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

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

ITA No.5110/Del/2019
Assessment Year: 2010-11

ACIT, Circle-19, New Delhi.	Vs.	Pawan Kansal, A-7, Antriksh Apartment, Plot No.D-3, Sector-14, New Delhi. PAN: AHEPK0574C
(Appellant)		(Respondent)

Assessee by	:	Shri Ved Jain, CA & Ms Supriya Mehta, CA
Revenue by	:	Ms Sapna Bhatia, CIT, DR
Date of Hearing	:	23.08.2022
Date of Pronouncement	:	30.08.2022

ORDER

PER C.M. GARG, JM:

This appeal has been filed by the Revenue against the order of the CIT(A)-27, New Delhi, dated 18.03.2019 relating to Assessment Year 2010-11.

2. The grounds of appeal raised by the Revenue read as under:-

"1) The Ld. CIT(A) has erred in law in relying on the ratio held in Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not be interfered by the AO without incriminating material. On the contrary, for making the assessment u/s 153A of the Act, 1961, the Act does not stipulates any such conditionality on A.O.

2) Whether Ld. CIT(A) has erred in law by relying on the ratio held in Kabul Chawla 61 taxman.com 412 (Delhi) and deleting following additions on this ground:-

a) Addition of Rs.20,99,129/- on account of under valuation of closing stock for A.Y. 2009-10.

b) Addition of Rs. 18,87,840/- on account of unexplained investment in the shares of Kapis Traders Pvt. Ltd.

c) Addition of Rs. 8,80,000/- on account of undisclosed capital gain on sale of property on estimation basis.

d) Addition of Rs.2,52,07,230/- on account of unsecured loans.

3) The Ld. CIT(A) has erred in law in admitting the additional evidence in the absence of the fulfillment of the conditions mentioned in Rule 46A.

4) The Ld. CIT(A) has erred in law in by deleting the addition made on account of unsecured loan in spite of the failure of the assessee to establish the genuineness of the unsecured loan during the assessment as well as remand proceedings.

5) (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"

3. The ld. CIT-DR submitted that the ld.CIT(A) has erred in relying on the ratio of the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of Kabul Chawla, reported in 61 taxman.com 412 (Del) and in holding that the completed assessment could not be interfered with by the AO without having incriminating material. She further submitted that on the contrary, for making assessment u/s 153A of the Act, the Act does not stipulates and such

conditionality or requirement from the AO. The ld. CIT-DR submitted that the ld.CIT(A) has erred in admitting the additional evidence in absence of fulfillment of conditions mentioned in Rule 46A of the Income-tax Rules, 1962 and in deleting the addition made on account of unsecured loan in spite of the failure of the assessee to establish the genuineness of the unsecured loan during the assessment as well as remand proceedings. The ld. CIT-DR submitted that the AO has made addition by taking right recourse and legal premise which was deleted by the ld.CIT(A) without any basis and reasoning. Therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above, the ld. Counsel of the assessee submitted a written submission and reiterated the same and submitted that the issue is squarely covered in favour of the assessee by the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Kabul Chawla (supra) and other subsequent judgements and, therefore, the first appellate order may kindly be upheld. The ld. Counsel also submitted that the ld.CIT(A) has not admitted any new or additional evidence in violation of Rule 46A of the Rules, and, as such, the ground No.3 of the Revenue being misconceived, all the grounds of the Revenue including ground No.3 may kindly be dismissed by confirming the first appellate order.

5. On careful consideration of the above submissions, we observe that the ld. Counsel of the assessee has submitted written submissions in support of the first appellate order, which is being reproduced below for the sake of completeness of this order:-

"ITA No. 5110/Del/2019
AY 2010-11
Synopsis

This is an appeal filed by the revenue against the order passed by the Commissioner of Income Tax (Appeals) dated. 18.03.2019 where the CIT(A) has given relief to assessee applying the Delhi High Court judgement in the case of CIT vs Kabul Chawla.

2. The CIT(A) has allowed the appeal of the assesse relying upon the decision of Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla in ITA No. 707, 709 and 713/2014, pronounced on 28.08.2015 wherein it has been held that no addition can be made in the absence of any incriminating material found during the course of search. Relevant findings of the CIT(A) at Page 88 Para 9.4.2.

Now the facts of the appellant are to be examined in the light of this legal position. 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 08.07.2015 and on that date, assessment of A. Y. 2010-11 was completed assessments as the time period to issue notices u/s 143(2) for aforesaid years had already expired. The assessments/ reassessments were not abated in this assessment year upon issue of notice u/s 153A. Thus this assessment was completed assessment in all respects.

As mentioned above, no incriminating material was found in the case of the appellant during the search proceedings or available with the AO from any other source, for making assessment in this year on these issues. Therefore, the AO was not justified in making above disallowances in absence of any incriminating material against appellant. In such situation, the additions/ disallowances made by AO as mentioned in ground no. 4 above, are not sustainable and liable to be deleted. I, therefore delete the additions of Rs.3,00,74,199/- made by the AO for the aforesaid assessment year.

3. This issue has now been settled by the Hon'ble Jurisdictional High Court as well as various other High Courts that in the absence of any incriminating material ,no addition can be made in the assessment order passed u/s 153A/143((3) of the Act.

4. Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla in ITA No. 707, 709 and 713/2014, pronounced on 28.08.2015, has held as under:

> *"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:*
>
> *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.*
>
> *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*

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

39. The question framed by the Court is answered in favour of the Assessee and against the Revenue."

5. Similar finding was given in the case of ACIT vs Ms. Punam Kansal bearing ITA No. 4055 &4056/Del/2019 dated. 28.06.2022 wherein Hon'ble Tribunal dismissed the appeal filed by the department by holding that:

> *6. We have heard the Learned Representatives of both the parties and perused the material on record. The issue in the present case is with respect to deletion of addition by the Ld. CIT(A) by holding that in the absence of any incriminating material, the completed assessment could not be interfered with. We find that the Hon'ble Delhi High Court and the Delhi Benches of the Tribunal by following the decision of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra), has been consistently holding that in absence of any incriminating material, no addition could be made when the assessment orders have attained finality. Considering the totality of the facts and circumstances of the case and in absence of any contrary binding decision of jurisdictional High Court we find no reason to interfere with the order ofLd. CIT(A) and thus, we dismiss the ground raised by the Revenue.*

6. The above judgement is recently followed by Hon'ble Delhi High Court in the case of PCIT vs Shri Rathi Steels (Dakshin) Limited bearing ITA No. 74/2020 dated. 20.01.2022 wherein Hon'ble Court dismissed the appeal filed by the department and has held as under:

> *"5. This Court in the case of Principal Commissioner of Income Tax vs. Bhadani Financiers Pvt. Ltd., 2021 SCC OnLine Del 4430 has held that where the assessment of the respondents had attained finality prior to the date of search and no incriminating documents or materials had been found and/or seized at the time of search, no addition can be made under Section 153A of the Act.*
>
> *6. In the present case, the Tribunal, which is the last fact finding authority, has conclusively found that no incriminating materials had been found and/or seized at the time of search.*
>
> *7. Consequently, the present appeal being bereft of merit is dismissed."*

7. Similar finding was given in the case of ACIT, CENTRAL CIRCLE-8 NEW DELHI VERSUS SURYA FRESH FOODS LTD., 2022 (1) TMI 650 - ITAT DELHI Dated.- January 11, 2022 wherein Hon'ble Tribunal has held as under:

> *8. We have carefully considered the rival submissions and the legal ground raised. It is a matter of record that the assessment concerning Assessment Years 2009-10 and 2010-11 stood concluded and were not pending at the time of search. Hence, the CIT(A) has rightly applied the position of law governing the field that while making the assessment under Section 153A of the Act, the Revenue is not entitled to interfere with already concluded (and not abated) assessment passed either under Section 143(1) or under Section 143(3) of the Act and not pending at the time of search, in the absence of any incriminating documents unearth, as a result of search. This legal position is affirmed and answered in favour of the assessee by large number of judicial precedents of different jurisdiction. A reference is made to the decisions rendered in CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del.); Pr. CIT vs. Meeta Gutgutia, (2017) 395 ITR 526 (Del); Pr. CIT vs. Somia Construction Pvt. Ltd. (2016) 387 ITR 529 (Guj.) and so on. The SLP of the Revenue against the decision of the Hon'ble Delhi High Court was dismissed by the Hon'ble Supreme Court in Pr. CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC). Having regard to the binding judicial precedent available in favour of the assessee rendered by the Hon'ble Delhi High Court in the case of Kabul Chawla and Meeta Gutgutia, the plea raised on behalf of the Revenue appears to be without merit in the case of concluded assessment concerning Assessment Years 2009-10 and 2010-11. We thus see no legal infirmity with the order of the CIT(A) in ITAs No. 4971/Del/2017 and 4972/Del/2017.*
>
> *9. In the result, the appeals of the Revenue in ITAs No. 4971/Del/2017 and 4972/Del/2017 concerning Assessment Years 2009-10 and 2010-11 are dismissed.*

8. The ratio laid down in the judgment of Kabul Chawla (Supra) has consistently been followed by the following judicial pronouncements as under:

- *PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-20 VERSUS MR. SHIV KUMAR AGARWAL - 2022 (8) TMI 268 - DELHI HIGH COURT - Dated.- July 28, 2022*
- *DCIT CENTRAL CIRCLE - 15, NEW DELHI VERSUS SUDHA NAGAR - 2022 (8) TMI 381 - ITAT DELHI - Dated.- August 5, 2022*
- *AGM PROPERTIES P. LTD. VERSUS ACIT, CENTRAL CIRCLE 14, NEW DELHI. - 2022 (8) TMI 255 - ITAT DELHI - Dated.- July 19, 2022*
- *UNIFIED INFRASTRUCTURE PVT. LTD. VERSUS ACIT CENTRAL CIRCLE - KARNAL HARYANA - 2022 (5) TMI 1156 - ITAT DELHI - Dated.- May 23, 2022*
- *SANJAY JAIN C/O. RAJIV SAXENA AND CO. (ADVOCATE & SOLICITORS) VERSUS DCIT CENTRAL CIRCLE-1 NEW DELHI - 2022 (5) TMI 1101 - ITAT DELHI - Dated.- May 20, 2022*

9. Thus, in view of the facts prevailing in assessee's case and considering the various judicial pronouncements in this regard, the addition made by the AO which is not based on any incriminating material found during the course of search is unsustainable and thus, rightly deleted by CIT(A)."

6. From the relevant operative part of the first appellate order, we observe that the ld.CIT(A) has granted relief to the assessee with the following observations and findings:-

"9.4.1 In such situation, when no incriminating evidence is found and assessments in these years are completed assessments, can any addition/disallowance be made, the issue has been dealt with and answered by Hon'ble Jurisdictional High Court in the case CIT vs Kabul Chawla, as mentioned by appellant in its submissions. Hon'ble Court has taken a view in such cases that although section 153A 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section only on the basis of the seized material. It is further

opined by Hon'ble Court that completed assessments can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found 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. In the subsequent decisions also, Hon'ble Court has substantiated the aforesaid view. In the case Pr. CIT vs Ram Avtar Verma 395 ITR 252, Hon'ble Court has reiterated the aforesaid finding that if the assessments are completed on the date of search and no incriminating material is found during the search, assessment u/s 153A of the Act is invalid. Similar view has been taken by Hon'ble Court in the recent case i.e. Pr. CIT vs Meeta Gutgutia 395 ITR 526 also wherein assessments were completed on the date of search but no incriminating material pertaining to those completed assessment years were found during search, Hon'ble Court has held that invocation of section 153A for those years was invalid.

9.4.2 Now the facts of the appellant are to be examined in the light of this legal position. 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 08.07.2015 and on that date, assessment of A.Y. 2010-11 was completed assessments as the time period to issue notices u/s 143(2) for aforesaid years had already expired. The assessments/reassessments were not abated in this assessment year upon issue of notice u/s 153A. Thus this assessment was completed assessment in all respects."

7. The ld. CIT-DR could not show us, from the first appellate order, which piece of evidence which was not before the AO was considered by the ld.CIT(A) while granting relief to the assessee in violation of Rule 46A of the IT Rules. Therefore, ground No.3 of the Revenue being devoid of merits is being dismissed.

8. So far as the challenge of the Revenue to the findings of the ld.CIT(A), wherein he granted relief to the assessee by following the judgement of the jurisdictional High Court of Delhi in the case of Kabul Chawla (supra) is concerned, undisputedly, the assessee filed return of income for AY 2010-11 on 30.09.2010 and, thereafter, e-filed the revised returned on 10.03.2011. The return was processed u/s 143(1) on 25.06.2011 and, thereafter, the case was selected for scrutiny under CASS by issuing notice u/s 143(2) of the Act on 01.09.2011. Subsequently, notices u/s 142(1) along with questionnaire were also sent to the assessee and, finally, the AO framed assessment u/s 143(3) of the Act on 11.03.2013. Thereafter, a search and seizure operation u/s 132 of the Act was carried out on the assessee on 08.07.2015 and as on the date of search, i.e., 08.07.2015, the assessment year 2010-11 was the year of completed assessment or unabated assessment. On being specifically asked from the ld.CIT-DR, the ld. CIT-DR did not dispute the above noted facts and could not point out any incriminating material in the hands of the AO supporting the additions made by him in the assessment order dated 29.12.2017 passed u/s 153A r.w.s 143(3) of the Act. Therefore, we are compelled to hold that the ld.CIT(A) was right in granting relief to the assessee by following the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Kabul Chawla (supra) wherein their Lordships, speaking for the jurisdictional High Court, categorically held that when, on the date of search, the assessment already stood completed, therefore, no new incriminating material was unearthed during the search, no

additions could have been made to the income already assessed in the hands of the assessee for AY 2010-11. In view of the foregoing discussion, we are unable to see any ambiguity, perversity or any other valid reason to interfere with the findings arrived at by the ld.CIT(A). Therefore, we uphold the same. Consequently, grounds No.1-5 of the Revenue are dismissed.

9. In the result, the appeal filed by the Revenue is dismissed..

Order pronounced in the open court on 30.08.2022.

Sd/-	Sd/-
(PRADIP KUMAR KEDIA) ACCOUNTANT MEMBER	(C.M. GARG) JUDICIAL MEMBER

Dated: 30th August, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi