

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.3976/Del./2016  
Assessment Year 2008-2009

The DCIT, Central Circle-29, Room No.318, 3 <sup>rd</sup> Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Aryan Future Trading (P) Ltd., F-1 & 2, Bhagat Singh Market, New Delhi. PAN AABCJ8948G
(Appellant)		(Respondent)

For Revenue :	-None-
For Assessee :	Shri Ved Jain, Advocate And Shri Akashat Goel, C.A.

Date of Hearing :	07.01.2020
Date of Pronouncement :	07.01.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-30, New Delhi, Dated 22.04.2016, for the A.Y. 2008-2009.

2. In this case, the assessee filed return of income on 30.09.2008 which was processed under section 143(1) of

the I.T. Act on 08.03.2010. A search and seizure action under section 132 of the I.T. Act was initiated in the case of assessee as part of Jaypee Group on 30.03.2012. The A.O. after considering the details on record made addition of Rs.4,78,01,261/- on account of Client Code Modification and passed the assessment order under section 153A of the I.T. Act, on Dated 27.03.2015.

3. The assessee contended before the Ld. CIT(A) that no addition could be made because no incriminating material was found during the course of search. It was further submitted that in the absence of any incriminating material, the A.O. cannot re-appraise and review already settled issue and the assessment already completed before the date of search under section 153A of the I.T. Act. It was submitted that issue is covered by the Judgment of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Kabul Chawla 380 ITR 573. The Ld. CIT(A) accepted the contention of assessee that on the date of search on 30.03.2012 assessment was already completed. Since no incriminating material was found during the course of

search, therefore, issue is covered by Judgment of Hon'ble Delhi High Court in the case of Kabul Chawla (supra). The Ld. CIT(A), accordingly, allowed the appeal of assessee on this ground and did not decide the issue on merits. In the grounds of appeal the Revenue has merely contended that Judgment of jurisdictional High Court in the case of Kabul Chawla (supra) has not been accepted by the Department and SLP is pending before the Hon'ble Supreme Court.

4. After considering the submissions of Learned Counsel for the Assessee, we are of the view that there is no merit in the Departmental appeal. Merely because SLP is pending in Hon'ble Supreme court is no ground for not following the decision of the jurisdictional Delhi High Court in the case of Kabul Chalwa (supra). Further, the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax vs., Meeta Gut Gutia 96 taxmann.com 468 (SC) dismissed the SLP of the Department confirming the view that invocation of Section 153A to reopen concluded assessments of assessment orders earlier to the year of search was not justified in the absence of incriminating

material found during the course of search qua each such earlier assessment year. Therefore, there is no merit in the Departmental appeal and the same is dismissed.

5. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 07<sup>th</sup> January, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.