

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 829/Del/2022
(Assessment Year: 2011-12)**

DCIT, Central Circle-20, New Delhi.	Vs.	Mahabir Singh Mittal, Delhi.
PAN No: AAHPM8185F		
APPELLANT		RESPONDENT

**C.O.:- 38/Del/2023
Arising from ITA No:- 829/Del/2022
(Assessment Year: 2011-12)**

DCIT, Central Circle-20, New Delhi.	Vs.	Mahabir Singh Mittal, 151-152, Deepali Enclave Pitampura, New Delhi-110035.
PAN No: AAHPM8185F		
APPELLANT		RESPONDENT

Revenue by : Shri Subhra Jyoti chakraborty, CIT(DR)
Assessee by : Shri Amul sinha, Adv.

Date of Hearing : 21.11.2023
Date of Pronouncement : 23.11.2023

ORDER

PER N.K. BILLAIYA, AM

ITA No. 829/Del/2022 by the Revenue and C.O. No. 38/Del/2023 of the assessee preferred against the order of the CIT(A)-27, New Delhi, dated 28.01.2022 pertaining to A.Y. 2011-12. The grievance of the Revenue read as under:

"1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,67,32,350/- made by AO on account of unexplained money u/s 69A of the IT Act.

2. The Ld. CIT(A) has erred in law and on facts in stating that the addition made by AO on account of unexplained investment / money u/s 69A of the IT Act,. 1961 is not sustainable and deserve to be deleted as the addition had been made during the regular course of assessment proceedings and not on the basis of incriminating material / evidence found during the search proceedings.

3. the Ld. CIT(A) has erred in law and on facts in deleting the addition made by the AO in view of the judgment in the case of CIT vs. Kabul Chawla (2016) 380 ITR 0573 as the said decision does not deal with the fact situation that arises in the present case.

3.2 the Ld. CIT(A) has erred by not considering the fact that the Valuation Report was duly called u/s 142A which clearly proved that the value of property is higher than the value shown by the assessee.

3.3 the Ld. CIT(A) has erred in ignoring the fact that the assessee could not file any explanation to the said Valuation report.

4. (a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, amend any/ all the grounds of appeal before or during the course of hearing of the appeal."

The grounds of the cross objection read as under:

"1. That the Ld. AO grossly erred in invoking provisions of Sec, 153A(1)(a) of the Act to the case of the assessee despite the fact that there existed no books of account or document or evidence in his possession on the basis of which it could have been alleged that the assessee had made unaccounted investment.

2. That the Ld. AO grossly erred in law and in facts of the case in relying upon an erroneous and incorrect valuation report prepared by valuer only on the basis of estimations without taking proper cognizance of facts and producing reliable comparable for valuation of land.

3. That the valuation report obtained u/s 142A of the Act in the case of assessee is void-ab- initio because of being obtained without any authority of law and in defiance of settled procedures of law.

4. That the valuation report obtained u/s 142A of the Act in the case of the assessee is void- ab-initio because of being obtained in violation of provisions of Sec. 56(2)(vii)(b) of the Act.

5. That the Ld. AO grossly erred in law and in facts of the case in relying upon a valuation report which was not prepared during the course of assessment proceedings.

6. That the assessee craves leave to add/ alter/ modify/ delete any grounds of appeal during the course of appeal proceedings."

2. Briefly stated the facts of the case are that a search & seizure and survey operation was conducted by the Investigation Wing of the Department on 19.12.2017 in PAN Group of cases. The assessee's premises were also covered in the search. Accordingly, statutory notices U/s 153A of the Act were issued and served upon the assessee pursuant to which the assessee filed a return of income declaring income of Rs. 7,15,010/-.

3. The return was selected for scrutiny assessment and the returned income was assessed at Rs. 2,74,47,360/- by making addition of Rs. 2,67,32,350/- as unexplained money U/s 69A of the Act.

4. The addition was challenged before the CIT(A) on the ground that the addition is devoid of any incriminating material found during the search. Reliance was placed on the decision of the **Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573.**

5. The CIT(A) was convinced with the contention of the assessee and directed the AO to delete the addition. Before us, the DR strongly relied upon the findings of the AO but could not point out any incriminating material basis which the impugned addition was made. The Counsel reiterated what has been stated before the CIT(A).

6. We have carefully perused the orders of the authorities below. The impugned quarrel is no more res-integra as the same has been settled by the Hon'ble Supreme Court in the case of **Abhisar Buildwell Pvt. Ltd. 454 ITR 212** wherein the Hon'ble Supreme Court, on first principles has endorsed the interpretation of Section 153A of the Act in the lead judgment rendered by the Hon'ble Delhi High Court in the case of Kabul Chawla

(supra), that in case where the assessment of an assessment year stood concluded at the time of search and remains unabated, the additions and disallowances are permissible in Section 153A proceedings only qua incriminating material found in the course of search. In the instant case, no incriminating material was found during the search and referred in the assessment order and hence the AO is not entitled to make additions in such completed / unabated assessments. We decline to interfere with the finding of the CIT(A). The appeal by the Revenue is dismissed and the Cross Objection of the assessee being infructuous is also dismissed.

7. In the result, appeal and cross objection both are dismissed.

Order pronounced in the Open Court on 23.11.2023

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 23/11/2023.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21.11.2023
Date on which the typed draft is placed before the dictating Member	22.11.23
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	