

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 685/Del/2021
(Assessment Year : 2013-14)

ACIT Central Circle – 13, New Delhi PAN No. AFYPM 4910 J (APPELLANT)	Vs.	Nirmal Minda A-15, Ashok Vihar Phase-1, New Delhi – 110 052 (RESPONDENT)
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Assessee by	Shri Shailesh Gupta, Adv.
Revenue by	Ms. Rinku Singh, CIT-D.R.

Date of hearing:	30.08.2022
Date of Pronouncement:	31.08.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 17.06.2020 passed by the Commissioner of Income Tax (Appeals)-26, New Delhi relating to Assessment Year 2013-14.

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

3. Assessee is an individual who filed its return of income for A.Y. 2013-14 on 05.08.2013 declaring income of Rs.1,95,58,963/-. The original assessment was completed u/s

143(3) of the Act vide order dated 03.03.2016 by accepting the return of income of the assessee. Thereafter, a search operation u/s 132 of the Act was conducted on 08.06.2017 and on subsequent dates in different business and residential premises of "Minda Group of cases". Consequently, notice u/s 153A of the Act was issued on 25.04.2019 wherein assessee was asked to furnish return of income. In response to aforesaid notice, assessee filed its return of income for A.Y. 2013-14 at Rs.1,95,58,963/-. Thereafter, assessment was framed u/s 143(3) r.w.s 153A of the Act vide order dated 30.12.2019 and the total income was determined at Rs.2,71,35,420/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) wherein assessee apart from challenging the additions made in the order also challenged the validity of the assessment framed u/s 143(3) r.w.s 153A of the Act. CIT(A) after considering the submissions of the assessee, vide order dated 17.06.2020 in Appeal No.10350/19-20 and by following the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) *inter alia* held that the additions has not been made on the basis of any incriminating material found during the search proceedings, but has been made only on the basis of scrutiny of return of income filed in regular course of assessment, which are already assessed u/s 143(3) of the Act. He therefore following the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (Supra)

held that the additions made by AO to be not sustainable. He accordingly deleted the additions.

5. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

“1. The CIT(A) erred in law in holding that, given the facts and circumstances of the case, the assessment u/s 153A had to be made strictly on the basis of the material found during the search and that the other material, even though incriminating, could not be considered in the assessment.

2. The Ld CIT(A) erred in law in not giving a guidance as to how the income based on material other than that found during the search should be assessed to tax if, according to him, the same could not be taxed in the assessment u/s 153A of the Act.

3. The Ld CIT(A) erred in not adjudicating the additions on merits.

*4. (a) 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.”*

6. All the grounds being interconnected considered together.

7. Before us, Learned DR took us through the order of AO and submitted that AO after considering the material and after conducting enquiry had concluded that the total profit received by the assessee from sale of share of Indian Infotech and Software Ltd. was not on account of real purchase and sale of shares but was a sham transactions and were undertaken only to bring unaccounted money in the guise of exempted long term capital gains and therefore the AO has rightly made the additions. She

therefore submitted that considering the aforesaid the order of AO needs to be upheld.

8. Learned AR on the other hand reiterated the submissions made before CIT(A) and pointed to the findings of CIT(A) at para 5.2.2 wherein CIT(A) has clearly noted that search and seizure action u/s 132(1) of the Act was undertaken in the case of assessee on 08.06.2017 and on that date, assessment for the A.Y. 2013-14 was completed assessment, as the assessment was already completed on 03.03.2016 u/s 143(3) of the Act and thus the case was of a completed assessment. He further pointed to the findings of CIT(A) wherein CIT(A) has noted that the additions have not been made on the basis of any incriminating material found during the course of search proceedings but only on the basis of scrutiny of return of income that was filed by the assessee in regular course of assessment proceedings and assessed u/s 143(3) of the Act. He therefore submitted that CIT(A) has rightly following the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (Supra) has held that additions made by AO was not sustainable. He thus supported the order of CIT(A).

9. We have heard the rival submissions and perused the material available on record. The issue in the present grounds are with respect to the additions made by AO in the assessment order framed u/s 143(3) r.w.s 153A of the Act. We find that CIT(A) while deciding the issue in favour of assessee has given a clear-cut

finding that search u/s 132 of the Act was conducted in the case of assessee on 18.06.2017 and on the date of search, the assessment for the impugned year was already completed and was not the case of abated assessment. He has further given a finding that the additions have been made by AO not on the basis of incriminating material found during the course of search but only on the basis of the scrutiny of return of income filed in the regular course by the assessee and the assessment that was already completed u/s 143(3). We find that CIT(A) while deciding the issue in favour of the assessee had followed the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra). Before us, Revenue has not placed on record any contrary binding decision in its support nor has pointed any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

10. **In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court on 31.08.2022

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI