

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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA Nos.4502 & 4503/Del/2014
(Assessment Years : 2006-07 & 2007-08)

Rahul Seth 14, Chinar Drive, DLF Chhatarpur Farms New Delhi – 110074 PAN : AASPS 9459 B	Vs.	ACIT Central Circle – 25, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Madhur Aggarwal, Advocate
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	23.09.2021
Date of Pronouncement:	06.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

Both the appeals filed by the assessee are directed against the order dated 27.05.2014 of the Commissioner of Income Tax (Appeals)-XXV, New Delhi relating to Assessment Years 2006-07 & 2007-08

2. At the outset, Learned AR submitted that the issue involved in both the appeals are identical except for the year and amounts involved and therefore the submissions made by him for one year

would be applicable to the other year also. Ld DR did not controvert the aforesaid submissions of Ld AR. In view of the aforesaid submissions of the Counsel, I for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2006-07.

3. The relevant facts as culled from the material on records are as under :

4. Assessee is an individual who filed his original return of income for AY 2006-07 on 31.10.2006 declaring total income at Rs.3,99,369/-. The return of income was processed u/s 143(1) of the Act. A search operation was conducted on 10.02.2010 in Sudhir Group of cases, the group being headed by Shri Sudhir Seth and the assessee is stated to be a partner of M/s Sudhir Engg. Co., M/s. Power Concept and Electron Energy Systems which are part of Sudhir Group. AO has noted that no surrender of undisclosed income was made in the group either during the search proceedings or in post search proceedings. Notice dated 1.11.2010 u/s 153A of the Act was issued and served on the assessee and in response to which assessee filed return of income for AY 2006-07 on 17.02.2011 declaring total income of Rs.7,26,723/-. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 153A of the Act vide order dated 23.12.2011 and the total income was determined at Rs.10,95,870/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 27.05.2014 in

Appeal No.317/2013-14 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee filed appeal before the Tribunal. The co-ordinate Bench of Tribunal vide order dated 1.10.2015 (ITA No 4502 & 4503/Del/2014) dismissed the appeal of the assessee for non prosecution. Thereafter assessee filed Miscellaneous application praying for recalling of the order. The Tribunal vide order dated 20.7.2018 (Miscellaneous Application No 237 and 238/Del/2016) recalled the order passed on 1.10.2015. Thus the assessee is now in appeal and has raised the following grounds:

“1. The Worthy CIT (A) has confirmed the addition made by the ACIT, Central Circle – 25, New Delhi to the extent of Rs.1,96,000/-.

Further, the Appellant craves for the right to raise additional grounds of Appeal during the course of hearing. Detailed submissions shall be made during the appellate proceedings.”

5. Thereafter assessee vide letter dated 05.09.2019 has sought permission to raise the following additional ground:

“That the addition so sustained by Ld. CIT(A) is beyond the scope of assessment framed u/s 153A/ 143(3), as the aforesaid addition made is not based on any incriminating material found during the course of search proceedings and as such is legally unsustainable in law.”

6. With respect to the admission of additional ground, it is submitted that in the additional ground, the assessee is challenging the validity of the assessment framed u/s 143(3) r.w.s 153A of the Act, which is a legal issue and goes to the root of the matter. Ld AR submitted that since all the material facts relevant to the legal issue are already on record and the issue as to scope of additions that can be made in an assessment u/s. 143(3) r.w.s.

153A of the Act, being a purely legal issue it can be raised at any time before the Tribunal. In support of his aforesaid contention, he placed reliance on the decision in the case of **National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383** and **M/s Jute Corporation of India Ltd. vs. CIT reported in 187 ITR 688 (SC)**. He therefore submitted that the additional ground of appeal be admitted and appropriate order be passed in the interest of rendering substantial justice.

7. On the issue of the admissibility of additional ground of appeal, Learned DR strongly objected to the plea for admission of additional ground. He submitted that the ratio of decision in the case of Jute Corporation of India Ltd. (supra) would not be applicable to the facts of the present case because ratio of the decision is that the additional ground could be raised only if it could not have been raised at the stage when the return was filed or when the assessment order was made and the ground became available on account of change of circumstances or law. He submitted that no change of circumstances of law has been pointed out by the Learned AR and therefore the ratio of the decision in the case of **M/s. Jute Corporation of India Ltd. (supra)** could not apply in the present facts of the case.

8. Having heard the rival submissions and on perusing the materials available on record I find that facts which are necessary for adjudication of legal issue raised by the assessee by way of additional grounds of appeals are already on record and no new material or evidence is relied upon to challenge the legal issue. I

find that the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) after considering the decision in the case of Jute Corporation of India Ltd. (supra) has observed that the Tribunal has jurisdiction to examine the question of law which arise from the facts as found from the authorities below and having bearing the tax liability of the assessee. It has further held that there is no reason to restrict the power of Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals) and that both the assessee and Department have a right to file an appeal/cross objections before the tribunal and the Tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier. It has further held that the view that tribunal is confined only to issues arising out of the appeal before CIT(A) is too narrow a view to take of the powers of the tribunal. I therefore following the aforesaid decision rendered by Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) admit the additional ground and proceed to dispose of the appeal.

9. Before me, Learned AR submitted that for A.Y. 2006-07, assessee had filed return of income on 31.10.2006 and the return of income was processed u/s 143(1) of the Act. He stated that the time limit for issuance of notice u/s 143(2) was up to 31.10.2007 but no notice u/s 143(2) of the Act was issued. He submitted that on the expiry of the aforesaid period for issue of notice u/s 143(2) of the Act, the assessment for A.Y 2006-07 is deemed to have been concluded. He further submitted that search in the case of

assessee was conducted on 10.2.2010 and during the course of such search no incriminating documents whatsoever was found. He submitted that in the assessment framed u/s 153A of the Act addition of Rs.3,47,000/- has been made on account of cash deposits in the bank account of the minor child of the assessee, Avya Seth and Aryan Seth. He submitted that no bank statement was found or seized during the course of search. He submitted that the scope of the assessment proceedings u/s 153A of the Act in respect of an assessment which has already been completed is restricted only to making an assessment of income which are based on incriminating material found during the course of search. He submitted that in the case of concluded assessments, the A.O. has no jurisdiction to make additions towards addition to returned income in the absence of any incriminating materials. The A.R. further submitted that in the case of abated assessments and assessments which are pending as on the date of search, the A.O. can assume jurisdiction to assess/reassess total income, which is found during the course of search. In the present case, the assessment for the assessment year 2006-07 since no proceedings were pending as on the date of search, therefore the A.O. was precluded from making additions to returned income in the absence of any seized materials. In other words, it was submitted that the AO has no jurisdiction to make an assessment of income which is not based on material found in the course of search, where assessment for the relevant assessment year has already been concluded prior to the date of search and where such assessments does not abate under the proviso to section 153A(1) of the Act. In support of his aforesaid

contentions, he placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of **Kabul Chawla reported in 380 ITR 573**. On the merits of the addition, he submitted that the cash deposits in the bank of the minor child was received from family members and friends and relatives as gift on their birthday and other festivals and those amount were received by the parents who deposited in the bank account. It was submitted that considering the status of the family the gifts was very reasonable and therefore no addition was warranted. In support of his aforesaid contention, he relied on the decision rendered by Delhi Tribunal in the case of **Vibhu Aggarwal vs. DCIT (2018) 170 ITD 580**.

10. Learned DR on the other hand supported the order of lower authorities.

11. I have heard the rival submissions and perused the materials available on record. Sec.153A of the Act lays down that in respect of searches carried out under section 132 of the Act or requisition of books and other documents made under section 132A of the Act after 31.05.2003, the Assessing Officer shall issue a notice calling upon assessee to furnish return of income in respect of six assessment years immediately preceding assessment year relevant to the assessment year in which search is conducted or requisition is made. The Assessing Officer is empowered to re- assess the total income in respect of each assessment year falling with such six assessment years.

12. As per the second proviso to Sec. 153A(1) of the Act, if any assessment proceedings for any of the six assessment years set out in Sec.153A(1) of the Act is pending as on the date of initiation of search u/s.132 of the Act, then such assessment proceedings would abate and the AO will make one assessment after considering the original return of income as well as materials found in the course of search. The assessment proceedings which have been completed as on the date of search u/s.132 of the Act will however continue to remain valid. Thus the former proceedings are referred to as "abated assessment proceedings" and the latter proceedings are referred to as "unabated assessment proceedings".

13. It is an undisputed fact that in the present case the return of income for A.Y. 2006-07 which was filed by the assessee on 31.10.2006 declaring income of Rs.3,99,369/- and the return of income was processed u/s 143(1) of the Act. No notice u/s 143(2) of the Act was issued for making the assessment u/s 143(3) of the Act within the period laid down in the proviso to section 143(2) of the Act namely 31.10.2007. Therefore, assessment proceedings stood completed and that in any case on the date of search i.e. on 10.2.2010 the assessment for the impugned assessment year 2006-07 was not pending. Therefore the acceptance of the return of income amounts to an assessment and such assessment did not abate in terms of the Second Proviso to section 153A(1) of the Act.

14. It is the plea of the learned counsel for the Assessee that the impugned additions made by the Assessing Officer could not have been made in the impugned assessment proceedings as they are not based on any material seized or found during the course of search of the assessee. I find that the impugned addition has been made on account of the cash deposits in the bank account of the minor children of the assessee. I find that no bank statement was found or seized during the course of search and therefore it cannot be said that the addition made in the assessment proceedings u/s 153A is on the basis of incriminating material found during the course of search.

15. The Hon'ble Delhi High Court in the case of Kabul Chawla (supra) has held that completed assessments can be interfered with by the Assessing Officer 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.

16. In the light of the foregoing, I am of the view that the assessment for AY 2006-07 was already completed prior to the date of search and having not abated, the scope of proceedings u/s.153A of the Act had to be confined only to material found in the course of search. Since no material on the basis of which the impugned addition has been made was found in the course of search, the additions made by the AO in the order of assessment

could not have been subject matter of proceedings u/s.153A of the Act. Consequently, the said additions made in the order of Assessment could not be made by the AO. **Thus the ground raised by the Assessee is allowed.**

17. In view of the above conclusions, the other grounds of appeal raised by the Assessee on merits, do not require any consideration.

18. In the result the appeal of the assessee is allowed.

19. **As far as ITA No.4503/Del/2014 for A.Y. 2007-08** is concerned, before me, both the parties have submitted that the issue raised in the appeal for AY 2007-08 is identical to that of A.Y. 2006-07. I have hereinabove while deciding the appeal for A.Y. 2006-07 for the reasons stated have allowed the appeal of the assessee. I therefore for similar reasons also allow the appeal of the assessee for AY 2007-08. Thus **the ground of the assessee is allowed.**

20. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on 06.10.2021

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 06.10.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI