

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 2697 to 2703/Del/2016
Assessment Years: 2006-07 to 2012-13

Sh. Amit Katyal, C-654, New Friends Colony, New Delhi	Vs.	Pr. CIT, 7 th Floor, HSIIDC Building, Udyog Vihar, Phase-V, Gurgaon
PAN : AAEPK4669H		
(Appellant)		(Respondent)

Assessee by	Sh. V.S. Rastogi, Adv.
Department by	Sh. S.S. Rana, CIT(DR)

Date of hearing	28.11.2016
Date of pronouncement	30.11.2016

ORDER

PER O.P. KANT, A.M.:

These appeals by the assessee are directed against order passed by the learned Commissioner of Income-tax (Central), Gurgaon, for assessment years from 2006-07 to 2012-13.

2. The learned Commissioner of Income Tax (Central) invoking the authority under section 263 of the Income-tax Act, 1961 (for short ~~the Act~~) passed identical orders setting-aside the assessments made under section 153A(1)(b) of the Act by the Assessing Officer for the assessment years from 2006-07 to 2012-13. In all these appeals, the assessee has effectively challenged the proceedings under section 263 of the Act. Since the issue involved in all the appeals is identical, same are heard together and disposed off by this consolidated order for the

sake convenience and brevity. The assessee has raised identical grounds in all the appeals, therefore, we are reproducing grounds in ITA No. 2697/Del/2016 for assessment year 2006-07 only as under:

- 1. That on the facts and the circumstances of the case the order passed by the Commissioner of Income Tax u/s 263 of the Income-tax Act, 1961 is bad in law and void ab-initio.*
- 2. That on the facts and circumstances of the case the assumption of jurisdiction u/s 263 of the IT Act, 1961 by the Commissioner of Income Tax is bad in law rendering the notice issued u/s 263 of the Income-tax Act, 1961 as bad and liable to be quashed, and so also the order passed in pursuance of the said notice.*
- 3. That on the settled principles of law the issuance of notice u/s 263 of the IT Act, 1961 by the Commissioner of Income Tax, on the facts and circumstances of the present case, was erroneous and unwarranted.*
- 4. That the order passed by the Commissioner of Income Tax settling aside the assessment order passed by the Assessing Officer and requiring him to pass a fresh order was bad both on facts and in law.*
- 5. The appellant craves permission to add, amend, alter or vary all or any grounds of appeal on or before the date of hearing of the appeal.*

3. The facts in brief of the case are that, a search action under section 132 of the Act was carried out at the premises of the assessee on 09/11/2011 and in pursuance thereto notices under section 153A of the Act were issued for the captioned years and respective assessments were completed on 24/03/2014 under section 153A of the Act. The learned Commissioner of Income Tax (Central) issued notices under section 263 of the Act on 07/07/2015 for those years. The contents of the notice issued for assessment year 2006-07, which has been reproduced by the learned Commissioner of Income Tax in the impugned order are as under:

“As per the balance sheet filed, you have obtained, inter alia, loans of Rs.1.30 lakh and Rs.1.36 lakh from M/s. Global Communication and Sh. Vaibhav Ratna respectively. However, during the assessment proceedings, confirmation of these two loans had not been filed. Consequently, these loans remained unverified and unsubstantiated as no enquiry was caused by the Assessing Officer into the genuineness of these credits. Considering the fact that you failed to discharge your primary onus of proving the identity of the lenders, their creditworthiness and the genuineness of the loan transactions, adverse inference ought to have been drawn by the Assessing Officer. The failure to do so has rendered the assessment order erroneous as well as prejudicial to the interest of the revenue.”

3.1 Before the Commissioner of Income Tax (Central) the assessee referred to the decision of the Hon^{ble} Delhi High Court in the case of CIT vs. Kabul Chawla, 380 ITR 571 (Delhi) and objected the proceedings under 263 of the Act as on the date of search the said assessment for assessment year 2006-07 already stood completed under section 143(1) of the Act and no incriminating material was found during the course of search, hence no addition could have been made in the case of the assessee. Therefore, there was no error in the assessments and no prejudice was caused to the Revenue and hence it was not permissible to invoke the provisions under section 263 of the Act.

3.2 The learned Commissioner of Income-tax (Central), however, observed that that the Department had challenged the decision of the Hon^{ble} Delhi High Court in the case of CIT Vs. Kabul Chawla (supra) before the Hon^{ble} Supreme Court . He also observed that in an another decision of Hon^{ble} Karnataka High Court in the case of Canara Housing Development Company Vs. DCIT, Central Circle-1, Bangalore, it was held that total income including income which has been returned in the earlier return could be subject matter of assessment under section 153A of the Act. In view of the observations, the learned Commissioner of

Income Tax (Central) dismissed the preliminary objection of the assessee against initiating proceedings u/s 263 of the Act. The learned Commissioner of Income Tax (Central) further observed that the assessee did not file confirmation of the parties/relevant documentary evidence to prove the identity, genuineness and creditworthiness of the creditors under reference, even during the proceedings under section 263 of the Act before him.

3.3 With these observations, the learned Commissioner of Income Tax (Central) concluded that the Assessing Officer failed to examine the identity/genuineness and creditworthiness of the creditors under reference and accordingly held the assessment order as erroneous and prejudicial to the interest of the revenue and set aside the same on the limited issue of the examination of the creditors under reference.

