IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.3305/DEL/2019
Assessment Year 2010-11

ACIT, Central Circle-6, New Delhi.	Vs.	KAD Housing Pvt. Ltd., 151, Savita Vihar, Delhi.
TAN/PAN: AACCK4705B		
(Appellant)		(Respondent)

Appellant by:	Shri C.S. Anand, Adv.		
Respondent by:	Shri M. Baranwal, CIT-DR		
Date of hearing:	05	12	2022
Date of pronouncement:	15	12	2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXIV, New Delhi ['CIT(A)' in short] dated 24.01.2019 arising from the assessment order dated 31.03.2016 passed by the Assessing Officer (AO) under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the Revenue read as under:

> *"1. The order of Ld. CIT(A) is not correct in law and facts.*
>
> *2. Whether on the facts and circumstances of case, Ld. CIT(A) has erred in deleting the addition of Rs.2,26,62,100/- made by assessing officer on accounts of unexplained credits the Income Tax Act, 1961.*
>
> *3. Whether on the facts and circumstances of the case, the Ld.*

CIT(A) has erred as the provisions of section 153A clearly empowers the assessment year relevant to the previous year in which such search is conducted/requisition is made and it do not restrict the Assessing Officer to frame assessment or reassessment only to the documents/assets seized during the course of search or requisition.

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in, not upholding the assessment order passed under Section 153A r.w. Section 143(3) of the Act on the ground that no incriminating material was found during the search on the basis of which additions have been made by the Assessing Officer as held in the case of Kabul Chawla, even when, the principal laid down in the judgment of Hon'ble High Court in the case of Kabul Chawla has not been accepted by the Revenue and S.L.P. there against has been filed which is pending for adjudication before the Hon'ble Apex Court.

5. Whether on the facts of the case, Ld. CIT(A) is justified in relying on the decisions in case of Kabul Chawla and Meeta Gutgutia in the current case when these decisions are distinguishable on facts.

3. Briefly stated, a search and seizure operation under Section 132 of the Act was carried out on Santosh/KM/VMI Group including the assessee by the Income Tax Department on 27.06.2013. Consequently, a notice under Section 153A was served upon the assessee and the assessment was completed under Section 153A r.w. Section 143(3) of the Act. In pursuance of search action under Section 132 of the Act, the Assessing Officer made an addition of Rs.2,26,62,100/- under Section 68 of the Act by questioning the *bona fides* of share application money on unsecured loan received by the assessee during the year.

4. Aggrieved, the assessee preferred appeal before the CIT(A). In the course of first appellate proceedings, the assessee contended that (i) as on date of search and seizure action u/s.132, the assessment for Assessment Year 2010-11 was not pending as the scrutiny assessment order was already passed

on 30.12.2011 and (ii) despite absence of incriminating material attributable to Assessment Year 2010-11 unearthed during the search and seizure action as may be under Section 132, the Assessing Officer has made an addition of Rs.2,66,62,100/- by invoking Section 68 of the Act. The assessee placed reliance upon the judgments rendered by Hon'ble Hon'ble High Court in *CIT vs. Kabul Chawla, 380 ITR 573 (Delhi)* and *CIT vs. Meeta Gutgutia, 395 ITR 526 (Del),* and contended that the action of the Assessing Officer in making such additions is beyond the legal mandate, in the absence of any reference to the incriminating material unearthed during the search.

5. The CIT(A) found merit in the contentions of the assessee and reversed the additions made by the Assessing Officer under Section 68 of the Act. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

> *"5.1 I have considered the material on record including written submissions of the AR of the appellant filed in course of appellate proceedings. I have perused the assessment order u/s 153A r.w.s. 143(3) of the Act passed by the AO. I have also considered the remand reports of the AO and the rejoinders of the AR of the appellant thereon.*
>
> *5.2 Ground Nos. 3 & 7 of revised grounds of appeal are bunched together for proper adjudication. On careful consideration, I find that the AO has not disputed that no incriminating material was found or seized in course of search action on the appellant. The AO has not pointed out any specific incriminating seized material relating to transactions of the appellant leading to addition of Rs.2,26,62,100/- made in the assessment order u/s. 153A r.w.s. 143(3) of the Act. I do hold that by virtue of provisions of section 153A the Assessing Officer gets the jurisdiction of assessment / reassessment over the appellant. However, these provisions do not provide the AO with power to make addition on any issue in respect of the year for which no assessment is pending as on date of search and in respect of which no incriminating material has been found during the course of search. In the instant case the assessment u/s 143(3) of the Act was completed on 30.12.2011.*

Further, no assessment proceedings were pending for AY 2010-11 on date of search (27.06.2013). It is fully established that no incriminating material was found during the course of search action. At this stage it is relevant to consider the judgment of the Hon'ble Delhi High Court in the case of CIT (Central-Ill) vs. Kabul Chawla 1380 ITR 573 (Del) I which has held as under:

"37. On a conspectus of Section 153A(1) of the Act, read with the proviso thereto, and in the light of the law, explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The A0 has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."(emphasis supplied)

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material

existing or brought on the record of the AO.

vii. Completed assessments can he interfered with by the AO while making the assessment under Section 153 A 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.

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.0n the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

5.3 In the case of PC1T (Central-II), New Delhi vs. Meeta Gutgutia 390 ITR 496 (Del), has held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search is not justified in absence of incriminating material found during search qua each such earlier assessment year. It is important to note that the Hon'ble Supreme Court of India dismissed vide its order dated 02.07.2018 Special Leave Petition(SLP) filed by the Revenue against the order dated 25.05.2017 of the Hon'ble High Court of Delhi in the case of Meeta Gutgutia.

5.4 In view of the facts stated above, following the ratio of the judgements of the Hon'ble High Court of Delhi in the cases of CIT (Central-III) vs. Kabul Chawla 380 ITR 573 (Del) and PCIT (Central-II), New Delhi vs. Meeta Gutgutia 390 ITR 496 (Del) and further considering the fact that on the date of the search the assessment for AY 2010-11 already stood completed, no addition could have been made to the income already assessed since no incriminating material was unearthed during the search. Thus, I hold that although the issue of notice u/s 153A of the Act by the AO was fully justified but the addition of Rs.2,26,62,100/- made by the AO was beyond the scope of the prov4ions of section 153A of the Act and therefore, deleted. Considering the facts and circumstances of the instant case and legal position stated above, Ground No. 3 is dismissed but Ground No. 7 is allowed."

6. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred appeal before the Tribunal.

7. We have considered the rival submissions and perused the orders of the authorities below. We note that the CIT(A) has examined the merits of the legal contentions raised on behalf of

the assessee and deleted the additions made by the Assessing Officer. On bare perusal of the order of the Assessing Officer and CIT(A), we find total absence of reference to any incriminating material which may have any bearing to the impugned additions made under Section 68 of the Act. As a corollary, it is manifest that impugned additions were made by the Assessing Officer without reference to any specific material found as a result of search and seizure action under Section 132 of the Act which can be said to be incriminating material. The action of the Assessing Officer is merely based on re-appreciation of facts unconnected to search.

8. We simultaneously note that the Income Tax Return for the relevant Assessment Year 2010-11 was duly assessed under Section 143(3) of the Act prior to search and thus no assessment was eventually pending at the time of initiation of search which may abate in consequence of search. No reference to any incriminating material, if any, is found in the assessment order for the purposes of making impugned additions under Section 68 of the Act. Accordingly, in the light of the judicial dicta referred to and relied upon by the CIT(A), we are of the view that the impugned additions made by the Assessing Officer are clearly beyond the scope of authority vested under Section 153A of the Act owing to absence of any incriminating material or evidence deduced as a result of search.

8.2 The legal issue emanating on such facts that in the absence of any incriminating material/evidence, no addition can be sustained under Section 153A where the earlier assessment stood included prior to search, is no longer *res integra* in view

of the judgment of the Hon'ble Jurisdictional High Court in *Kabul Chawla (supra)* and *Meeta Gutgutia (supra)* and host of other judicial pronouncements.

8.3 In view of long line of judicial precedents governing the field, we see no infirmity in the conclusion drawn by the CIT(A). We are of the opinion that in the factual backdrop, the CIT(A) has rightly concluded that in the Section 153A proceedings the additions made without showing any nexus to incriminating found, if any, as a result of search operation are not sustainable in the eye of law. The order of the CIT(A) being in sync with the judicial view echoed, we decline to interfere therewith.

7. In the result, the captioned appeal of the Revenue is dismissed.

Order pronounced in the open Court on 15/12/2022.

Sd/-	Sd/-
[SAKTIJIT DEY]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **/12/2022**

Prabhat