

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. C. M. Garg, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1841/Del/2022 : Asstt. Year : 2016-17**

Shashi Sharma, KA-5, Kavi Nagar, Ghaziabad-201001 (APPELLANT)	Vs	DCIT, Central Circle, Ghaziabad (RESPONDENT)
<b>PAN No. AGEPS6394R</b>		

**Assessee by : Sh. Rajiv Khandelwal, CA &  
Sh. Gagan Khandelwal, Adv.  
Revenue by : Mr. Waseem Arshad, CIT DR**

<b>Date of Hearing: 10.08.2023</b>	<b>Date of Pronouncement: 06.10.2023</b>
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**ORDER**

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

The present appeal has been filed by the assessee against the order of Id. CIT(A)-4, Kanpur dated 27.06.2022.

2. Following grounds have been raised by the assessee:

*"1. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax Appeal)-4, Kanpur erred in confirming the action of the assessing officer to make an addition of Rs 50,00,000/- to the income of the appellant in respect of unsecured loan received from M/s Amsoft Global Private Limited treating the same as not proved. The addition confirmed is unjustified and bad in law.*

*2. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred to confirm the action of the assessing officer to make an addition of Rs. 50,00,000/- by invoking the provisions of section 68 of the Act and by ignoring the plea, genuine loan is received where Identity, Genuineness and Creditworthiness had been proved. The addition*

*confirmed by the Hon'ble Commissioner of Income Tax (Appeal)-4, Kanpur is unjustified, unwarranted and is bad in law.*

*3. That on the facts and in law and under the circumstances, the issue of the penalty notice under section 271(1)(c) of the Act and also the interest charged under section 234A/B/C/D is thus illegal and bad in law."*

3. A search & seizure operation was conducted u/s 132 of the Income Tax Act, 1961 on 17.01.2019. The Assessment Year before us pertains to A.Y. 2016-17. The assessee has e-filed return of income u/s 139(1) on 15.10.2016. The due date for issue of notice u/s 143(2) was 30.09.2017. No notice u/s 143(2) has been issued to the assessee. Hence, no assessment in the case of the assessee was abated.

4. The assessee is engaged in the business of Trading of Cement under the name of M/s Sona Cement Agency. The assessee has derived income from House Property, Business & Profession and Other Sources during the year under consideration.

5. Excerpts from the Assessment Order (para 4 & 5)

4. In this case, the assessee had e-filed return of income u/s 139(1) of the I.T. Act, 1961 on 15/10/2016 declaring total income of Rs. 9,17,650/- but in the return of income filed by the assessee in response to notice u/s 153A, the assessee has declared total income of Rs. 9,23,650/- which results that the assessee has declared the additional income amounting to Rs. 6,000/- after the search operation conducted u/s 132 of the I.T. Act, 1961. This additional income has been declared by the assessee in return of income filed in response to notice u/s 153A and not in return filed u/s 139(1) of the I.T. Act, 1961.

5. During the year, the assessee has received the following loans from various entities. During the course of assessment proceedings vide Notice u/s 142(1) dated 20.10.2020 and 05.01.2021 and show cause notice dated 23.02.2021, the assessee was specifically asked to furnish the evidence of identity and creditworthiness of the entities from whom loans have been received and prove the genuineness of transaction with them. In reply, the assessee furnished the confirmations, ITR, bank statements and financial statements of these entities. Notices u/s 133(6) of IT act, 1961 were also issued to these entities to which the compliances were made.

6. From the above, we find that,

- The assessee has filed return of income u/s 139(1) on 15.10.2016.
- The due date for issue of notice u/s 143(2) was 30.09.2017.
- The date of search in the case of the assessee was 17.01.2019.
- Hence, it can be said that the assessment is a completed assessment and unabated assessment.
- From para 5 of the Assessment Order mentioned above and also from the Assessment Order, we find that the assessment has been made *devoid* of any material found and seized during the course of search. The additions made has no relation with the seized material.

7. On this issue, we have been guided by the established judgments of Hon'ble Jurisdictional High Court.

8. Reliance is placed on the following case laws:

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

9. 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"*

10. The Hon'ble Delhi High Court 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."*

11. We have gone through the entire plethora of judgments.

12. 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 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.

13. The entire issue stands settled by the judgment of Hon'ble Apex Court in the case of M/s. Abhisar Buildwell P. Ltd. in Civil Appeal No. 6580 of 2021 dated 24.04.2023 wherein the Hon'ble Apex Court held that in case no incriminating material is unearthed during the search, the AO cannot assess or reassess

taking into consideration the other material in respect of completed assessments/unabated assessments. Hence, respectfully following the judgment of Hon'ble Apex Court, we hold that no addition can be made in the case of the assessee sans seized material.

14. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 06/10/2023.

Sd/-

**(C. M. Garg)**  
**Judicial Member**

**Dated: 06/10/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

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

**ASSISTANT REGISTRAR**