

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

**BEFORE SH. H.S.SIDHU, JUDICIAL MEMBER
AND
SH.ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**I.T.A .No.-52/Del/2014
(ASSESSMENT YEAR-2006-07)**

ACIT, Central Circle-3, New Delhi. (APPELLANT)	Vs	Superb Developers (P.) Ltd., WZ-183, F.F., Lane No.4, Lajwanti Garden, New Delhi. PAN-AAICS4437L (RESPONDENT)
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Assessee by	Sh.S.S.Rana, CIT DR
Revenue by	Sh.Suresh K.Gupta, Adv.

ORDER

PER ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

(A). The present appeal has been filed by the Revenue against the order dated 25.10.2013 of CIT(A)-1, New Delhi pertaining to A.Y. 2006-07. Grounds of appeal are as under:-

1. *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs.83,00,000/- u/s 68 of the Act w.r.t procurement of accommodation entries through share application money from non-descript companies.*
2. *The Commissioner of Income tax (Appeal) erred in law and on facts in deleting an addition of Rs.41,500/- made by the AO w.r.t. commission paid @ 5% for procurement of accommodation entries through share application money from non-descript companies.*
3. *The Commissioner of Income tax (Appeal) erred in admitting additional evidence under Rule 46A.*
4. *(a)The order of the CIT(A) is erroneous and not tenable in law and on facts.*

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

(B). The assessee filed original return of income on 21.03.2007 declaring NIL income. Later, search u/s 132 of the I.T.Act, 1961 was conducted in the case of the assessee and notice u/s 153A of the I.T.Act, 1961 (in short “Act”) was issued on 13.04.2010 for furnishing of return of income within 16 days of service of the notice. In response to the aforesaid notice the assessee filed a letter dated 18.04.2011 stating therein that return of income filed originally as per provisions of section 139 of the Act may be treated as filed in response to notice issued u/s 153A of the I.T.Act. Assessment order dated 29.12.2011 was passed u/s 143(3) r.w.s. 153A of I.T.Act wherein the following additions, totaling Rs.83,41,500/-were made:-

i).	<i>on a/c of share application money</i>	<i>Rs.83,00,000/-</i>
ii).	<i>on a/c of commission</i>	<i>Rs. 41,500/-</i>
	<i>Totaling</i>	<u><i>Rs.83,41,500/-</i></u>

(B.1). The aforesaid addition of Rs.83,00,000/- was made by the Assessing Officer on the ground that the assessee had taken accommodation entries towards share application money. Moreover, the aforesaid addition of Rs.41,500/- was made by the AO on the account of estimated commission paid by the assessee @ 0.5% of the aforesaid

Rs.83,00,000/- . The assessee filed appeal before Ld.CIT(A), who vide impugned appellate order dated 25.10.2013 deleted the aforesaid additions totaling Rs.83,41,500/- on merits, holding that the allegations of the Revenue regarding accommodation entries taken by the assessee had no basis and that the additions were ill-conceived and unfounded. The Revenue has filed this appeal against the aforesaid order dated 25.10.2013 of Ld.CIT(A). At the time of hearing before us, Ld. Counsel for the assessee contended that the matter is covered in favour of the assessee by order of Jurisdictional Delhi High Court in the case of *CIT vs Kabul Chawla 380 ITR 573 (Delhi)* and sought to support the order of the Ld.CIT(A) vide application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, the relevant portion which is reproduced below:-

“The appellant seeks your kind permission to move application under Rule 27 of the Appellate Tribunal Rules 1963 to support the order under appeal.

The Ld CIT (A) has allowed the relief to the respondent assessee on merits deleting the additions of Rs 83,41,500/- after considering the facts of the case. The Ld CIT (A), however, has not allowed the legal submission of the appellant that in the absence of the incriminating material found in the course of search u/s 132 of the Act, the AO is not entitled to make addition where the assessment of the appellant had not abated under second proviso to section 153A of the Act.

Accordingly the following ground is raised for consideration of the Hon'ble Bench under Rule 27 of the appellate Tribunal Rules 1963

"That on the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the proceedings initiated under Section 153A of I.T. Act, which is bad in law in the absence of any incriminating material belonging to the assessee being found during the course of search".

The respondent assessee seeks to support the order of the Ld CIT(A) under above Rule as this ground has been decided by the Ld CIT (A) against the assessee in pages 6 to 10 of the order of Ld CIT (A) in Appeal for AY 2006-07 which is the order followed by the Ld CIT(A) in the assessment year under consideration.

The appellant relied on various authorities before the first appellate authority to canvass the above legal proposition but subsequent to the passing of the impugned order of appeal, the Hon'ble jurisdictional High Court in CIT Vs Kabul Chawla 380 ITR 573 (Del) has come up with the ruling in favour of the assessee and therefore the ruling given in the above case has the binding effect on the assessee being in the jurisdiction of the Hon'ble Delhi High Court."

(B.1.1). Ld. counsel for the assessee also supported the order of Ld.CIT(A) on merits. Ld.CIT (Departmental Representative), (in short "CIT DR") who appeared on behalf of the Revenue supported the order of the AO. He also relied on the precedents in the cases of *E.N.Gopakumar vs CIT [2016] 75 taxmann.com 215 (Kerala); CIT vs Raj Kumar Arora [2014] 52 taxmann.com 172 (Allahabad)/ [2014] 367 ITR 517 (Allahabad); CIT vs Kesarwani Zarda Bhandar Sahson Alld. [ITA No.270 of 2014] [Allahabad]; Cit vs St.Francis Clay Décor Tiles [385 ITR 624]; and Smt. Dayawanti vs CIT [75 taxmann.com 308]*. The Ld. counsel for the assessee replied with the submission that the order of Jurisdictional High Court in the case of Kabul Chawla (supra) is a

stronger precedent as compared to orders of non-jurisdictional High Courts. Further, he submitted that the case of the assessee is distinguishable from the case of Smt. Dayawanti vs CIT (supra) because, unlike in the case of Smt. Dayawanti vs CIT (supra), in the instant case there was no incriminating material or evidence (whether by way of statement or document or asset etc.) against the assessee unearthed as a result of search u/s 132 of I.T.Act relevant for any of the assessment years. The Ld.CIT DR did not dispute the fact that there was no incriminating material or evidence (whether by way of statement or document or asset etc.) against the assessee as a result of search u/s 132 of I.T.Act relevant for any of the assessment years.

(C). We have heard both sides patiently. We have also perused all materials carefully. We have considered all the precedents brought to our attention. On perusal of paragraph 4.1 of the impugned appellate order dated 25.10.2013 of Ld.CIT(A), we find that no proceedings were pending for this assessment year on the date of search. Further, it is an undisputed fact that in the instant case there was no incriminating material or evidence (whether by way of statement or document or asset etc.) against the assessee as a result of search u/s 132 of I.T.Act relevant for any of the assessment years. In these facts and circumstances, we are of the view that the order of Hon'ble

Jurisdictional High Court in the case of **CIT vs. Kabul Chawla** 380 ITR 573 (Delhi) provides better guidance than the case of Dayawanti vs CIT (supra). In the case of CIT vs Kabul Chawla (supra) the Hon'ble jurisdictional High Court held as under:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (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 ITA Nos. 707, 709 and 713 of 2014 of assessment has to be made under this Section only on the basis of seized material.”

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 (i.e. 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.”

(C.1). In the instant case, the additions have been made by the AO despite the fact that there was no incriminating material (whether by way of statement or document or asset, etc.) unearthed during the course of search relevant for any assessment year. Also, no proceedings were pending for this assessment year on the date of search. In these facts and circumstances, we are of the considered view that the matter is squarely covered in favour of the assessee by precedent of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra). Respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra), we hold that in the absence of any incriminating material unearthed during the course of search, the AO had no jurisdiction to initiate proceedings u/s 153A of the Act when no assessment proceedings were pending for this.

Assessment Year on the date of search. Accordingly, we hold that the assessment order dated 29.12.2011 u/s 143(3) r.w.s. 153A of the I.T.Act and the additions made therein were without jurisdiction. Hence, we annul the assessment order dated 29.12.2011 u/s 143(3) r.w.s 153A of the Act. Consequently, the additions made in the assessment order have no legs to stand. Thus, we dismiss the appeal of the Revenue on jurisdictional issue. We wish to clarify that we have not expressed any opinion on the issue of merits of the addition made by the AO because we have already dismissed the appeal of the Revenue on jurisdictional issue and, as a result of which the issue of merits of the addition does not require adjudication being purely academic.

(D). In the result, the appeal of the Revenue is dismissed for statistical purposes.

The order pronounced in the open court on 21st April 2017.

Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER
Date:- 21st April, 2017

Amit Kumar

Copy forwarded to:

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

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI