

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.7338/Del./2017 & ITA.No.7346/Del./2017  
Assessment Years 2008-2009 & 2010-2011

M/s. Frontier Commercial Co. Ltd., (Merged with M/s. Sucon India Ltd., later merged with M/s. Akriti Global Traders Ltd.,) Faridabad. <b>PAN AABCF1424D</b> C/o. RRA Taxindia, D-28, South Extension, Part-1, New Delhi – 110 049.	vs.,	The DCIT, Central Circle – II, Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, Advocate
For Revenue :	Ms. Nidhi Srivastava, CIT-DR

Date of Hearing :	08.09.2020
Date of Pronouncement :	08.09.2020

**ORDER**

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

Both the appeals by the Assessee are directed against the different Orders of the Ld. CIT(A), Karnal, Dated 07.09.2017 for the A.Ys. 2008-2009 and 2010-2011, challenging the additions of Rs.1,88,803/- and

Rs.61,88,132/- respectively on account of disallowance of freight charges under section 37(1) of the I.T. Act, 1961.

2. Briefly the facts of the case are that by virtue of the authorization of the Director of Income-tax (Investigation), Delhi, under section 132(1)(A) of the I.T. Act, 1961, in the case of the assessee, the residential as well as business/office premises of M/s SRS Group of cases were subjected to search and seizure operations on 09.05.2012. The assessee was drawing income from business and profession in assessment years under appeal. The A.O. issued statutory notice under section 153C r.w.s. 153A of the Income Tax Act, 1961 requiring the assessee to file its return of income. The assessee in response to the said notice, filed return of income. The A.O. noted that during search and survey operations carried-out at various premises of SRS Group, large number of material was found and in the post-search enquiries, it was found that SRS Group has created several companies just to book sales/purchase and to inflate expenses. The assessee is selling on rate to rate basis within the group companies

without making any profit in the process and shown huge losses. The A.O. noted that assessee has incurred freight charges at Rs.1,88,803/- and Rs.61,08,132/- in both the assessment years under appeals respectively. Since the assessee could not produce the requisite bills and vouchers in respect of freight charges, the A.O. disallowed the same under section 37(1) of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

3. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

4. Learned Counsel for the Assessee at the outset submitted that mere disallowance was made under section 37 of the I.T. Act, 1961 and in the absence of any incriminating material found qua the freight charges, therefore, issue is covered by Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla 380 ITR 573 (Del.). He has also submitted that in A.Y. 2009-2010 in the case of same assessee, on the identical facts, the ITAT, Delhi B-Bench, Delhi decided the appeal of assessee vide

Order Dated February, 2020 and similar addition have been deleted. Copy of the Order of the Tribunal is placed on record.

5. On the other hand, Ld. D.R. submitted that though no material is referred in the Order with respect to freight charges, but, incriminating material was found during the course of search in the case of SRS Group, therefore, addition is justified.

6. On consideration of rival submissions, we are of the view that no addition is liable to be sustained. The Hon'ble Delhi High Court in the case of Kabul Chawla (supra), as regards completed assessment held as under :

*“vii. Completed assessments can be interfered with by the A.O. while making the assessment under section 153A 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”*

6.2. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia (supra) in paras 69 to 72 has held as under :

*“69. What weighed with the Court in the above decision was the “habitual concealing of income and indulging in clandestine operations” and that a person indulging in such activities “can hardly be accepted to maintain meticulous books or records for long.” These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.*

*70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been*

*followed not only by this Court in its subsequent decisions but also by several other High Courts.*

*71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.*

#### *Conclusion*

*72. To conclude :*

*(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153 A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04.”*

6.3. In the present case though search was conducted in the case of assessee as well as SRS Group, but, the A.O. made disallowance of freight charges because the assessee

could not produce the bills and requisite vouchers in respect of the claim of the freight charges. It is, therefore, clearly apparent that the disallowance of freight charges are made in the absence of any incriminating material found during the course of search. The A.O. has framed assessments under section 153A r.w.s. 143(3) of the I.T. Act, 1961. Thus, the above Judgments are clearly apply in the case of assessee. Further, on identical facts, the ITAT, Delhi E-Bench, Delhi, in the case of assessee for the A.Y. 2009-2010 deleted the similar addition. Therefore, following the above decisions and discussion above, we are of the view that both the additions are liable to be set aside. In view of the above, we set aside the Orders of the authorities below and delete both the additions in both the years under appeals.

7. In the result, appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 08<sup>th</sup> September, 2020

VBP/-

Copy to

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

// BY Order //

Asst. Registrar, ITAT, Delhi Benches,  
Delhi.