

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'F', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 4989/Del/2018 : Asstt. Year : 2009-10**

Vijay Pal Garg, TU-70, Pitampura, New Delhi-110088 (APPELLANT)	Vs	ACIT, Central Circle-5, New Delhi (RESPONDENT)
<b>PAN No. ADQPG3144E</b>		

**Assessee by : None**

**Revenue by : Sh. Shashi Bhushan Shukla, CIT DR**

**Date of Hearing: 07.12.2022**

**Date of Pronouncement: 12.12.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-XXXI, New Delhi dated 19.02.2013.

2. Following grounds have been raised by the assessee:

*"1. That the learned Commissioner of Income Tax (Appeals)-31, New Delhi has erred both in law and on facts in upholding the initiation of proceedings u/s 153 A of the Act and, framing of assessment u/s 153 A/143(3) of the Act since no incriminating material was found as a result of search conducted on the appellant and therefore, both the notice issued and, assessment framed were without jurisdiction and, deserved to be quashed as such.*

*1.1 That additions made and sustained are without jurisdiction since they are not based on any material found as a result of search on the appellant, as have been also held by the judgments of Hon'ble Delhi High*

*Court in the case of CIT vs. Kabul Chawla reported in 380 ITR 573 and Pr. CIT vs. Meeta Gutgutia reported in 395 ITR 526.*

*2. That the learned Commissioner of Income Tax (Appeals) has further grossly erred both in law and on facts in upholding the addition of Rs.15,00,000/- representing the alleged deemed dividend under section 2(22)(e) of the Act.*

*2.1 That the learned Commissioner of Income Tax The appeal of the assessee on this ground is allowed. (Appeals) while upholding the addition has failed to appreciate the facts and circumstances of the case of the appellant and statutory provisions of law and therefore, addition so made and upheld is altogether unsustainable and untenable.*

*2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that transactions between appellant and M/s Gee Ispat (P) Ltd. were commercial transactions and therefore beyond the scope of ambit of section 2(22)(e) of the Act.*

*2.3 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that since there were no accumulated profits, there was no justification to make impugned addition and in any case, determination of accumulated profit was excessive and not in accordance with law.*

*3 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding disallowance a claim of deduction of Rs. 35,11,535- representing interest paid on loans raised for business purposes and eligible for deduction u/s 36(1)(iii) of the Act.*

*3.1 That the learned Commissioner of Income Tax (Appeals) has upheld the disallowance by failing to appreciate the fact and circumstances of the case of the appellant, statutory provisions of law and evidence on record, including the submissions filed by the appellant.*

*3.2 That the finding recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect, contrary to evidence on record and, therefore disallowance sustained is entirely vitiated.*

*4 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs. 1,50,000/- out of Rs. 3,00,000/- on account of low household withdrawals."*

3. The pertinent facts of this case are as under:

Date of search	- 08.11.2010
Date of filing of regular return	- 29.09.2009
Due date for issue of notice u/s 143(2)	- 30.09.2010

Additions made u/s 153A - u/s 2(22)(e) and u/s 133  
- & low house withdrawals.

4. It is not disputed that the addition has been made sans seized material.

5. On this issue, we are guided by the following case laws:

- CIT v. Kabul Chawla (2016] 380 ITR 573
- Pr. CIT vs. Meeta Gutgutia (2017) 395 ITR 526
- All Cargo Global Logistics Limited Vs. DCIT 18 ITR 106
- ACIT, Central Circle-16, New Delhi vs. Vinita Chaurasia, ITA No. 5957/DEL/2015 dated 05.10.2018,

6. The Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (supra) held as under:

*"vii. Completed assessments can be interfered with by the A.O. while making the assessment under section 153A 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”*

7. The Hon'ble Delhi High Court in its decision in the case of Pr. CIT vs. Meeta Gutgutia (2017) 395 ITR 526 in paras 69 to 72 has held as under:

*“69. What weighed with the Court in the above decision was the “habitual concealing of income and indulging in clandestine operations” and that a person indulging in such activities “can hardly be accepted to maintain meticulous books or records for long.” These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.*

*70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.*

*71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.*

*Conclusion*

*72. To conclude:*

*(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A. of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04."*

8. The above Judgment was confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. Therefore, on this reason also no addition could be made of any unexplained bank deposits or interest earned thereon in any of the assessment years. In view of the above, we set aside the Orders of the authorities below and delete the entire additions.

9. Hence, keeping in view, the entire factum of the case, we hold that the addition made vide the assessment u/s 153A in the absence of any incriminating material is not sustainable.

10. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 12/12/2022.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated:12/12/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**