

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.3246/Del/2018
Assessment Year: 2011-12
&
ITA No.3247/Del/2018
Assessment Year: 2012-13

DCIT Central Circle-19, New Delhi.	Vs.	Forum Sales Pvt. Ltd. C-134, Defence Colony, New Delhi.
PAN :AAACF0285H		
(Appellant)		(Respondent)

Appellant by	Ms. Nidhi Srivastava, DR
Respondent by	Sh. Hiren Mehta, Adv.

Date of hearing	04.12.2019
Date of pronouncement	04.12.2019

ORDER

PER B.R.R. KUMAR, A.M:

The present appeals filed by the Revenue are directed against the common order dated 28.02.2018 passed by learned Commissioner of Income Tax (Appeals)-27, New Delhi, pertaining to the AYs 2011-12 & 2012-13 raising the similar grounds of appeal. (AY 2012-13 reproduced)

- 1. "The Ld. CIT(A) has erred in holding that completed assessment could not be interfered with by the*

Assessing Officer without incriminating material, whereas the provisions of Section 153A of the IT Act, 1961 do not stipulate any such restrictions on the powers of the Assessing Officer.

- 2. The Ld. CIT(Appeals) has erred in law and on the facts in deleting the addition of Rs. 74,74,803/- on account of estimation of unaccounted profit.*
- 3. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 29,07,267/- on account of disallowance of expenses.*
- 4. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 14,61,443/- on account of unaccounted profit with different parties.*
- 5. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 10,00,000/- on account of deemed dividend u/s 2(22)(e).*
- 6. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 4,92,24,373/- on account of inflated purchases.*
- 7. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 50,000/- on account of disallowance u/s 40A(3).*
- 8. (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 of the grounds of appeal before or during the course of the hearing of the appeal.”

2. The facts of the case, in brief are that the assessee M/s. Forum Sales (P) Ltd. is engaged in providing corporate gifting solutions to various companies. Search & seizure and survey operations under section 132/133A of the Income Tax Act, 1961 were conducted on 15.02.2014 and subsequent dates in the case of the assessee alongwith other cases of the AMQ Group at various residential & business premises. In response to notice u/s 153 A of the Act, the assessee filed the return of income of Rs. 62,93,632/- for the AY 2011-12 and Rs.77,31,688/- on 24.07.2015 for A. Y. 2012-13.

3. The Assessing Officer made additions on the above grounds based on the record available with them. Before the Ld. CIT(A), the assessee has taken arguments that assessment years 2011-12 & 2012-13 are completed assessments and issue for notice u/s 143(2) has elapsed at the time of search proceedings undertaken and secondly, assessments u/s 153A has to be essentially based on documents unearthed during the course of search and seizure operation. The assessee has challenged the additions/disallowances on the ground that since the assessments for the years in question were completed assessments and in absence of any incriminating material having been found during search, additions in its case could not have been made by Assessing Officer.

4. The Ld. CIT(A) accepting the contention of the assessee deleted the addition holding as under:

12. *“As it is reflected from assessment orders, a search and seizure operation was conducted by the Investigation Wing of the Department in the cases of M/s AMQ Group and during the searches, the business premises of assessee at C-134, Ground Floor,, Defence Colony, New Delhi-110024 was also covered u/s 132(1) of I.T. Act. Accordingly, the notices u/s 153A of the Act were issued by AO and, in reply, appellant filed returns of income. It is also clear from the assessment orders that in all the seven years i.e. A.Y. 2008-09 to A.Y. 2014-15, additions have been made on the grounds of inflated/bogus purchases, disallowance of expenses, estimation of profit, deemed dividend u/s 2(22)(e) etc. However, no addition/disallowance has been made on the basis of any incriminating evidence found during the search proceedings. The assessment orders do not speak about finding of any incriminating documents/evidence during the search proceedings in the case of appellant. The addition made on account of undisclosed profit @7.8% derived from transactions with M/s Jagatjit Industries Ltd. and M/s Hari Mohan Enterprises is also based on incriminating document/evidence found in the case of appellant for A.Y. 2013-14 and A.Y. 2014-15 which cannot be applied in earlier years.*

12.1 *In such situation, when no incriminating evidence is found and assessments in these years are completed assessments, can any addition/disallowance be made, the issue has been dealt with and answered by Hon'ble*

Jurisdiction High Court in the case CIT Vs Kabul Chawla, as mentioned by appellant in its submissions. Hon'ble Court has taken a view in such cast that although section 153A 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section only on the basis of the seized material. It is further opined by Hon'ble Court that completed assessment can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found 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. In the subsequent decisions also, Hon'ble Court has substantiated the aforesaid view. In the case Pr. CIT vs Ram Avtar Verma 395 ITR 252, Hon'ble Court has reiterated the aforesaid finding that if the assessments are completed on the date of search and no incriminating material is found during the search assessment u/s 153A of the Act is invalid. Similar view has been taken by Hon'ble Court in the recent case i.e.

Pr. CIT vs Meeta Gutgutia 395 ITR 526 also wherein assessments were completed on the date of search but no incriminating material pertaining to those completed assessment years were found during search, Hon'ble Court has held that invocation of section 153A for those years was invalid.

12.2 Now the facts of the appellant are to be examined in the light of this legal position. It is clear from the assessment orders as well as submission appellant that search and seizure action 132(1) of the Act was undertaken by the Department in the case of appellant as on 15.02.2014 and on t assessments of A.Y. 2008-09 to A.Y. 2012-13 were completed asses the time period to issue notices u/s 143(2) for aforesaid years b expired. Further, as mentioned above, no incriminating material was found in the case of the appellant during the search proceedings for making in these years. Therefore, on both the counts, no addition/disallowance could have been made by AO by disturbing the income disclosed in the returns filed by appellant. In such situation, the additions/disallowances made by Assessing Officer, as mentioned above, for AYs 2008-09 to 2012-13, are not sustainable and liable to be deleted. I, therefore, delete the additions made by the A for the aforesaid five assessment years and allow the grounds taken by the appellant.”

5. During the arguments before us, the Ld. AR, Ms. Nidhi Srivastava, vehemently argued that provisions of sec. 153A of the Act do not stipulate any restrictions on the powers of the Assessing Officer to complete the assessment based on all the materials available before them. Against the arguments of the Ld. DR, Shri Hiren Mehta argued that in view of the judgments of the Hon'ble Jurisdictional High Court in the case of CIT vs. Meeta Gutgutia 82 taxman 287, CIT vs. Kabul Chawla 380 ITR 573, no assessment can be made in the absence of any incriminating material leading to undisclosed income.

6. After considering the documents of both the parties, we find it is an admitted fact that the time limit for issue of notice u/s 143(2) and completion of the assessment has already been lapsed as on the date of the search. We also find that the additions made by the Assessing Officer is not based on incriminating material found during the course of search albeit is based on the other record not related to material found during the search. In such a situation, the additions made are beyond the scope of proceedings u/s 153A. This proposition of the law has been well settled by the jurisdictional High Court in the case of CIT vs. Meeta Gutgutia 82 taxman 287, CIT vs. Kabul Chawla 380 ITR 573. In the case of Kabul Chawla the Hon'ble High Court clearly spelt that 153A additions have to be made only on the basis of the seized material. It was also held that completed assessments can be interfered with by the Assessing Officer while making assessment order u/s 153A only on the basis of some

incriminating material found during the course of search or requisition of documents or undisclosed income or property discovered in course of search which were not produced or not already disclosed to the Revenue. Hence, keeping in view the facts that assessment has been made for the years in question is not based on any incriminating material found during the search, we hereby decline to interfere with the order of the Ld. CIT(A).

7. In the result, the appeals of the Revenue are hereby dismissed.

Order is pronounced in the open court on 4th December, 2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 4th December, 2019.

*Kavita

Sd/-
(B.R.R KUMAR)
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