3.4 Before us, the learned counsel of the assessee contested that there was no error in the order of the Assessing Officer and as such it cannot be held as erroneous and prejudicial to the interest of the revenue. The learned counsel submitted that the observation of the learned Commissioner of Income Tax (Central) were erroneous due to following reasons:

1. As on date there was no order on the SLP by the Department in the case of Kabul Chawla (supra) and as such the judicial discipline required that the order of the higher appellate authority should have been followed by the subordinate authority unless its operation is suspended by the competent court. In this connection, the learned counsel relied on the finding of the Hon^{ble} Supreme Court in the case of Union of India Vs. Kamalakshi Finance Corporation Limited AIR 1992 SC 711, 712 (SC). It was submitted that there has been no suspension of the order of Sh. Kabul Chawla (supra), which being a

jurisdictional High Court, the objection of the learned Commissioner of Income Tax (Central) did not survive.

2. The decision of the Hon^{ble} Karnataka High Court in the case of Canara Housing Development and Company (supra) was no longer required to be followed as in another decision of the Hon^{ble} Karnataka High Court in the case of CIT Vs. Lancy Construction, 237 Taxman 728 (Kar), the view taken by the Hon^{ble} Delhi High Court in the case of Kabul Chawla and Hon^{ble} Bombay High Court in the case of CIT Vs. All Cargo logistics Ltd 374 ITR 645 (Bom) have been endorsed.
3. In the case of CIT, Nagpur Vs. Murli Agro Products Ltd. (ITA No. 36 of 2009), the Hon^{ble} High Court of Nagpur, quashed the proceeding under Section 263 of the Act due to similar reasons.

3.5 The learned counsel submitted that the Assessing Officer has taken action in accordance with law, in not examining the creditors and the view of the Assessing Officer has been upheld by the jurisdictional High Court in the case of Kabul Chawla (supra) and therefore there was no error in the order of the Assessing Officer and thus it cannot be held erroneous by the learned Commissioner of Income Tax (Central) .

3.6 The learned Commissioner of Income Tax (Departmental Representative), on the other hand, relied on the order of the Commissioner of Income Tax (Central) and prayed that the impugned order might be sustained.

3.7 We have heard the rival submissions and perused the relevant material on record. We find that in the instant case the jurisdiction of the learned Commissioner of Income Tax (Central) in invoking proceeding under section 263 of the Act has been challenged. For invoking the

proceeding under section 263 of the Act, the twin conditions of the order being erroneous so as to be prejudicial to the interests of the Revenue need to be satisfied. The learned Commissioner of Income Tax (Central) has held that the Assessing Officer did not examine the two creditors, namely, M/s Global Communication (Rs.1.30 lakhs) and Sh. Vaibhav Ratna (Rs.1.36 lakhs). The learned counsel has submitted that in view of the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra), no assessment was pending in the case and so addition could have been made only on the basis of incriminating material found during the course of search and no addition could have been made other than based on an incriminating material. According to him, the action of the Assessing Officer in not examining the creditor was thus in accordance with law and there was no error in the order of the Assessing Officer. We agree with the contention of the learned counsel of the assessee. The fact that assessment in the year under consideration stood completed under section 143(1) of the Act, was not in dispute as the Commissioner of Income Tax (Central) has also accepted this fact. The Hon'ble Jurisdictional High Court in the case of Kabul Chawla has held that in case of completed assessments, addition could have been made only on the basis of incriminating material found during the course of search. Evidently, no addition could have been made by the Assessing Officer in respect of the creditors under reference in the assessment under section 153A of the Act, as no incriminating material has been found in relation to the creditors under reference. In view of above, we do not find any error in the assessment order passed by the Assessing Officer under section 153A of the Act and thus the twin conditions for invoking jurisdiction under section 263 of the Act are not satisfied. Accordingly, the order passed by the Assessing Officer under Section 153A cannot be

said to be erroneous so as to be prejudicial to the interest of Revenue. We thus hold that the order passed by the CIT is not a valid order and same is quashed. In the result, assessment order dated 24.03.2014 u/s 153A of the Act passed by the Assessing Officer is restored and grounds of the appeal are allowed. Consequently, the appeal in ITA No. 2697/Del/2016 is allowed.

4. The issues involved in ITA No. 2698/Del/2016 (AY : 2007-08) and ITA No. 2700/Del/2016 (AY: 2009-10) are identical to the issues involved in ITA No. 2697/Del/2016 (AY: 2006-07), which we have decided above, thus, grounds in ITA Nos. 2698/Del/2016 and 2700/Del/2016 are decided mutatis mutandis to the grounds in ITA No. 2697/Del/2016 and both these appeals are also allowed.

5. At last, learned counsel for the assessee submitted that he wants to withdraw the appeals filed in ITA Nos. 2699/Del/2016 (AY:2008-09), 2701/Del/2016 (AY:2010-11), 2702/Del/2016 (AY: 2011-12) and 2703/Del/2016 (AY : 2012-13). Accordingly, the aforesaid appeals are dismissed as withdrawn.

6. In the result, the appeals in ITA No. 2697/Del/2016, 2698/Del/2016, 2700/Del/2016 are allowed and the appeals in ITA Nos. 2699/Del/2016, 2701/Del/2016, 2702/Del/2016 and 2703/Del/2016 are dismissed as withdrawn.

The decision is pronounced in the open court on 30th Nov., 2016.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 30th November, 2016.
Laptop/-

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

ITA Nos. 2697 to 2703/Del/2016
AYs: 2006-07 to 2012-13

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi