

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F" NEW DELHI ]

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 694/Del/2022  
निर्धारण वर्ष/Assessment Year: 2013-14

ACIT, Central Circle : 19, New Delhi.	<u>बनाम</u> Vs.	Shri Pawan Kansal, A-7, Antriksh Apartments, Plot No. D-3, Sector 14 Extn., Rohini, Delhi-110 085.
		PAN No. BBDPS7201L
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	Shri Ved Jain, C. A.; Ms. Supriya Mehta, C. A. & Ms. Uma Upadhyay, C.A.
राजस्वकीओरसे / Department by :	Shri T. Kipgen, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	17.04.2023
उद्घोषणाकीतारीख/Pronouncement on :	25.05.2023

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the Revenue against the order of the  
ld. Commissioner of Income Tax (Appeals)-27 [hereinafter referred  
to CIT (Appeals)] New Delhi, dated 15.02.2022 for assessment year

2013-14 in deleting the addition of Rs.2,50,00,000/- made under section 68 of the Income Tax Act, 1961 (the Act).

2. The ld. DR submits that there was a search and seizure operation on 8.07.2015 under section 132/133A of the Act in the case of the assessee along with other cases of K.R. Pulp & Papers Ltd. group. Notice under section 153A of the Act was issued to the assessee on 26.09.2016 and in response to the notice the assessee filed return of income declaring income of Rs.20,17,910/- on 24.10.2016. The ld. Dr submits that in the course of search copy of agreement between the assessee and Mahagauri Estates Pvt. Ltd., to sell the property was found according to which property No. 1531 and J EPIP Kundli Sonapat, Haryana was agreed to sell for a consideration of Rs.16.55 crores and an advance of Rs.2,50,00,000/- was received by the assessee through RTGS of Axis Bank dated 12.03.2013. The ld. DR submits that to verify authenticity of this agreement this was confronted to the assessee that there are no witness signatures to the agreement and issued a questionnaire requesting to furnish point-wise annexure-wise information of various documents which pertain/belong to assessee have been found in the premises. The ld. DR submits that the assessee has not furnished any reply and in the absence of any reply the Assessing Officer treated that the arrangement through this agreement is a sham transaction. Moreover the party to the agreement Mahagauri Estates Pvt. Ltd. also did not respond to the notice issued by the Assessing Officer. Therefore, the genuineness of the transaction could not be verified by the Assessing Officer and in such circumstances the Assessing Officer treated the forfeited sum of

Rs.2,50,00,000/- by the assessee as unexplained and unverified income of the assessee under section 68 of the Act. The ld. DR supported the order of the Assessing Officer in making the addition under section 68 of the Act.

3. On the other hand, the ld. Counsel for the assessee relying on the orders of the ld. CIT (Appeals) who deleted the addition made following the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla [(2016) 380 ITR 573 (Del.)] submits that in the absence of any incriminating material found during the search operation there cannot be any addition.

4. Heard rival submissions perused the orders of the authorities below. The Assessing Officer treated the amount of Rs.2,50,00,000/-, which was forfeited by the assessee as unexplained income of the assessee under section 68 of the Act as the assessee neither furnished any explanation nor the party to the agreement Mahagauri Estates Pvt. Ltd. responded to the summons issued by the Assessing Officer. The ld. CIT (Appeals) deleted the addition on the ground that the transaction of forfeited amount of Rs.2,50,00,000/- was accounted for by the assessee in the books of accounts and the agreement referred to by the Assessing Officer is not incriminating material found during search operation observing as under:-

“5.2 Ld. AO in the assessment order makes reference to pages found during course of search that makes reference to an agreement to sell that was later fortified. These papers are actually two Agreements. First paper is Agreement to sell the property bearing number 153 I and J EPIP Kundli, Sonapat, Haryana. Second paper is Cancellation of the above Agreement. During this process the appellant has forfeited

Rs.2.5 cr received as advance. The forfeiture clause was very much there in the Agreement to sale. In case of non-compliance from seller side, seller was to pay double of this advance i.e Rs. 5 cr. On the other hand non compliance from buyer side will cost him the advance given to seller i.e. seller would be very much in his right to forfeit this amount of Rs. 2.5 cr. Other than these documents, no other evidence was found during search operation which suggests that this transaction was arranged and money has actually gone back to buyer in cash. These transactions were duly recorded in the books of account by the assessee. It is also observed that the amount had been credited in the bank account of the assessee. The appellant has taken the plea that this amount was not offered to tax this year as per the provisions of the section 51 of the IT Act and the same would be adjusted from the cost of acquisition of the property at the time of making sale of the said property.

5.3 Further, whether any addition/disallowance be made without reference to any incriminating material/evidence found during the search operation when the assessment in that year is a completed assessment, has been dealt with and answered by Hon'ble Jurisdictional High Court in the case CIT vs. Kabul Chawla. Hon'ble Court has taken a view in such cases that 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section 153A/153C only on the basis of the seized material. It is further opined by Hon'ble Court that completed assessment can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found 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. In the subsequent decisions also, Hon'ble Court has reiterated their aforesaid views. In the case of Pr. CIT vs. Ram Avtar Verma 395 ITR 252, Hon'ble Court has supported the aforesaid view that if the assessments are completed on the date of search and no incriminating

material is found during the search, assessment u/s 153A of the Act is invalid.

5.4 Now the facts of the appellant are to be examined in view of this legal position. It is clear from the assessment order as well as submissions of the appellant that search and seizure action u/s 132(1) of the Act was undertaken by the Department in the case of appellant group on 08.07.2015. The status of original return filed is as under:-

Asstt. Year.	Date of filing of original return	Due date for filing of return	Last date for issue of notice u/s 143(2)	Remarks.
2013-14	20.09.2013	30.09.2013	30.09.2014	Not an abated assessment

On the date of search on 08.07.2015, assessment for A.Y. 2012-13 was a completed assessment as the time period to issue notices u/s 143(2) had already expired. This was also not an abated assessment as appears from the assessment order and confirmed in the submission of the appellant. Therefore, in this-AY, additions on account of forfeiture of advance received against sale of property could have been made by AO only on the basis of incriminating material/evidence found during the search proceedings. However, in view of the para 7.2, reference to the agreement to sell and agreement to cancel can not be considered as reference to incriminating material found during search operation.

5.5 In view of above, since the assessment year under consideration is a completed assessment year, any addition/disallowance ought to have been made by AO on the basis of /evidence as such incriminating material/evidence as found during the search proceedings in view of various decisions, including CIT Vs. Kabul Chawla(supra), of Hon'ble Jurisdictional High Court. In view of this, the aforesaid additions made by AO on account of unexplained investment/money u/s 69A of the IT Act, 1961 is not sustainable and deserve to be deleted as the addition had been made during the regular course of assessment proceedings and not

on the basis of incriminating material/evidence found during the search proceedings. I, therefore, delete the aforesaid additions made by AO on account of forfeiture of made by the search proceedings. I advance received against sale of property u/s 68 of the IT Act, 1961 for AY 2012-13. However, if in future the ratio-decidenti of the decision of Hon'ble High Court in the case of CIT vs. Kabul Chawla gets reversed, the appeal will revive on these issues.”

5. On careful perusal of the observations of the ld. CIT (Appeals) we do not find any infirmity in the order passed by the ld. CIT (Appeals). The decisions relied upon by the ld. DR are distinguishable on facts and have no application to the issue on hand. Thus, we sustain the order of the ld. CIT (Appeals) and reject the ground raised by the Revenue.

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

Order pronounced in the open court on : 25/05/2023.

Sd/-  
( SHAMIM YAHYA )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 25/05/2023

*\*MEHTA\**

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	22.05.2023
Date on which the typed draft is placed before the dictating member	23.05.2023
Date on which the typed draft is placed before the other member	25.05.2023
Date on which the approved draft comes to the Sr. PS/ PS	25.05.2023
Date on which the fair order is placed before the dictating member for pronouncement	25.05.2023
Date on which the fair order comes back to the Sr. PS/ PS	25.05.2023
Date on which the final order is uploaded on the website	<del>25.05.2023</del> 25.05.2023
Date on which the file goes to the Bench Clerk	25.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	