

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

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

**Sh. Yogesh Kumar US, Judicial Member**

**ITA Nos. 1764 to 1766/Del/2021  
Asstt. Years : 2009-10 to 2011-12**

The DCIT, Central Circle-31, New Delhi	V s	M/s N V Distilleries & Breweries (North East) Pvt. Ltd., 10 <sup>th</sup> Floor, Vandana Building, 11, Tolstoy Marg, Connaught Place, New Delhi 110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCN 8618 G</b>		

**Assessee by : Sh. Nirbhey Mehta, Adv.**

**Sh. Ashwani Gupta, CA**

**Sh. Neeraj Jain, CA**

**Revenue by : Sh. Subhra Jyoti Chakraborty, CIT-DR**

**Date of Hearing: 09.11.2023**

**Date of Pronouncement: 06.02.2024**

**ORDER**

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

The present appeals have been filed by the Revenue against the orders of Id. CIT(A)-30, New Delhi dated 07.09.2021. Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order. In ITA No. 1764/Del/2021, the assessee has raised the following grounds:

*"1. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,51,00,000/- made by the AO on account of share application money received by the assessee company.*

*2. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 4,15,250 /- made by the AO on account of commission expense incurred by the assessee.*

*3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition relying on the decision of Kabul Chawla, without appreciating the fact that the Hon'ble Supreme Court of India has admitted SLP vide Diary No. 37848/2015 in the case of APAR Industries Ltd. decided by Hon'ble Bombay High Court in ITA No. 1669 of 2013 dated 08.05.2015 which is a led cases tagged with more than 115 issues on the issue of restriction of additions only to incriminating materials found during search. Therefore, withdrawal of SLP in the case of Kabul Chawla on account of Low Tax Effect leading to reporting of dismissal SLP by Hon'ble Supreme Court is mitigated by admission SLP by Hon'ble Supreme Court in the case of APAR Industries Ltd as mentioned above, tagged with 115 cases as a lead case.*

*4. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.*

*5. That the grounds of appeal are without prejudice to each other."*

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 20.04.2017. 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 appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 06/02/2024.

**Sd/-**  
**(Yogesh Kumar US)**  
**Judicial Member**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 06/02/2024**

\*NV, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, DELHI**