

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1805/Del/2017 : Asstt. Year: 2006-07

ITA No. 1806/Del/2017 : Asstt. Year: 2007-08

ITA No. 1807/Del/2017 : Asstt. Year: 2008-09

ITA No. 1808/Del/2017 : Asstt. Year: 2009-10

Raju Verma, 17/1, Curzon Road, Dehradun-248001	Vs	DCIT, Central Circle, Dehradun
(APPELLANT)		(RESPONDENT)
PAN No. ABIPV8176F		

Assessee by : Dr. Rakesh Gupta, Adv. &

Sh. K. K. Juneja, Adv.

Revenue by : Sh. N. S. Jangpangi, CIT DR

Date of Hearing: 29.04.2022	Date of Pronouncement: 29.07.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A), Muzaffarnagar dated 28.11.2016.

2. Heard the arguments of both the parties and perused the material available on record.

ITA No. 1805/Del/2017: A.Y. 2006-07:

3. The only effective issue in the present appeal is against the part relief allowed by Ld. CIT(A).

4. Two additions were made in the assessment order passed u/s 153A, i.e. Rs. 1,45,025/- on account of interest income from HSBC Bank Account and Rs. 56,264/- being the

difference between the total income shown in the original return of income and shown in the return filed u/s 153A. The Ld. CIT(A) reduced the first addition and upheld the addition to the extent of Rs. 80,265/- (81670-1405).

5. As to the second addition, no relief was allowed and the addition of Rs. 56,264/- was sustained.

6. In this case original return of income was filed on 10.10.2006 as per the assessment order and thus as on the date of search i.e. 14.03.2012, the said assessment attained finality and hence addition in the assessment order passed u/s 153A could not have been made in the absence of incriminating material found as a result of search & seizure operations.

ITA No. 1806/Del/2017: A.Y. 2007-08:

7. The only effective issue in the present appeal is against the part relief allowed by Ld. CIT(A).

8. The addition was made in the assessment order passed u/s 153 A, i.e. Rs. 3,65,031/- on account of interest income from HSBC Bank Account. The Ld. CIT(A) upheld the addition to the extent of Rs. 2,41,816/-. In this case original return of income was filed on 11.10.2007 as per the order u/s 143(1) and thus as on the date of search i.e. 14.03.2012, the said assessment attained finality.

ITA No. 1807/Del/2017: A.Y. 2008-09:

9. The only effective issue in the present appeal is against the part relief allowed by Ld. CIT(A).

10. The addition was made in the assessment order passed u/s 153A i.e. Rs. 6,69,754/- on account of interest income from HSBC Bank Account. The Ld. CIT(A) upheld the addition to the extent of Rs. 1,55,683/-. In this case original return of income was filed on 29.07.2008 as per the order u/s 143(1) and thus as on the date of search i.e. 14.03.2012, the said assessment attained finality.

Adjudication:

11. With regard to the issue of addition u/s 153A, in the absence of incriminating material seized has been a matter of adjudication by various Hon'ble High Courts. No judgment of the Hon'ble Jurisdictional High Court on this issue has been brought before us by either of the parties. To quote a few,

1. E.N. Gopakumar Vs CIT [(2016) 75 taxmann.com 215 (Kerala)]

where Hon'ble Kerala High Court held that assessment proceedings generated by issuance of a notice under section 153A(1)(a) can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 on basis of which notice was issued under section 153A(1)(a). The judgment in the case of E.N. Gopakumar was delivered after considering the judgments in the case of Kabul Chawla. Finally, the ratio of judgment in that case will be applicable only when two views are possible. In the instant

case, the provisions are very clear and unambiguous and there is no scope of having two views on this issue.

The above order has been passed after considering cases of

(i) CIT v. Kabul Chawla 120161 380 ITR 573/120151 234 Taxman

300/61 taxmann.com 412 (Delhi) (para 4),

(ii) CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd. [2015] 374 ITR 645/232 Taxman 270/58 taxmann.com 78 (Bom.) (para 4)

(iii) Principal CIT v. Kurele Paper Mills (P.) Ltd. [2016] 380 ITR 571 (Delhi) (para 4),

(iv) CIT v. Lancy Constructions [2016] 383 ITR 168/237 Taxman 728/66 taxmann.com 264 (Kar.) (para 4),

(v) CIT v. ST. Francies Clay Decor Tiles [2016] 240 Taxman 168/70 taxmann.com 234 (Ker.) (para 5) and

(vi) CIT v. Promy Kuriakose [2016] 386 ITR 597 (Ker.) (para 5).

2. CIT Vs Raj Kumar Arora [2014] 52 taxmann.com 172 (Allahabad)/[2014] 367 ITR 517 (Allahabad)

where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment

3. CIT Vs Kesarwani Zarda Bhandar Sahson Alld. [ITA No. 270 of 2014] (Allahabad)

where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also

with regard to material available at time of original assessment.

4. DR. A. V. Sreekumar Vs CIT Kerala High Court 90 taxmann.com 355 (Kerala)

Where pursuant to search and enquiry unaccounted consideration from purchaser had been unearthed, it could not be said that other material already available with Department had been relied upon in proceedings.

5. CIT Vs St. Francis Clay Decor Tiles (385 ITR 624) where Hon'ble Delhi Kerala Court held that notice issued under section 153A -return must be filed even if no incriminating documents discovered during search.

6. Vinod Kumar Gupta Vs DCIT ITA No. 1003 of 2017 where Hon'ble Delhi High Court upheld addition made on the basis of statements made by his brother Sh. Suresh Kumar Gupta and the materials seized from his brother's premises, given that the premises were separate, though a common warrant under Section 132 of the Income Tax Act, 1961 was issued in respect of both.

7. Smt. Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi)

where Hon'ble Delhi High Court held that Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable,

additions so made by Assessing Officer by rejecting books of account was justified.

8. CIT Vs Anil Kumar Bhatia (24 taxmann.com 98. 211 Taxman 453, 352 ITR 493

where Hon'ble Delhi High Court held that jurisdiction of AO under 153A is to assess total income for the year and not restricted to seized material. Post search reassessment in respect of all 6 years can be made even if original returns are already processed u/s 143(1)(a) - Assessing Officer has power u/s 153A to make assessment for all six years and compute total income of assessee, including undisclosed income, notwithstanding that returns for these years have already been processed u/s 143(1)(a).

Even if assessment order had already been passed in respect of all or any of those six assessment years, either under section 143(1)(a) or section 143(3) prior to initiation of search/requisition, still Assessing Officer is empowered to reopen those proceedings under section 153A without any fetters and reassess total income taking note of undisclosed income, if any, unearthed during search.

9. Filatex India Ltd Vs CIT (49 taxmann.com 465)

where Hon'ble Delhi High Court held that during assessment under section 153A, additions need not be restricted or limited to incriminating material, found during course of search.

10. The Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (supra) 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"

11. The Hon'ble Delhi High Court in its decision in the case of Pr. CIT vs. Meeta Gutgutia (2017) 395 ITR 526 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 153A. of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04."

12. The Hon'ble Delhi High Court in the case of PCIT & Ors. vs. Best Infrastructure (India) Pvt. Ltd. & Ors. (2017) 397 ITR 82 held that,

"Search and seizure—Additions on account of statements—Tribunal held that, additions made u/s 68, on account of statements made by assessee's Directors in course of search u/s 132 were not justified—Tribunal also held that, additions made by AO u/s 153A, were not justified—Appellant-Revenue claimed that, tribunal fell into error in holding that additions made u/s 68, on account of statements made by assessee's Directors in course of search u/s 132 were not justified—Held, statements recorded u/s 132 (4) did not by themselves constitute incriminating material—Present case was different from facts in Smt. Dayawanti Gupta v. CIT where admission by Assessee themselves on critical aspects, of failure to maintain accounts and admission that seized documents reflected transactions of unaccounted sales and purchases, was non-existent in present case—In said case, there was - factual finding to effect that Assessee were habitual offenders, indulging in clandestine operations—Nothing in present case, whatsoever, to suggest that any statement made by directors contained any such admission— Tribunal was fully justified in concluding that assumption of jurisdiction u/s 153A qua Assessee was not justified— Additions made u/s 68 on account of statements made by Assessee's Directors in course of search u/s 132 were also rightly deleted by tribunal—Having regard to materials seized in course of search u/s 132 and statements made on behalf of

Assessee, assumption of jurisdiction u/s 153 A and consequent additions made by AO were not justified—Revenue's appeal dismissed.”

13. Hon'ble Delhi High Court in the case PCIT (Central) & Ors. vs. Anand Kumar Jain (HUF) & Ors. (2021) 432 ITR 0384 (Delhi) has held that,

"Search and seizure—Assessment in case of search—Assessee purchased shares of an unlisted private company in 2010—This unlisted company then merged with another unlisted company, F and shares of this merged entity were allotted to Assessee—Subsequently, merged entity allotted further bonus shares to Assessee and thereafter it was listed on Bombay Stock Exchange—Assessee sold these shares on stock exchange and earned a huge profit which was claimed as exempt income on account of being long term capital gain—A search was conducted u/s. 132—Assessing officer framed assessment order detailing modus operandi as to how cash is provided to accommodation entry operator in lieu of allotment of shares of a private company—Thereafter when matter was carried up in appeal before CIT(A), findings of AO were affirmed—However, in further appeal before IT AT, said findings were set aside—Held, Assessment has been framed under section 153A, consequent to search action—Scope and ambit of section 153A is well defined—In event no incriminating material is found during search, no addition could be made in respect of assessments that had become final.”

12. Hence, following the view of the Hon'ble High Court of Delhi, we hereby hold that no addition is called for in the absence of any incriminating material found and seized during

the search & seizure operation conducted u/s 132 of the Income Tax Act, 1961.

13. With regard to Ground No. 5 for the A.Y. 2006-07 for the purpose of correction of record, the amount of Rs.6,252/- or Rs.62,521, the matter is remanded to the file of the AO for verification and correction.

ITA No. 1808/Del/2017: A.Y. 2009-10:

14. The only effective issue in the present appeal is against the part relief allowed by the Id. CIT(A).

15. The addition was made in the assessment order passed u/s 153A i.e. Rs. 12,22,265/- on account of interest income from HSBC Bank Account. The Id. CIT(A) deleted the said addition, and nothing survives on account of interest. The assessee raised an issue of not allowing the benefit of loss of Rs.19,182/- incurred by the assessee on sale of investment. The relevant part of the order of the Id. CIT(A) is as under:

"12. The facts of the case along with submission of the appellant have been gone through. The AO has made addition of Rs.16,23,822/- on account of interest earned during the year from the deposits held with HSBC Bank, Geneva. The AO has made the computation of the interest income on the accrual basis. The appellant during appellate proceedings has submitted along with documentary evidence that in August, 2007, the interest bearing deposits were converted into market linked investments and therefore, there was no interest earned during the year. Further, it was submitted along with documentary evidence that the appellant has sold some investments in the year under consideration which incurred loss of Rs.19,182/- (\$ 417.74). The above submission of the appellant has been forwarded to the AO for remand report vide letter dated 16.06.2016. Upon

consideration of facts it is noted that the AO has erred in computing the interest income on accrual basis. The income is said to have accrued only when the appellant has got right to receive the same. On this basis and on the perusal of income statement as furnished by the HSBC Bank for FY 2008-09, it is noted that the appellant has not earned any income from the said account. Therefore, the addition made by the AO of Rs.16,23,822/- is hereby deleted."

16. On perusal of the record, we find that the amount of Rs.16,23,822/- mentioned by the Id. CIT(A) be read as Rs.12,22,265/- which was addition made by the AO on account of interest received as per para no. 3.4 of the Assessment Order.

17. With regard to loss incurred of Rs.19,182/-, the matter is being referred to the file of the AO to determine the type of loss viz. speculative, non-speculative or business and allow the same in accordance with the provisions of law.

18. In the result, the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 29/07/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 29/07/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR