/Del/2017, A.Y. 2010-11

ACIT, Central Circle-20 Room No. 108, 1 st Floor, ARA Centre, E-2, Block Jhandewalan, New Delhi (APPELLANT)	Vs.	M/s. Alchemist Capital Ltd., SCO 52-53, Sector-9D, Chandigarh- 160017 (RESPONDENT)
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Assessee by	None
Revenue by	Shri T. Kipgen, CIT- DR

Date of hearing:	18.08.2022
Date of Pronouncement:	18.08.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 17.10.2017 in appeal no. 528, 456, 429 to 531/16-17 in assessment year 2010-11 passed by Commissioner of Income Tax (Appeals)-27, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld.

F.A.A.’) in regard to the appeal before it arising out of assessment order dated 30.12.2016 u/s 153(3) r.w.s. 143(3) of the Income Tax Act, 1961 passed by ACIT, Central Circle-20, New Delhi (hereinafter referred to as the Assessing Officer ‘AO’).

2. A search & seizure and survey operation u/s 132/133A of the Income Tax Act was conducted by the Investigation Wing of the Income Tax Department on 20.06.2014 in M/s. Alchemist Group of cases and the assessee’s case was also covered u/s 132(1) of the Act. Accordingly, notice u/s 153A was issued on 12.01.2015 upon which return of income declaring an income of Rs. 5,83,18,370/- was filed on 03.12.2015. Thereafter notice u/s 143(2) was issued. The assessee company is Reserve Bank of India registered Non-Banking Financial Company mainly engaged in business of loans & advances. Ld. AO observed that preference shares were issued which provided no rate of return. AO concluded that the total issues value of preference share at Rs. 165.21 crores and total redemption value of Rs. 555.90 crores and the period of 16 years, made internal rate of return on this preference share at 7.87% per annum and the AO on the basis of advances made to group companies at low interest of around 2.71% calculated that the assessee deliberately under recovered the income from its associate companies to the extent of 5.16% as against the cost incurred at 7.87 % percentage per annum, thus made an addition.

2.1 The Ld. CIT(A) however, relied the judgment of Hon’ble Delhi High Court in *CIT vs Kabul Chawla, ITA No 707/2014 and others dated 28.08.2015(2015) 61 taxman.com 412(Delhi)* and observed that the assessment could have been made u/s 153A of the Act only on the basis of seized material.

3. The revenue is now in appeal raising following grounds :-

1. *“That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.6,59,27,495/- made on account of under recovered interest at the rate of 5.16% on the average advance recoverable from the associated companies without appreciating the facts and circumstances of the case.*

2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in ignoring the fact that the decision in the case of CIT vs Kabul Chawla, ITA No 707/2014 and others dated 28.08.2015(2015) 61 taxman.com 412(Delhi) in which Ld.CIT(A) has relied upon is pending in supreme court and decision is still awaited.*

3. *The Ld. CIT(A) has erred in observing that invocation of section 153A is invalid in those cases where no incriminating material was recovered during search & seizure u/s 132(1) of the Act and time period for issuance of notice u/s 143(2) of the Act has already expired because section 153A of the Act is an independent provision of assessment and nowhere it is mentioned that additions made while completing assessments u/s 153A will be restricted upto the issues based upon incriminating documents seized during search action.*

4. *(a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. Heard and perused the records.

5. At the time of hearing, non-appeared for the assessee. The record shows since institution of the appeal on 14.01.2021, none has appeared for the assessee in spite of repeatedly notices being issued. No further notices is justified as it appears assessee is not interested to pursue the appeal, accordingly arguments of Ld. DR were heard who submitted that Ld.

CIT(A) has fallen in error in not considering the fact that judgment of Hon'ble Jurisdictional High Court in **Kabul Chawla** case is under challenged before Supreme Court of India.

6. Giving thoughtful consideration to the matter on record, the bench is of considered view that admittedly no incriminating material was found during the search and seizure operation to base any addition qua present assessment year and accordingly Ld. CIT(A) cannot be faulted in following the Jurisdictional High Court judgment in **Kabul Chawla** (supra) whereby Hon'ble High Court had held that assessment cannot be made arbitrarily without any relevance or nexus with the seized material and the assessment in such cases has to be made only on the basis of incriminating material found during the search and completed assessments cannot be interfered arbitrarily.

7. Ld. CIT(A) specifically mentions in para 8 that :

“It is clear from the assessment orders as well as submissions of the appellant that search and seizure action 132(1) of the Act was undertaken by the Department in the case of appellant as on 20.06.2014 and on that date, assessments of A.Y. 2009-10 to A.Y. 2012-13 were completed assessments as the time period to issue notices u/s 143(2) for aforesaid years had already expired. Further, as mentioned above, no incriminating material was found in the case of the appellant during the search proceedings for making assessments in these years. Therefore, on both the counts, no addition/ disallowance could have been made by AO by disturbing the income disclosed in the returns filed by appellant.”

8. Only because the Revenue has challenged the Jurisdictional High Court judgment before Hon'ble Supreme Court that cannot be ground of appeal when as such there is no stay and no other law is cited contradicting the findings of Ld. CIT(A). There is no substance in grounds of Revenue.
The Appeal is dismissed.

Order pronounced in the open court on 18th August, 2022.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Date:- 18th.08.2022

Binita, SR.P.S

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI