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

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

ITA No.4932/Del./2019
(ASSESSMENT YEAR : 2012-13)

DCIT, Central Circle 1, Gurugram.	vs.	Shri Arun Ghai, H.No.604/608, Sector 15, Faridabad (Haryana).
		(PAN : AAVPG1638F)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri P. Praveen Sidharth, CIT DR

Date of Hearing : 22.12.2022
Date of Order : 23.12.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)-3, Gurgaon dated 28.03.2019 for the AY 2012-13.

2. The grounds of appeal taken by the assessee read as under :-

"i) Whether on the facts and circumstances of the case the CIT(A) was right in holding that there was a difference in scope of proceedings under section 153A of the Income Tax Act, 1961 for an abated assessment and for a completed assessment.

ii) Whether on the facts and circumstances of the case the CIT(A) was right in holding that no addition can be made u/s

153A of the Income Tax Act, 1961 in respect of completed assessment if no incriminating material is found during search.

iii) Whether there is any restriction on the powers of the Assessing Officer under section 153A of the Income Tax Act, 1961 to confine only to the "incriminating material found during the search", even though such words or conditions are not mentioned in the section per se.

iv) Whether on the facts and circumstances of the case the CIT(A) was correct in interpreting section 153A which starts with a (non-obstante clause' stating therein that the operation of section 139, 147, 148, 149, 151 & 153 was de-posed, meaning thereby that in search cases the Assessing Officer is duty bound to take up the assessment u/s 153A and that the above mentioned sections cannot be invoked. Therefore, even if incriminating material is not found during search, but if an escaped income or under-assessed income or undisclosed income has to be assessed for such completed assessment, then it has to be done in the proceedings u/ s 153A in search cases?

v) Whether on the facts and circumstances of the case the CIT(A) was right in ignoring the basic difference in search assessment u/s 153A and Chapter XIVB being that in section 153A the "total income" has to be assessed or reassessed in .six separate A.Ys., as opposed to assessing only "undisclosed income" in the scraped Chapter XIV B for block period in a single assessment.

vi) Whether on the facts and circumstances of the case the CIT(A) was right in following Delhi High Court decision in the case of CIT v. Kabul Chawla, 61 taxman.com 412 when the Hon'ble HC itself admits in para 37 (iv) the "Although Section 153A does not say that additions should strictly be made on the basis of evidence found in course of search .... » there by interpreting the statute in the manner which were never worded or intended by the legislature.

vii) Whether on the facts and circumstances on the case the CIT(A)is right in not following the judgments on the issue of additions in search case u/s 153A of the Income Tax Act, 1961 rendered in the case of CIT v. Anil Kumar Bhatia 352 ITR 493

(Delhi HC), MadugulaVenu v. DIT 49 Taxman.com 200 (Delhi HC), CIT v. Raj Kumar Arora 367 ITR 517 (Allahabad HC), Canara Housing Development Company v. DCIT 49 taxman.com 98 (Karnataka HC), Filatx India Ltd. v. CIT 229 Taxman 555 (Delhi HC) Sunny Jacob Jewellers and Wedding Centre, 362 ITR 664 (Kerala HC).

viii) Whether on the facts and in the circumstances of the case and in law the CIT(A) erred in not deciding the addition of Rs.1,46,76,109/ - made by the AO on account of disallowance of exemption u/ s 10(36) of the Income Tax Act, 1961 claimed by the assessee on merits."

3. In this case, there was a search & seizure operation on 10.10.2013. Section 153A notice was issued to the assessee. On the basis of return filed and report received from investigation wing during assessment proceedings. AO made addition of penny stocks LTCG by concluding as under :-

" Thus, in the light of the above facts and also in view of report of the Directorate of Investigation, Kolkata on L TCG/STCL through penny stocks at the platform of the Calcutta stock Exchange, I hold that the L TCG claimed by the assessee at Rs.1,45,26,109/- during the year under consideration is nothing but assessee's own unaccounted money which he tried to bring into mainstream under the garb of exempt income u/s 10(36)with the assistance of entry operators engaged in the business of converting tainted money into good money. The entire amount of sale consideration of tainted shares amounting to Rs. 1,46,76,109/- is therefore, added to the income of the assessee as unexplained cash introduced in the garb of Capital Gain."

4. Upon assessee's appeal, ld. CIT (A) held that it is not a case of abated assessment. That no assessment was pending. Hence, he held that addition made *de hors* any incriminating material found during search is

not sustainable. The ld. CIT (A) order in this regard can be referred as under:-

> " I have gone through the assessment order and the submissions filed by the appellant and following observations are made.
>
> 1. The appellant filed return u/s 139 for the year on 25.09.2012 and no notice u/s 143 (2) was issued to the appellant for the year under consideration.
>
> 2. A search action under section 132 of the Act, was carried out in the case of appellant on 10.10.2013. No assessment was pending in the case of appellant on the date of search and hence the assessment for the year under consideration had not abated.
>
> 3. It is apparent from the assessment order that no incriminating documents/ records or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the appellant during the years under consideration.
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> 4. A search action under section 132 of the Act, was carried out in the case of appellant on 10.10.2013 and subsequently assessment proceedings initiated and order u/s 153A of the Act was passed on 14.03.2016 making addition as mentioned above.
>
> 5. It is clear from the above that neither any incriminating material/ evidence were found and seized during the course of search in case of the appellant related to the year under consideration nor the addition has been made emanating out of the search proceedings and no proceedings were pending nor abated in terms of the provision of section 153A of the Act.
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> 6. The appellant has relied upon various judicial pronouncements of various appellate authorities on the similar issues:
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> 1. CITvs Kabul Chawla (Del) 281 CTR 45.
> 2. Pro CIT vs. Meeta Gutgutia (Del) 82 Taxmann.com 287.

It has been stated by the appellant that keeping in view the facts of the case and above mentioned judicial pronouncements, assessment made u/s 153A made by the AO is bad in law, therefore no addition can be made to the income of the appellant and the same may please be deleted and the order u/s 153A may please be annulled.

7. Further, the case is also covered by the recent decision of Hon'ble ITAT, Chandigarh Bench in the case of DCIT vs SCM Fintrade Pvt Ltd in ITA No. 981 and 982/Chd/ 2017 dated 05.01.2018 decided on identical set of facts wherein addition made in assessment framed pursuant to search u/s 153A was deleted by the CIT(A) for the reason that there was no incriminating material found during the search and the assessments had not abated, which order was upheld by ITAT.

The findings of the Hon'ble ITAT in the case of DCIT vs SCM Fintrade Pvt Ltd at para 5 of its order, squarely applies in the present case also, which reads as under:-

> "5. We have heard the contentions of both the parties. We do not find any merit in the present appeal filed by the Revenue. The facts vis-a-vis both the appeal that search action was carried out on the assessee on 04.10.2010 and at the time of search action no assessment or reassessment proceedings were pending is undisputed. It is also not disputed that no incriminating document or record or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the assessee. Therefore, the Ld. CIT(A), we hold, has rightly deleted the addition made following various judicial pronouncements in this regard. Further we do not find any merit in the contention of the Ld. DR that the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has been distinguished in the case of Smt Dayawanti vs CIT in ITA No. 357/2015 and others dated 27.10.2016, since we find that even this aspect has been dealt with by the ITAT Chandigarh Bench in the case of M/s Bharatnet Technology Ltd (supra) in which it was observed that the case of Smt

Dayawanti (supra) was subsequently discussed by the Hon'ble Delhi High Court in the case of Principal CIT vs Meeta Gutgutia Prop. M/s Ferns 'N' Petals in ITA No. 306/2017 & other decision vide order dated 25.05.2017, wherein it was held that in the case of Smt Dayawanti (supra) incriminating material was found during search action, however, in the case of Principal CIT vs Meeta Gutgutia Prop. M/s Ferns 'N' Petals no incriminating material was found during search action and hence addition made was not justified. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) while deleting the impugned additions in both the appeals filed by the Revenue."

7. The facts of the above referred case(s) are similar to the present case. As mentioned earlier, the addition made in the cases under consideration are not emanating out of any incriminating material found during the search proceedings nor any proceedings were pending or abated on the date of search, in this case.

8. In view of the ratio laid down by the Hon'ble High Court of Delhi in the case of CIT vs Kabul Chawla and also other judgments as discussed in order of Hon'ble ITAT reproduced in this order, the decision of the jurisdictional ITAT has been found applicable and accordingly, the addition made by the AO as discussed above cannot be sustained and hence deleted looking into the position of law and facts of the case.

9. Since, the issue has been decided on the legal grounds regarding jurisdiction of AO to make such additions under section 153A of the Act, when no incriminating documents/ material or undisclosed income belonging to the appellant was found during search operations for the year(s) under consideration against the appellant and the additions have not been sustained, the other grounds of appeal relating to the merit of these cases have not been considered."

5. Against the above order, assessee is in appeal before us.

6. Upon hearing both the parties and perusing the record, we find that this is an unabated assessment. Hence, *de hors* incriminating material, addition is not sustainable in assessment u/s 153A of the Income-tax Act, 1961 (for short 'the Act'). This issue is duly decided by Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 173 (Del.). Other decisions referred by ld. CIT (A) are also germane. Accordingly, following the precedent, we do not find any infirmity in the order of the ld. CIT (A). Accordingly, we uphold the same.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on this 23rd day of December, 2022.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 23rd day of December, 2022
TS

Copy forwarded to:

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

AR, ITAT
NEW DELHI.