

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3144 /Del./2017
(ASSESSMENT YEAR : 2011-12)**

Jyoti Goel,
E-270, Shastri Nagar,
New Delhi.

vs. DCIT, Central Circle 25,
New Delhi.

(PAN : AIAPG0204E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Hiren Mehta, CA
REVENUE BY : Ms. Ranu Mukherjee, CIT DR

Date of Hearing : 06.09.2022
Date of Order : 08.09.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (A)-29, New Delhi dated 20.02.2017 pertaining to assessment year 2011-12.

2. The issue raised is that Id. CIT (A) erred in sustaining the addition of Rs.12,00,000/- under section 68 of the Income-tax Act, 1961 (for short 'the Act').

3. Brief facts in this case are that there was a search on 15.10.2013. For the impugned assessment year, income-tax return was filed on

11.01.2012 and the same was processed u/s 143(1) of the Act on 13.02.2012, hence assessment was completed before the search. In the assessment after the search u/s 153A, AO made certain additions, one of them was addition u/s 68 of Rs.12,00,000/-. In the assessment order, AO had made the addition by noting that bank statement was found during the search which showed that assessee has received Rs.12,00,000/- and when the assessee was asked to provide the source thereof, satisfactory explanation was not received, hence the addition was made by the AO. Assessee made preliminary objections before the Id. CIT (A) relying upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla - 380 ITR 173 (Del.) that since the assessment was completed before the search and no incriminating material was found during the search relating to this addition, hence addition is not sustainable. But the Id. CIT (A) rejected the assessee's plea that no incriminating material was found as he observed that the bank statement was found and in the said bank account statement, same amount was found to be received.

4. Against this, the assessee is in appeal before us. We have heard both the parties and perused the record.

5. Ld. counsel of the assessee in this regard contended that assessee has already submitted the return of income and in the said return of

income, the said bank account was duly disclosed. Hence, by referring to bank statement found during search, addition cannot be made for the entries made in the said bank statement which was already disclosed. In this regard, ld. counsel further submitted before us a copy of return earlier filed wherein the said bank account was duly disclosed by the assessee. Further, ld. counsel of the assessee pointed out that ld. CIT (A) has in another ground before him himself deleted the addition based upon the deposit in the bank account by observing that said bank account was already disclosed, hence addition was not sustainable relying upon the decision of CIT vs. Kabul Chawla (supra).

6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below. She submitted that assessee has not been able to prove the veracity of the lender as the said person was not found at the stated address. She further doubted that said bank account was duly disclosed by the assessee or not in the return earlier filed.

7. We have heard both the parties and perused the record. Upon careful consideration, we find that it is undisputed that the assessment was completed before the date of search. Nowhere it was the case of the authorities below that the said bank was not earlier disclosed. In these circumstances, by referring to the bank statement of said bank which was already disclosed, additions made cannot be said to be based upon

incriminating material found during the search. As a matter of fact, Id. CIT (A) himself deleted the addition based upon the deposits in the said bank account on the ground that no incriminating material was found during search. Hence Id. CIT (A) on this issue is himself taking contradictory stand. In this regard, Id. counsel of the assessee placed reliance upon the decision of ITAT in the case of M/s. Sarva Priya Holdings Pvt. Ltd. vs. DCIT for the AYs 2010-11 & 2011-12 in IT(SS)A.Nos.97 & 98/Kol/2018 vide order dated 29.11.2019. Ld. counsel of the assessee submitted that in the said case also, on similar issue, when the bank account was earlier disclosed and the addition made based upon the bank statement found during the search, addition was deleted by the ITAT. We may gainfully refer to the concluding part of the aforesaid order as under:-

“12. It is observed that the addition of Rs. 3.15 by treating the share application money as unexplained cash credit u/s 68 was made in the present case by the AO in the assessment completed u/s 153A of the Act for A.Y. 2010-11 on the basis of bank account found during the course of search and since the said bank account as well as transactions reflected therein were duly disclosed by the assessee company in its return of income originally filed for A.Y. 2010-11, we find ourselves in agreement with the contention of the Id. Counsel for the assessee that the same cannot be treated as incriminating material found during the course of search. The addition of Rs. 3.15 crores made by the Assessing Officer u/s 68 and confirmed by the Id. CIT(A) thus was not based on any incriminating material found during the course of search and the same, in our opinion, is not sustainable being outside the scope of section 153A of the Act. Similarly, the disallowance made by the AO

and confirmed by the Id. CIT(A) u/s 14A read with Rule 8D in both the years under consideration is also not sustainable as the same is not based on any incriminating material found during the course of search. We, therefore, delete the said additions made in both the years under consideration and allow these appeals of the assessee.”

8. We find that the aforesaid case law is fully applicable to the facts of the case. In the orders of the authorities below, there was no mention that bank account has not been disclosed in the earlier return of income, hence addition made de hors on incriminating material found during the search is not sustainable as has been held by Hon’ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra). Accordingly, on the jurisdictional issue, we hold that addition is not sustainable inasmuch as it was made de hors incriminating material found during search. Since we hold that addition was without jurisdiction, the addition on merits is not dealt with as the same is academic in nature.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on this 8th day of September, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 8th day of September, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-29, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.