

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.Nos.3268 & 3269/Del./2018
Assessment Years 2010-2011 & 2011-2012

The DCIT, Central Circle-28, Room No.317, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Klaxon Trading Pvt. Ltd., # Warehouse A-97B, Khasra No.50/4, Behind Friends Dharam Kanta, Shahbad Daulatpur, New Delhi – 110 042. PAN AAACK3487E
(Appellant)		(Respondent)

Cross Objection No.60/Del./2021
Arising out of
ITA.No.3268/Del./2018 - Assessment Year 2010-2011

M/s. Klaxon Trading Pvt. Ltd., # Warehouse A-97B, Khasra No.50/4, Behind Friends Dharam Kanta, Shahbad Daulatpur, New Delhi – 110 042. PAN AAACK3487E	vs.	The DCIT, Central Circle-28, Room No.317, ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

For Revenue :	Shri R.K. Gupta, CIT (DR)
For Assessee :	Dr. Rakesh Gupta, Shri Deepesh Garg, Advocates.

Date of Hearing :	10.08.2022
Date of Pronouncement :	31.08.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

The above appeals by Revenue are directed against the separate order of the Ld. CIT(A)-XXVI, New Delhi, dated 07.02.2018 in Appeal No.10256/14-15 and in Appeal No.10255/14-15 relating to the A.Ys. 2010-2011 and 2011-2012 respectively. The Assessee filed cross objection for the A.Y. 2010-11 in support of the order of the Ld. CIT(A).

1.1. Since common issues are involved in both the appeals of the Revenue and cross objection of the Assessee, the appeals and cross objection were heard together and are being disposed of by this common consolidated order for the sake of brevity.

2.1. Briefly stated facts of the case are that the assessee company is a company which filed its return of income for the A.Y. 2010-11 on 07.10.2010 declaring income of Rs.2,91,620/-, which was initially processed under section 143(1) of the I.T. Act, 1961. The A.O. has

noted that a search and seizure action under section 132 of the I.T. Act, 1961 was carried out in Dua Group of cases including the assessee company on 25.04.2014 and various material, documents were found and seized and statements of various persons were also recorded. In view of initiation of search, notice under section 153A of the I.T. Act, 1961 was issued on 16.05.2016, requiring the assessee to file the return of income. In response to the said notice, the assessee vide letter dated 08.08.2016 furnished the return of income declaring income of Rs.2,91,620/-. The case of the assessee company was taken-up for scrutiny and consequently assessment was framed under section 153A of the I.T. Act, 1961 read with Section 143(3) of the I.T. Act, 1961 vide order dated 30.12.2016 and the total income of the assessee company was determined at Rs.3,57,21,700/-.

2.2. Aggrieved by the order of A.O. assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 07.02.2018 granted partial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue has filed ITA.No.3268/Del./2018 for the A.Y. 2010-2011 and has raised the following grounds :

1. *“That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,54,54,000/- made by AO on account of unexplained investment in unquoted shares of unlisted companies.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.99,73,560/- made by A.O. on account of unexplained investment i.e. sale of shares treated as capital gains.*
3. *That the grounds of appeal are without prejudice to each other.*
4. *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. The assessee has also filed Cross Objection No.60/Del./2021 in ITA.No.3268/Del./2018 for the A.Y. 2010-201 and has raised the following grounds :

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) ought have deleted the addition on the ground that there was no incriminating material found as a result of search and the assessment attained the finality, more so in view of the judgment of Hon’ble High Court of Delhi in the case of CIT vs. Kabul Chawla, (2016) 380 ITR 0573.*
2. *That, in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition even though there was no incriminating material found as a result of search, is bad in law and against the facts and circumstances of the case.*
3. *That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.”*

5. As far as the A.Y. 2011-2012 in ITA.No.3269/Del./2018 is concerned, the facts of the case are that the assessee filed return of income on 17.09.2011 declaring total income of Rs.15,37,070/- which was processed under section 143(1) of the I.T. Act, 1961. Consequent to the search at the place of the assessee and in Dua Group of cases on 25.04.2014, notice under section 153A of the I.T. Act, 1961 was issued on 16.05.2016 and in response to which assessee filed return of income on 03.06.2016 declaring income of Rs.15,37,070/-. The case of the assessee company was taken-up for scrutiny and assessment was framed under section under section 153A of the I.T. Act, 1961 read with Section 143(3) of the I.T. Act, 1961 vide order dated 30.12.2016 and the total income of the assessee company was determined at Rs.2,63,56,770/-.

6. Aggrieved by the order of A.O., assessee carried the matter before CIT(A) who vide order dated 07.02.2018 in Appeal No.10256/14-15 granted substantial relief to assessee. Aggrieved by the order of Ld. CIT(A), the Revenue

is now in appeal before the Tribunal and has raised the following grounds :

1. *“That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,27,32,000/- made by AO on account of unexplained investment in unquoted shares of unlisted companies.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,20,87,700/- made by A.O. on account of unexplained investment i.e. sale of shares treated as capital gains.*
3. *That the grounds of appeal are without prejudice to each other.*
4. *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”.*

7. The assessee while quoting Rule 27 has filed the following additional grounds for the A.Y. 2011-2012 in ITA.No.3269/Del./2018 which read as under :

1. *“That having regard to the facts and circumstances of the case. Ld. CIT(A) ought to have deleted the addition on the ground that there was no incriminating material found as a result of search and the assessment attained the finality, more so in view of the judgment of Hon'ble High Court of Delhi in the case of CIT vs. Kabul Chawla, (2016) 380 ITR 0573.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition even though there was no incriminating material found as a result of search, is bad in law and against the facts and circumstances of the case.”*

8. The Learned Counsel for the Assessee, at the very outset, submitted that in the cross objection, the assessee has challenged the jurisdiction of the A.O. in framing the assessment under section 153A in view of

settled position of law rendered by the Hon'ble jurisdictional Delhi High Court in the cases of CIT vs. Kabul Chawla, (2016) 380 ITR 0573 (Del.) and Pr. CIT vs. Meeta Gutgutia 395 ITR 526 (Del.). He, therefore, submitted that if cross objection of the assessee is decided in its favour, then the grounds raised in Revenue's appeal would not require for any adjudication, to which, the Ld. D.R. has no objection. We, therefore, proceed to dispose of the cross objection filed by the assessee, after hearing both the parties.

9. Before us, the Learned Authorised Representative submitted that in the present case assessee had filed the return of income for A.Y. 2010-11 on 07.10.2010 which was initially processed under section 143(1) of the I.T. Act, 1961. A search in assessee's case took place on 25.04.2014 and on that date no proceedings were pending for the instant assessment year. He thereafter pointed to the assessment order and pointed to the fact that the addition has been made on account of unexplained investment of Rs.2,45,54,000/- made by the assessee in unquoted shares

of unlisted companies which are also recorded in the Balance Sheet of the assessee company. He further submitted that the second addition of Rs.99,73,560/- has been made by the A.O. on the basis of estimation at 20% of the investments amounting to Rs.4,98,67,800/- that was sold during the year and the aforesaid addition has been treated as capital gains. He submitted that since no incriminating material was found during the course of search, then in view of decision of Hon'ble jurisdictional Delhi High Court in the cases of CIT vs. Kabul Chawla, and Pr. CIT vs. Meeta Gutgutia (supra), no addition could be made in the hands of assessee. He, therefore, submitted that assessment is bad in law and prayed that the assessment be quashed.

10. On the other hand, though the Ld. D.R. did not controvert the factual position submitted by Learned Counsel for the Assessee, but, however, supported the findings of the lower authorities.

11. We have heard the rival submissions and perused the material available on record. We find that admittedly in the instant case consequent upon the search and seizure action under section 132 of the I.T. Act, 1961 in the case of assessee, no incriminating material was found and seized. However, the A.O. made the addition. In appeal filed by the assessee, the Ld. CIT(A) categorically held that addition can be made only qua the incriminating material found as a result of search, which is none in the instant case. The Ld. CIT(A), therefore, respectfully following the decisions of Hon'ble jurisdictional Delhi High Court in the cases of CIT vs. Kabul Chawla, and Pr. CIT vs. Meeta Gutgutia (supra) treated the assumption of jurisdiction itself by A.O. as invalid and consequently, deleted the addition. While doing so, the Ld. CIT(A) has also quoted the relevant findings of the Hon'ble jurisdictional Delhi High Court in the cases of CIT vs. Kabul Chawla, (2016) 380 ITR 0573 (Del.) and Pr. CIT vs. Meeta Gutgutia 395 ITR 526 (Del.) at page Nos.4 to 6 of his order. Since the order of the Ld. CIT(A) is in conformity with the settled position of law and in absence of

any contrary material brought to our notice by the Ld. D.R, respectfully following the judgments of Hon'ble jurisdictional Delhi High Court in the cases of CIT vs. Kabul Chawla, and Pr. CIT vs. Meeta Gutgutia (supra), we confirm the order of the Ld. CIT(A) and resultantly, assumption of jurisdiction by the A.O. is treated as invalid. The cross objections filed by the assessee are accordingly allowed.

12. Further, the additional grounds raised by the assessee for the A.Y. 2011-12 in ITA.No.3269/Del./2018 under Rule 27 of I.T. Rules, 1963 are also allowed as these grounds are inconformity with the settled position of law as was observed by us in the preceding paragraphs.

13. In the result, Cross Objection No.60/Del./2021 for the A.Y. 2010-11 of the Assessee are allowed and additional grounds raised by the assessee in ITA.No.3269/Del./2018 for the A.Y. 2011-12 of the Assessee are allowed.

14. Since we have held in the preceding paragraphs on the cross objections filed by the assessee to the effect

that assumption of jurisdiction by the A.O. as invalid as no incriminating material was found consequent to the search action taken up under section 132 of the I.T. Act, 1961 in the case of assessee and deleted the additions made by the A.O. by upholding the order of the Ld. CIT(A), the grounds raised by the Revenue in ITA.Nos.3268 & 3269/Del./2018 for the A.Ys. 2010-11 and 2011-12 have become infructuous. Therefore, we dismiss the grounds of appeal of the Revenue for both the assessment years under appeals.

15. In the result, appeals of the Revenue are dismissed.

16. To sum-up, Cross Objection filed by the Assessee are allowed and appeals of the Revenue are dismissed.

Order pronounced in the open Court on 31.08.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 31st August, 2022
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.

Date of dictation on	11.08.2022
Date on which the typed draft order is placed before the dictation Member	12.08.2022
Date on which the approval draft comes to the Sr. PS	31.08.2022
Date on which the fair order is placed before the Dictation member for pronouncement	31.08.2022
Date on which the fair order comes back to the Sr. P.S.	31.08.2022
Date on which the final order is uploaded on the website of ITAT	31.08.2022
Date on which the file goes to the Bench Clerk	31.08.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	