

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

ITA No. 1515/Del/2020  
(Assessment Year: 2015-16)

DCIT,  
Central Circle-8,  
New Delhi

(Appellant)

**PAN: AALCS2611M**

Vs. M/s. SMS Packers Pvt. Ltd,  
13A/24, WEA, Chana  
Market, Karol Bagh, New  
Delhi

(Respondent)

Assessee by :  
Revenue by:

Shri Nippur Mittal, CA  
Shri. H. K. Chaudhary, CIT DR

Date of Hearing

12/10/2023

Date of pronouncement

18/10/2023

**ORDER**

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

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-24, New Delhi dated 22.06.2020 for AY 2015-16.
2. The assessee has raised the following grounds of appeal:-  
*"1. The Ld. CIT(A) has erred in law and on facts in holding that addition which was not based on incriminating material found during the search could not be made in assessment u/s 153A of the 1.T.Act and, consequently, deleting addition of Rs.2.80 crore, without going into merits of the same".*
3. The Id CIT DR pressing into service the sole ground of revenue submitted that the Id CIT(A) erred in law and on facts in holding that addition, which was not based on incriminating material found during the search could not be made in assessment u/s 153A of the IT Act. The Id CIT DR vehemently pointed out that since the Id CIT(A) has granted relief

to the assessee without any justifiable basis and reason therefore, first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above, the assessee's representative (AR) supported the first appellate order and drew our attention towards relevant para of first appellate order and submitted that there was no incriminating material found and seized during the course of search and seizure operation in the case of Shri Sanjay Singhal and other group of cases on 13.11.2017, therefore, the Id CIT(A) rightly deleted the addition by following the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Kabul Chawla reported as 61 taxmann.com 412 and PCIT Vs. Meeta Gutgutia (2017) 82 taxmman.com 287 (Delhi).

5. On careful consideration of the above submission, first of all we find it necessary and proper to produce the relevant portion of the above first appellate order as follows:-

*"5.3.1 In Ground No. 4, the appellant has contended that the addition of Rs.2,80,00,000/-made by the learned assessing officer on account of alleged unexplained cash credit u/s. 68 of the Income Tax act, 1961 is beyond the scope / jurisdiction of provisions of section 153A of the Income tax Act, 1961 and, therefore, the addition made is liable to be deleted.*

*5.3.2 The detailed submissions of the appellant are reproduced above. Primary argument of the appellant is that no incriminating material was seized during the course of search with regard to addition of Rs.2,80,00,000/- made u/s 68 of Income Tax Act. The appellant relied upon following case laws:*

- (i) CIT V Kabul Chawla (61 Taxmann.com 412) (Delhi)*
- (ii) Principal Commissioner of Income-tax, vs MeetaGutgutia [2017] 82 taxmann.com 287 (Delhi)*
- (iii) CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645/232 Taxman 270/58 taxmann.com 78 (Bom.).*
- (iv) Jai Steel (India) vs ACIT (2013) 259 CTR (Raj) 281*
- (v) Pr. CIT v Best Infrastructure (India) Pvt. Ltd. [2017] 84 taxmann.com 287 (Delhi)*

*5.3.3 I have perused the assessment order. The Assessing Officer has not relied upon any incriminating material gathered during the course of search. The addition has been made relying upon following evidences:*

- i. *Returned income of M/s Midnight Agencies Pvt. Ltd. and M/s. Motorex Finance Pvt.*
- ii. *Ltd. was very nominal Profit of M/s Midnight Agencies Pvt. Ltd. and M/s. Motorex Finance Pvt. Ltd. Was zero/minimal*
- iii. *M/s Midnight Agencies Pvt. Ltd. and M/s. Motorex Finance Pvt. Ltd. have no fixed assets*
- iv. *Each payment to appellant company is followed by immediate credit from some other entity meaning thereby that loan has not been advanced from available balance.*
- v. *Enquiry report of DDIT (Inv.), Unit-1(4), Kolkata dated 24.12.2019 showed that M/s Midnight Agencies Pvt. Ltd. and M/s. Motorex Finance Pvt. Ltd. are shell companies controlled and managed by Kolkata based entry operator namely Sh. Santosh Kumar Shah. Statements on oath of Sh. Santosh Kumar Shah recorded on 01.02.2012, 31.10.2012 and 11.02.2015 were relied upon*

*5.3.4 A perusal of the assessment order reveals that while making the impugned addition, the Assessing Officer has only mentioned the date of search but has not referred to any incriminating material found during the course of search which could be the foundation of these additions. There is not even a whisper of any incriminating material having been found and relied upon by the Assessing Officer relating to this addition on account of unsecured loan under section 68 of the Act.*

*5.3.5 From perusal of the entire assessment order, it is observed that no incriminating material was unearthed during course of search. There are a plethora of decisions in which the Hon'ble High Courts have held that there can be no valid assessment under section 153A of the Act in the absence of any incriminating material in completed assessments. The appellant had filed return of income u/s 139(1) on 29.09.2012 i.e. before the date of search and the time limit for issue of notice u/s 143(2) had expired on 30.09.2013. In view of above facts and considering written submissions of the appellant, it is held that no addition could be made in the hands of the appellant since no incriminating material was unearthed during course of search and the assessment of the appellant stood completed on the date of search in view of following judgements:*

*(1) Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla [2016] 380 ITR 573 (Delhi) held that completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment. Operative part of the judgment is reproduced below:*

*37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under*

- i. *Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place*
- ii. *Assessments and reassessments pending on the date of the search shall abate. The total income for such AY's will have to be computed by the AOs as a fresh exercise.*
- iii. *The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the total income of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax"*
- iv. *Although Section 153 A 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 AO 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. Obviously an assessment has to be made under this Section only on the basis of seized material."*
- v. *In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (ie, those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. *Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO*
- vii. *Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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."*

*(2) Hon'ble Delhi High Court in the case of Pr CIT vs Meeta Gutgutia [2017] 395 ITR 526 (Delhi) held that invocation of section 153A by revenue for assessment years 2000-01 to 2003-04 was without any legal basis where there was no incriminating material qua each of those assessment years. The operative part of judgment is reproduced below:*

*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 in the being 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 is answered in the negative ie. 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 153 A of the Act against the Assessee in relation to AY's 2000-01 to AY's 2003-04."*

*SLP was dismissed by Hon'ble Supreme Court in above case of Pr CIT vs Meeta Gutgutia [2018] 96 taxmann.com 468 (SC) vide order dated 02.07.2018.*

6. In view of the above, we note that the search and seizure operation in the case of Shri Sanjay Singhal and other group was carried out on 13.11.2017 during the FY 2017-18 pertaining to AY 2018-19. He further submitted that the return of income filed by the assessee company u/s 139 of the Act on 16.01.2016 had already been processed u/s 143(1) of the Act on 28.01.2016 before the commencement of search. Therefore, on the date of search i.e. 13.11.2017 the AY 2015-16, was pertaining to the assessment year which was unabated and completed assessment year.

7. From the relevant para of CIT(A) order it is clear that while making addition the AO has not mentioned the date of search, which can be valid foundation of the addition in the assessment order wherein, the assessment has completed unwarranted. From the above, we note that the Id CIT(A) has listed documentary evidence in para 5.3.3 and referred the judgment of Hon'ble jurisdictional High Court of Delhi in the case of

CIT Vs. Kabul Chawla (supra). Thereafter, considering the submission of the assessee held that no addition could be made in the hands of the assessee in absence of any incriminating material unearthed, found and seized during the course of search operation. Therefore, in view of the judgment of High Court in the case PCIT Vs. Subhash Khattar (ITA No. 60/2017) dated 25.07.2017 Meeta Gutgutia (supra) no valid and sustainable addition can be made in the hands of the assessee since no incriminating material was found and seized during the course of search operation. Therefore the Id. CIT(A) has recorded a sustainable conclusion as per facts and circumstances of the case supported by the proposition of law rendered by Hon'ble jurisdictional High Court in the case of CIT Vs. Kabul Chawla (supra) and thus no interference is called for therein.

8. Accordingly, we are unable to see any ambiguity, perversity or any other valid reason to interfere with the findings recorded by the Id CIT(A) and therefore, we uphold the same. Accordingly, sole ground of Revenue being devoid of merits is dismissed.

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

Order pronounced in the open court on 18/10/2023.

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

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

Dated:18/10/2023  
A K Keot/NV

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi