

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No.2036/Del/2021
(Assessment Year: 2012-13)

DCIT,
Central Circle-4,
New Delhi
(Appellant)

Vs. M/s. SMC Foods Ltd,
4/654, Bomaji Road,
Saharanpur, UP
(Respondent)

PAN: AABCS9564R

Assessee by : Shri. Salil Aggarwal, Sr. Adv
Shri Madhur Aggarwal, Adv
Shri Shailesh Gupta, CA

Revenue by: Shri. Amitabh Kumar Singha, CIT DR

Date of Hearing 19/07/2023
Date of pronouncement 30/08/2023

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the revenue against the order of the Id CIT(A)-23, New Delhi dated 16.06.2021 for AY 2012-13.

2. The Revenue has raised the following grounds of appeal:-

"1. The Ld. CIT (A) erred in holding that no addition based on fresh material received from Investigation Wing can be made in a pending assessment u/s 153A thereby overlooking the fact that in the process the assessee has gone scot-free with respect to the undisclosed income referred in the fresh material.

2. The Ld. CIT (A) has erred in disregarding the fact that the information received from the wing was sufficient to reopen the case u/s 148, if there had been no pending proceedings u/s 153A on the date of such receipt of information.

3. Whether the decision of Hon'ble Delhi Court in the case of CIT vs Kabul Chawla [2016] 380 ITR 573 (Delhi) has any

application in a case where fresh incriminating material about undisclosed income is received from outside agencies when proceedings u/s 153A is pending for the same year.

4. The Ld. CIT(A) erred in law by not invoking provisions of section 150 of the I.T. Act to issue directions to the Assessing Officer to assess the escaped income u/s 148 of the Income Tax Act in view of the fact that as on date of issue of notice u/s 153A, the relevant assessment years could have been taken up u/s 148 of the Income Tax Act and that all the ingredients of proviso to section 147 and the provisions of section 149(1)(b) are fulfilled in the facts of this case."

3. The Id CIT DR submitted that the Id CIT DR erred in holding that no addition based on fresh material received from Investigation Wing can be made in a pending assessment u/s 153A thereby overlooking the fact that in the process the assessee has gone scot-free with respect to the undisclosed income referred in the fresh material. He further submitted that the Id CIT(A) has also erred in disregarding the fact that the information received from the wing was sufficient to reopen the case u/s 148, if there had been no pending proceedings u/s 153A on the date of such receipt of information. The Id CIT DR further submitted that the decision of Hon'ble Delhi Court in the case of CIT vs Kabul Chawla [2016] 380 ITR 573 (Delhi) has not applicable in a case where fresh incriminating material about undisclosed income is received from outside agencies when proceedings u/s 153A is pending for the same year.

4. The Id CIT DR submitted that there is an omission on the part of the Id CIT(A) on conclusion of the order that he could not issued direction to the AO u/s 250 of the Act for initiation of reassessment proceedings u/s 147/148 of the Act. The Id DR submitted that the relief has been granted by the Id CIT(A) to the assessee by considering the irrelevant facts and circumstances therefore, the impugned first appellate order may kindly be set aside by restoring to the AO.

5. Replying to the above the Id Sr. counsel Shri Salil Aggarwal submitted that from the assessment order it is clear that there was no incriminating material found in the hands of the assessee for invocation of provision of section 69C of the Act and making additions in the hands of the assessee. He further submitted that since the search and seizure operation was carried out in the SMC Group of cases on 21.11.2017 in FUY 2017-18 and the return of assessee for AY 2012-13 was filed on 25.09.2012 and the scrutiny assessment order u/s 143(3) of the Act was passed on 31.03.2014 before date of search and therefore it is a case of non abated or completed assessment and hence, in absence of any incriminating material in the hands of the AO no addition could have been made in the hands of the assessee u/s 153A read with section 143(3) of the Act. The Id counsel submitted that the proposition rendered by the jurisdictional Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has been affirmed by the Hon'ble Supreme Court in the case Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 39. Therefore, the order of the Id CIT(A) cannot be alleged as perverse or not sustainable and appeal of the revenue may kindly be dismissed.

6. On careful consideration of the above rival submission, first of all, from relevant para 4.2.1 and 4.2.13, we note that the Id CIT(A) observed that the assessee filed return of income on 25.09.2012 for AY 2012-13 and the assessment order was passed u/s 143(3) of the Act on 31.03.2014. Subsequently, search and seizure operation was carried out in the case of the assessee on 21.11.2017 and in pursuance of search was conducted the assessment was completed u/s 153A of the Act vide order dated 31.12.2019 after making impugned addition of Rs. 2,69,30,000/- on the ground that assessee claimed bogus expenditure of Rs. 1,05,00,000/- and Rs. 1,64,30,000/- with regard to transaction with M/s. Vigneshwara Overseas and M/s. Balaji Sales Corporation. The Id CIT(A), thereafter noted a legal proposition that unless there is an incriminating material qua each of

the assessment year in which addition has to be made in pursuance to search and seizure operation no addition can be made to the returned income in the assessment year where assessment proceedings have been completed before the date of search. This proposition was rendered by Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla (supra) and upheld by the Hon'ble Supreme Court in the case Pr. CIT v. Abhisar Buildwell (P.) Ltd. (supra).

7. On being asked by the bench the Id CIT DR in all fairness, did not controvert the factual position that the assessment for AY 2012-13 was completed on 31.03.2014 in the case of assessee by passing assessment order u/s 143(3) of the Act and thus, present AY 2012-13 was the year of non abated or completed assessment on the date of search 21.11.2017. The search and seizure operation was carried out on 21.11.2017 and the AO made addition only on the basis of books of account of assessee by disallowing expenses claimed by the assessee with regard to transaction with the said two entities treating the same as bogus expenses.

8. The Id CIT(A) para 4.2.5 after considering the above noted factual position, observed that the AO has not mentioned the valid foundation of the above. It was also observed that in the assessment order there is no whisper of any incriminating material having been found, seized and relied upon by the AO related to the impugned addition on account of accommodation entries from M/s. Vigneshwara Overseas and M/s. Balaji Sales Corporation. Therefore, relying on the various judgment including judgment of Hon'ble Jurisdictional Delhi High Court in the case of Kabul Chawla (supra) and in the case Pr CIT Vs. Meeta Gutgutia 395 ITR 526 (Delhi) held that the Id CIT(A) granted relief to the assessee and deleted the addition. The proposition rendered by the Hon'ble Jurisdictional High court of Delhi in the case of Kabul Chawla(supra) and other identical cases has been upheld by Hon'ble Supreme Court in the case Pr. CIT v. Abhisar Buildwell (P.) Ltd. (supra) therefore, we are unable to see any valid

reason to interfere with the findings recorded by the Id CIT(A) and thus we uphold the same. So far as the allegation of omission by Id CIT(A) in issuance of direction to the AO for initiation of reassessment proceedings u/s 147/148 of the Act is concerned even in absence of any such direction the AO is empowered and entitled to invoke said provisions within the ambit of provision of Act. Accordingly, grounds of revenue being devoid of merits are dismissed.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 30/08/2023.

-Sd/-
(B. R. R. Kumar)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 30/08/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi