

**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. 411/Del/2022: Asstt. Year: 2013-14

ACIT, Central Circle-26, New Delhi-110055 (APPELLANT)	Vs.	Reena Jain, C-9/46, Sector-8, Rohini, Delhi-110085 (RESPONDENT)
PAN No. AAIPJ5866F		

**Assessee by : Sh. Ved Jain, Adv.
Sh. Aman Garg, CA
Revenue by : Sh. Shashi Bhushan Shukla, CIT DR**

Date of Hearing: 08.12.2022	Date of Pronouncement: 03.03.2023
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ORDER

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

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-29, New Delhi dated 22.12.2021.

2. The revenue has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 2,45,75,050/- made on account unaccounted investment in Land u/s 69 of the act ignoring the fact that the valuation report of the DVO was supported by the on spot enquiry conducted by the Income Tax Inspector which confirms that the value of the property is way above the rate declared by the assessee in its return of income.

2. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law."

3. In this case, a search & seizure operation u/s 132 was carried out on the assessee on 17.12.2015 in connection with Sh. Anand Jain and Sh. Naresh Jain group of cases.

4. The assessee filed original return of income on 12.07.2013 declaring total income of Rs.2,82,240/- for A.Y. 2013-14 which was processed u/s 143(1) of the Income Tax Act, 1961.

5. The due date for issue of notice u/s 143(2) for A.Y. 2013-14 was 13.09.2014. Hence, the assessment can be treated as unabated assessment. From the Assessment Order and the order of the Id. CIT(A), we find that the addition made was not on the basis of any incriminating found and seized during the course of search but solely based on the report of the DVO.

6. With regard to the deletion made by the Id. CIT(A), reliance is placed on the following case laws:

- i. CIT v. Kabul Chawla (2016] 380 ITR 573/(2015) 234 Taxman 300/61 taxmann.com 412 (Delhi),*
- ii. All Cargo Global Logistics Limited Vs. DCIT [2012] 18 ITR 106,*
- iii. ACIT, Central Circle-16, New Delhi vs. Vinita Chaurasia, ITA No. 5957/DEL/2015 dated 05.10.2018,*
- iv. ACIT, Central Circle-4, New Delhi vs. M/s. Moolchand Steels Pvt. Ltd., ITA No. 2544/DEL/2015 dated 10.10.2018 etc.*

7. 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”

8. The Hon'ble Delhi High Court in its recent 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.”

9. The decisions of the Hon'ble Jurisdictional High Court are squarely applicable to the facts and circumstances of the case

as no assessment was pending on the date of search and the addition has been made merely on the basis of the book entries already disclosed to the department. Further, reliance is also being placed on the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Subhash Khattar in ITA No. 60/2017 dated 25.07.2017.

10. 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. We hereby affirm the order of the Id. CIT(A).

11. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

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

Dated: 03/03/2023

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR