

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 1911/Del/2019
Assessment Year 2011-12

DCIT Central Circle – 08, New Delhi	Vs.	M/s. Charles (India) Pvt. Ltd Room No.603, 27, Weston Street, Kolkata – 700 012
TAN/ PAN : AABCC 0116 H		
(Appellant)		(Respondent)

Applicant by:	Shri Amit Goel, C.A. and Shri Pranav Yadav, Adv.		
Respondent by:	Shri Surender Pal, CIT-D.R.		
Date of hearing:	08	10	2024
Date of pronouncement:	28	11	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-24, New Delhi ('CIT(A)' in short) dated 31.12.2018 arising from the assessment order dated 31.12.2017 passed by the Assessing Officer (AO) under Section 153A/143(3) of the Income Tax Act, 1961 ('the Act') concerning A.Y. 2011-12 in question.

2. The grounds of appeal raised by the Revenue read as under:

“1. The order of Ld. CIT(A) is not correct in law and facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,21,41,000/- made by assessing officer on account of disallowance of loss claimed by assessee on account of forfeiture of share application money even when the investment was made by the assessee in the companies which are controlled & managed by same group

which control the assessee & the transactions were controlled transaction to shift the profit from assessee company to other group companies.

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 72,26,547/- made by assessing officer by disallowing loss claimed on sale of shares even when the investment was made by the assessee in the company which is controlled & managed by same group which control the assessee, the camouflaged transaction of sale of shares was controlled transaction by way of forming a cartel & was on account of conscious decision to shift the profit through transfer of shares from assessee company to other group companies.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in, not upholding the assessment order passed u/s. 153A of the Act on the ground that no incriminating material was found during the search on the basis of which additions have been made by the assessing officer as held in the case of Kabul Chawla, even when, the principal laid down in the Judgement of Hon'ble High Court in the case of Kabul Chawla has not been accepted by the Revenue & S.L.P. there against has been filed which is pending for adjudication before the Hon'ble Apex Court.*
5. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that in assessment order passed u/s. 153A of the Act, no incriminating material was found during the search on the basis of which additions have been made by the assessing officer even when the assessing officer on the basis of statement of director recorded during the course of search operation & details of large number of companies found at his premise proved that these all were the companies which were controlled & managed by the SMC group & loss on account of forfeiture of share application money & transfer of shares as claimed in the account was on account of controlled transactions and not genuine.*
6. *The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

3. When the matter was called for hearing, the learned CIT-D.R. for the Revenue referred to and relied upon the assessment order.

4. Per contra, learned Counsel for the assessee on the other hand, submitted at the outset that a search was carried out on 19.02.2016. No assessment was pending for A.Y. 2011-12 at the time of search. The additions made by the AO is also not based on any incriminating material found in seized during the search. In this backdrop, the CIT(A) following the decision

rendered in the case of *CIT vs. Kabul Chawla 380 ITR 573 (Del)* has held that the additions made by the AO is not sustainable. The learned Counsel submitted that the view taken by the Hon'ble Delhi High Court in the case of *Kabul Chawla (supra)* has been fortified in the case of *PCIT vs. Abhisar Buildwell Pvt. Ltd. (2023) 149 taxmann.com 399 (SC)*. The learned Counsel thus submitted that the appeal of the Revenue is not sustainable on the face of it.

5. We have carefully considered the rival submissions and perused the case records. The CIT(A), on perusal of facts on records, found that the additions made by the AO in the assessment order passed under section 153A r.w. Section 143(3) of the Act is beyond the scope of jurisdiction available under section 153A of the Act. The CIT(A) has dealt with the issue as under:

*“5.2 Ground Nos. 1 & 2 of appeal are bunched together with Ground No. 3 for proper adjudication. On careful consideration, I find the AO has not disputed that no incriminating material was found or seized in course of search action on the appellant. The AO has specifically accepted in his remand reports that there is no specific seized material relating to transactions of the appellant leading to addition made in the assessment order. I do hold that by virtue of provisions of section 153A the A.O. gets the jurisdiction of assessment / reassessment over the assessee. However, these provisions do not provide the AO with power to make addition on any issue in respect of the year for which no assessment is pending as on date of search and in respect of which no incriminating material has been found during the course of search. In the instant case no assessment proceedings were pending for AY 2011-12 as on date of search (19.02.2016). It is fully established that no incriminating material was found during the course of search action. In the remand reports the AO has admitted the fact that the additions made were not based on any specific seized document and that the additions were based on the financials of the company. At this stage it is relevant to consider the judgement of the Hon'ble Delhi High Court in the case of *CIT (Central-III) vs. Kabul Chawla [380 ITR 573 (Del)]* which has held as under:*

“37. On a conspectus of Section 1534(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 1534(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 AYs 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." (emphasis supplied)*
 - 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.*
- 38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed.*

Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

5.3 In the case of PCIT (Central-II), New Delhi vs. Meeta Gutgutia 390 ITR 496 (Del), has held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search is not justified in absence of incriminating material found during search qua each such earlier assessment year. It is important to note that the Hon'ble Supreme Court of India dismissed vide its order dated 02.07.2018 Special Leave Petition(SLP) filed by the Revenue against the order dated 25.05.2017 of the Hon'ble High Court of Delhi in the case of Meeta Gutgutia.

5.4 With regard to the observation of the AO in his remand reports that the appellant company is a bogus concern, I find that there is substantial force in the contention of the appellant in written submissions filed in course of appellate proceedings. It has been submitted that the appellant company is a registered non-banking finance company. It is maintaining regular books of accounts which are duly audited every year and filed with various statutory authorities including Income Tax Department, Registrar of Companies, RBI etc. The appellant company has been a regular income tax assessee. The assessment of the appellant company has been scrutinized in the past u/s 143(3) of the Act. The fact that the appellant company has been maintaining regular books of accounts find mention in the scrutiny assessment made u/s 143(3) of the Act. Accordingly I do not find any sound reason or legal basis for treating the company as bogus company. With regard to the observation of the AO in the remand report dated 24.12.2018 that the appellant has given consent only for one addition pertaining to A.Y. 2010-11 on the issue of treating stock-in-trade as forfeiture of investment and not for all the additions, it has been clarified by the appellant company that it is a registered non-banking finance company and the main business of the company is to invest in securities and granting of loans and advances. As per the assessment order the appellant company filed reply stating therein that the appellant company had no objection if the losses of Rs. 4,21,41,000/- and Rs.72,26,547/- on account of forfeiture of shares and sale of shares respectively are treated as of investment instead of stock-in-trade. According to the appellant, this was because whether it was stock-in-trade or investment, considering the nature of business of the company, losses anyway were to be treated as business losses.

5.5 With regard to statement of Sh. Dhananjay Shukla as referred to in the assessment order by the AO, it is seen that the statement recorded has no relation with the additions made by the AO. There is no reference in the statement to the transactions for which additions were made by the AO. No query regarding such transactions were raised while recording statement of Sh. Shukla u/s 132(4) of the Act. There is no confession or surrender of any income in the statement. Even otherwise, in view of the various case laws as referred to in the written submissions of the appellant, it is a settled law that the statement recorded cannot by itself be a ground for making addition without any corroborating evidences.

5.6 In view of the facts stated above, and following the ratio of the judgements of the Hon'ble High Court of Delhi in the cases of CIT (Central-III) vs. Kabul Chawla 380 ITR 573 (Del) and PCIT (Central-II), New Delhi vs. Meeta Gutgutia 390 ITR 496 (Del), I hold that the addition of Rs.4,93,67,547/- (additions of Rs. 4,21,41,000/- and Rs.72,26,547/- on account of forfeiture of shares and sale of shares respectively) made by the AO was beyond the scope of the provisions of section 153A of the Act and therefore, deleted. Considering the facts and circumstances of the instant case and legal position stated above, Ground No. 1 is dismissed but Ground Nos. 2 & 3 are allowed.”

6. A mere perusal of the facts available on record would show that the additions made in the unabated assessment for A.Y. 2011-12 in question are *dehors* any incriminating material. Thus the ratio of Abhisar Buildwell Pvt. Ltd. (supra) shall squarely apply. The CIT(A) has reached the conclusion and granted relief on sound legal basis. There is no reason to interfere with the order passed by the CIT(A).

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

Order pronounced in the open Court on 28/11/2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: 28/11/2024

Priya Yadav, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar