

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.2810/Del./2018
(ASSESSMENT YEAR : 2007-08)**

**ITA No.2812/Del./2018
(ASSESSMENT YEAR : 2009-10)**

Rajesh Mangla,
C/o RRA Tax India,
D – 28, South Extension,
New Delhi – 110 049.

vs. DCIT, Central Circle II,
Faridabad.

(PAN : AKBPM6493Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Dr. Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Ms. Banita Devi Neorem, CIT DR

Date of Hearing : 19.06.2023
Date of Order : 21.06.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals are preferred by the assessee against the orders of Id.
CIT (Appeals) for the respective assessment years.

2. Since the issues are common & connected and the appeals were
heard together, they are disposed off by this common order.

3. For the sake of reference, we are referring grounds of appeal for AY 2007-08 which read as under :-

“1. That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153A of the Act.

2. That in any case and in any view of the matter, the assessment framed under section 153A(1)(a) of the Act, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs.6,20,000/- on account of cash deposited in the bank account as alleged income from undisclosed sources and that too in the proceedings u/s 153A of the Act.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.6,20,000/- is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.”

4. Brief facts of the case are that there was a search and seizure operation conducted on 09.05.2012 in the case of assessee. Assessment was framed under section 153A read with section 143 (3) of the Income-tax Act, 1961 (for short 'the Act'). In the assessment order, AO did not mention regarding any incriminating material seized. Rather he mentioned that on perusal of the bank account statement of the assessee, it was noticed that cash deposits were appearing and the total of which was Rs.6,20,000/-. When the assessee was asked to explain the source of the said cash deposits, assessee submitted that cash was deposited out of

earlier withdrawals. However, the AO was not convinced. He held that assessee had not disclosed this income suo moto and this income would not have been unearthed had there been no search on the premises of the assessee. Hence, he made the impugned addition.

5. Assessee challenged the same both on jurisdiction as well as merits before the Id. CIT (A) who rejected the assessee's appeal.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that the issue is squarely covered by the decision of Hon'ble Apex Court in the case of Pr. CIT-3 vs. Abhisar Buildwell P. Ltd. in Civil Appeal No.6580 of 2021 vide order dated 24.04.2023 and the decision of Hon'ble jurisdictional High Court in the case of CIT (Central)-III vs. Kabul Chawla (2016) 380 ITR 573 (Delhi). He submitted that since no incriminating material was found on the basis of which addition has been done, the same is without jurisdiction on the touchstone of the aforesaid precedents.

8. Per contra, Id. DR for the Revenue relied upon the orders of the authorities below.

9. Upon careful consideration, we note that it is undisputed that addition of cash deposit in the bank account has been found from the banks statement of the assessee and no incriminating material was found during the search which is mentioned in the assessment order. In this

view of the matter, the aforesaid Hon'ble Apex Court decision which upheld the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) applies fully. In this case, it was held that completed assessments can be interfered with by AO while making assessment u/s 153A only on the basis of some incriminating material unearthed during the course of search which was not produced or not already disclosed or made known in course of original assessment.

10. In the present case, the issue emanating from the aforesaid case laws is fully applicable. The addition is not made on the basis of any incriminating material found. Hence, the jurisdiction to make the addition u/s 153A of the Act is not valid. Since we have held the jurisdiction of the assessment is not valid, the issue on merits is academic and we are not engaging into the same.

11. Our above order applies *mutatis mutandis* in case of ITA No.2812/Del/2018 for AY 2009-10.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 21st day of June, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 21st day of June, 2023
TS**

Copy forwarded to:

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

AR, ITAT
NEW DELHI.