

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 8718/DEL/2019 (A.Y 2014-15)

Smt. Honey Nayyar, C/o. Anil Jain DD & Co., 611, Surya Kiran Building, 19, K. G. Marg, New Delhi – 110 001. PAN No. AAFPN6537J	Vs.	ACIT, Central Circle : 20, New Delhi.
--	-----	---

AND

I.T.A. No. 8719/DEL/2019 (A.Y 2016-17)

Smt. Honey Nayyar, C/o. Anil Jain DD & Co., 611, Surya Kiran Building, 19, K. G. Marg, New Delhi – 110 001. PAN No. AAFPN6537J	Vs.	ACIT, Central Circle : 20, New Delhi.
--	-----	---

AND

I.T.A. No. 8720/DEL/2019 (A.Y 2015-16)

Smt. Honey Nayyar, C/o. Anil Jain DD & Co., 611, Surya Kiran Building, 19, K. G. Marg, New Delhi – 110 001. PAN No. AAFPN6537J (APPELLANTS)	Vs.	ACIT, Central Circle : 20, New Delhi. (RESPONDENTS)
---	-----	---

Assessee by :	Shri Anil Jain, C. A.;
Department by:	Shri C. P. Pathak, [CIT] - D. R.;
Date of Hearing	01.11.2022
Date of Pronouncement	09.11.2022

ORDER

PER YOGESH KUMAR U.S., JM

These three appeals are filed by the same assessee for assessment years 2014-15, 2016-17 and 2015-16. Challenging the separate orders of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to CIT (Appeals)] all dated 29.08.2019. Since all the three appeals are filed challenging the Assessment Orders in consequent to the search and seizure operation conducted by the Department on 18/11/2016 and the Assessee has raised the similar grounds of Appeal, all the three appeals have been clubbed together and heard together.

2. The assessee has raised the following substantive common grounds (except the amounts):-

“1. That on the facts and circumstances of the case and the provision of the law, the Ld CIT (A) has failed to appreciate that the assessment order passed by the Ld AO under Section 153A of the Income Tax Act is illegal and bad in law.

2. That on the facts and circumstances of the case and the provision of the law, the Ld CIT (A) has failed to appreciate that in 153A assessment proceedings additions are to be confined only to the incriminating material belonging to the assessee found during the course of the search.

3. *That on the facts and circumstances of the case and the provision of the law, the Ld CIT (A) has failed to appreciate that the approval obtained u/s 153D is mechanical and without application of mind and accordingly assessment framed requires to be quashed.*
4. *That on the facts and circumstances of the case and the provision of the law the Ld CIT (A) has failed to appreciate that the assessment order being passed is in violation of principle of natural justice and hence, the said assessment order is bad in eyes of law and liable to be quashed.*
5. *That on the facts and circumstances of the case and the provision of the law, the Ld. CIT (A) has erred in sustaining addition of Rs. 126902/- on account of receipt of KVP at the time of maturity.*
6. *That on the facts and circumstances of the case and the provision of the law, the Ld CIT (A) has erred in sustaining addition of RS.198656/- on account of accumulated rental income.*
7. *That the Ld CIT (A) has failed to appreciate that the various observations and findings of the Ld AO in the impugned assessment order are irrelevant, unjustified, baseless and vitiated in the law.*
8. *That on the facts and circumstances of the case and the provisions of law, the Ld AO has erred in charging of an interest u/s 2348. Without prejudice the interest charged is also excessive.*
9. *That on the facts and circumstances of the case and the provision of law the Ld CIT(A) has failed to appreciate that the penalty initiated u/s 271(1)(c) of the Income Tax Act, 1961 is illegal and bad in law.”*

I.T.A. 8718/Del/ 2019 (Assessment Year 2014-15)

3. The facts of the case in brief are as follows:- A search, seizure and survey operation u/s 132/133A of the Act was conducted on 18/11/2016 in Nayyar Group of cases. The Assessee's residential premises at 2B/12, Road No. 12, East Punjabi Bagh, New Delhi was also covered u/s 132(1) of the Act. Notice u/s 153A of the Act was issued, in response a return income declaring an income of Rs. 3,95,850/- was filed by the Assessee. The assessment order u/s 153A (3)/143(3) of the Act came to be passed on 29-12-2018 by making an addition of Rs. 10,80,668/- u/s 68 of the Act being treated as unexplained

cash deposit, a sum of Rs. 2,88,764/- which has been treated as unexplained investment by making addition u/s 69A of the Act and another addition of sum of Rs. 1,98,658/- has been made u/s 69 A of the Act being unexplained income.

4. Aggrieved by the assessment order dated 29/12/2018, the assessee has preferred the appeal before the CIT(A) and the Ld.CIT(A) vide order dated 29/08/2019 partly allowed the appeal by sustaining addition of Rs. 12,69,09/- on account of receipt of Kisan Vikas Patra (KVP), which was treated as “income from other sources” and also sustained the addition of Rs. 19,86,56/- on account of accumulated rental income.
5. Aggrieved by the order dated 29/08/2019, the assessee has preferred the present appeal on the grounds mentioned above.
6. The Ld. Counsel for the assessee vehemently contended that the materials found during the search represents regular banking and other transactions of the Assessee which does not fall under the category of “incriminating material and arguing on the Ground No. 2, the Ld. AR submitted that the CIT(A) has failed to appreciate that in Section 153A assessment proceedings, the additions should be confined only to incriminating materials belonging to the assessee found during the course of search. By relying on the judgments of the Hon’ble Delhi High Court in the case of CIT Vs. Kabul Chawla in ITA No. 707/2014 and Pr. Commissioner of Income Tax Vs. Meeta Gutgutia issued in ITA No. 306/2017, submitted that the Order of the Ld. CIT (A) is liable to be set aside.
7. Per contra, the Ld. DR submitted that the Ld.CIT(A) has minutely examined the facts and circumstances of the case and the judgment of the Hon’ble Delhi High Court in the case of Kabul Chawla (supra) has been

considered by the Ld.CIT(A) and sustained the additions made by the A.O., therefore, submitted that the order of the Ld.CIT(A) requires no interference.

8. We have heard the parties, perused the material on record and gave our thoughtful consideration.

9. The Ld.CIT(A) while sustaining the addition of Rs. 1,26,902/-, found that the assessee has been showing the income on receipt basis and since no TDS was deductible on the interest payment of KVP made by the post office to the assessee, the interest received on those KVPs was taxable in the year under consideration. Considering the fact that the investment made 6 years prior to the year under consideration, source of the investment has not been taxed. Therefore, interest of Rs. 1,26,902/- held to be taxable in the year under consideration of receipt presuming the investment of Rs. 1 lac in the KVPs. Further, the Ld. CIT (A) has sustained another addition of Rs. 1,98,656/- made on account of accumulated rental income. The authorities have found that the accumulated rental income of Rs. 1,98,656/- for which no satisfactory explanation for not showing the same in the Assessee's return of income has been offered by the assessee either during the assessment stage or during the appellate proceedings.

10. In so far as application of the ratio laid down in the case of Kabul Chawla is concerned, the Ld.CIT(A) while considering the ratio laid down in the case of Kabul Chalwa (supra), observed as under:-

“The appellant, being individual was not filing the capital account form where these transactions could have been verified. Further the appellant could not get all the transactions verified including cash outflow in various activities during the assessment proceedings. The A.O had made addition on account of papers seized w.r.t

various transactions, thus the papers seized had the character of incrementing nature. As there were seized papers relating to these transactions, which were not readily verifiable from the returns filed by the appellant, the case of the appellant is not covered by the judgment of CIT vs Kabul Chawla and the additions on these issues proves that the nature of transactions represented on seized papers were of "incrementing nature". In these circumstances these grounds of appeal of the appellant are also rejected."

11. Thus the Ld.CIT(A) was of the opinion that based on the papers which were seized during the search had the character of "incriminating nature" which ultimately resulted in sustaining partial addition by the CIT(A). It is the specific contention of the Ld. Counsel for the Assessee that no such incriminating materials have been seized to make the addition and no incriminating material recovered during the search qua the assessee for the year under consideration.

12. It is found that after considering the facts and circumstances of the Ld. CIT (A) has specifically observed that the ratio laid down in the case of Kabul Chawla (supra) is not applicable. But the Ld. Counsel for the Assessee has contended that the Ld. CIT (A) has not considered the material available on record and not specifically gave finding on which specific "incriminating material" resulted in addition qua the year under consideration. In view of the same, we deem it fit remand the matter to the file of CIT (A). Accordingly the issue involved in the Appeal is remanded to the file of Ld.CIT(A) to verify as to whether the additions sustained by Ld.CIT(A) is based on the "incriminating materials" belonging to the assessee found during the search or not, by giving specific findings, decide the matter in view of the ratio laid down by the Hon'ble High Court in the case of Kabul Chawla (Supra) and Meeta Gutgutia (Supra).

13. In the result, the **appeal in ITA No. 8718/Del/2019 filed by the assessee is partly allowed for statistical purpose.**

ITA No. 8719/Del/2019 (Assessment Year 2016-17)

14. The subject matter of the above appeal is the only addition of Rs. 22,05,12/- which was sustained by the Ld.CIT(A) on account of accumulated rental income. The assessee has raised the similar grounds in ITA No. 8718/Del/2019 in respect of the very same issue, which has been dealt in detail and the said issue has been remanded to the file of Ld. CIT (A) for considering a fresh with certain directions. Therefore, the present appeal is also disposed off in terms of the Assessee's appeal in ITA No. 8718/Del/2019 by remanding the issue in the present Appeal to the file of Ld.CIT(A). **Accordingly the appeal in ITA No. 8719/Del/2019 is partly allowed for statistical purpose.**

ITA No. 8720/Del/2019 (Assessment Year 2015-16)

15. The subject matter of the above appeal is the only addition of Rs. 2,76,042/- which was sustained by the Ld.CIT(A) on account of accumulated rental income. The assessee has raised the similar grounds in ITA No. 8718/Del/2019 in respect of the very same issue, which has been dealt in detail and the said issue has been remanded to the file of Ld. CIT (A) for considering a fresh with certain directions. Therefore, the present appeal is also disposed off in terms of the Assessee's appeal in ITA No. 8718/Del/2019 by remanding the issue in the present Appeal to the file of Ld.CIT(A).

16. Accordingly the appeal in ITA No. 8720/Del/2019 is partly allowed for statistical purpose.

Order pronounced in the open court on : **09/11/2022.**

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated : /11/2022

R.N, Sr. PS

Copy forwarded to :

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

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI