

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
DELHI**

**BEFORE: DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.319/Del/2020
(Assessment Year: 2011-12)**

The DCIT, Central Circle-30, New Delhi 110055	Vs.	Nikhil Madan legal heir of Late Naveen Madan, 19/14, East Punjabi Bagh, New Delhi 110026
PAN/GIR No. AAWPM 1160 H		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashok Khandelwal, CA
Revenue by	Shri Subhra Chakraborty, CIT(DR)
Date of Hearing	06/11/2023
Date of Pronouncement	08/11/2023

ORDER

PER DR. B.R.R. KUMAR:-

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-27, New Delhi dated 11.09.2019.

2. We have examined the facts of the case and find that the addition has not been made based on the material found and seized during the search & seizure operations conducted on 22.10.2016. The issue with regard to addition in the absence of incriminating material has now been settled.

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

4. 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.*

5. 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"

6. 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."

7. 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.

8. 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.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/11/2023.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(DR.B.R.R. KUMAR)
ACCOUNTANT MEMBER

Delhi; Dated 08/11/2023

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Delhi