

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.891 to 894/Del/2021
Assessment Year: 2008-09 to 2011-12

Moin Akhtar Qureshi C-134, Ground Floor Defence Colony, New Delhi-110024 PAN No.AAAPQ4438L	Vs	Pr. Commissioner of I. Tax Central-1 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Hiren Mehta, CA Sh. Ashwani Gupta, CA
Respondent by	Ms. Sarita Kumari, CIT DR

Date of hearing:	17/04/2023
Date of Pronouncement:	20/04/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.891/De/2021 to 894/Del/2021 four separate appeals by assessee preferred against four separate orders of the Pr. CIT, Central-1, Delhi dated 13.01.2021 pertaining to A.Y.2008-09 to 2011-12.

2. Since common grievance is involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common challenge is the assumption of jurisdiction u/s.263 of the Act by the Pr. CIT. The assessee contends that the Pr. CIT has wrongly assumed the jurisdiction u/s. 263 of the Act and has grossly erred in holding that the impugned assessment orders are erroneous and prejudicial to the interest of the revenue.

4. We have heard the rival contentions on the facts of ITA No.891/Del/2021 for A.Y.2008-09.

5. Briefly stated the facts of the case are that a search and seizure and survey operations u/s.132/133A of the Act were conducted on 15.02.2014 in the case of assessee alongwith the other cases of the AMQ group at various residential and business premises. Accordingly statutory notices were issued and served upon the assessee and vide order dated 17.08.2017 the AO framed the assessment u/s.153A r.w.s. 143 (3) of the Act and the income declared at Rs.96,76,449/- was assessed at Rs.28,41,27,590/-.

6. Assuming jurisdiction conferred upon him by the provisions of section 263 of the Act the Pr. CIT issued show cause notice to the assessee alleging that since the assessee is a beneficial owner of shares holding 12% of the voting power in AMQ Agro India Private Limited and provisions of section 2(22)(e) of the IT Act squarely apply on the facts of the case.

7. Referring to the financial transactions, the Pr. CIT dismissed the contentions of the assessee that it is a running account

having business transactions, therefore, section 2(22)(e) does not apply.

8. The Pr. CIT also dismissed the claim of the assessee that since no incriminating material was found ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573 squarely apply.

9. The Pr. CIT concluded as under :-

“4.3.6 It is noteworthy that the decisions in the cases Anil Kumar Bhatia (supra), Chetan Das Lachman Das (supra) and Filatex India Ltd. (supra) had been rendered by the Delhi High Court before and the decision in the case of Dayawanti (supra) was rendered after the decision was rendered in the case of Kabul Chawla (supra). In other words, it has been the constant interpretation adopted by the High Court, in cases where incriminating material had been found during the search, that entire assessment would be open and the AO would be entitled to consider not only the material found during the search but also any other material emanating from any other source. The decision in the case of Dayawanti(supra) was subsequently distinguished by the Court in some decisions on the basis of the observation in that case that the assessee in that case was “habitually concealing income or indulging in clandestine operations”. Even that qualification is satisfied in this case because, as per the information available on record, the assessee in question has been doing that year after year. He is believed to be beneficial owner of undisclosed foreign assets. He made an application before the Income tax Settlement Commission offering substantial undisclosed income. The seized material found during the search shows clearly that he was indulging in accounted business transactions regularly. It is, therefore, held that the decision in the case of Kabul Chawla (supra) is not applicable here and, considering

the ratio of the decisions that are, the income under consideration was very much subject matter of the assessment.

5. In view of the foregoing analysis, it is held that the assessment order in question is erroneous in so far as it is prejudicial to the interests of the revenue. Considering the facts and circumstances of the case and provision of law discussed above, it is held that an amount of Rs.2,26,923/- had accrued to the assessee by way of dividend u/s.2(22)(e) of the Act but the same was neither disclosed by the assessee in the return of income nor assessed by the AO in the assessment order in question. The assessee is, therefore, enhanced by Rs.2,26,923/-. Accordingly, the AO is directed to recomputed total income and issue notice of demand.”

10. Before us the Counsel for the assessee vehemently stated that since no incriminating material was found the Pr. CIT grossly erred in invoking the provisions of section 2(22)(e) of the Act. The Counsel further stated that the assessee was having a business account with the company and the transactions were business transactions, therefore, cannot be coloured as loan within the deeming provisions of section 2(22)(e) of the Act. It is the say of the Counsel that the assumption of jurisdiction by Pr. CIT is bad in law.

11. Per contra the DR strongly supported the orders of the Pr. CIT and read the relevant operative part of the order.

12. We have given a thoughtful consideration to the orders of the authorities below. The assessment order dated 17.08.2017 was framed u/s. 153A r.w.s. 143(3) of the Act after thoroughly scrutinizing the seized documents. There is also no dispute that nothing incriminating was found to suggest the applicability of

the provisions of section 2(22)(e) of the Act. Since no incriminating material was found in relation to the deeming provisions of section 2(22)(e) of the Act, the ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) squarely apply. Similar view was taken by the Hon'ble Delhi High Court in the case of Mita Gutgutia and the Hon'ble Supreme Court in the case of Singhad Education Society. The Pr. CIT has referred to some judicial decision of the Hon'ble High Court in support of his order.

13. We are of the considered view that there are several decisions of the Hon'ble High Courts which are in favour of the assessee and some decisions may be in favour of the revenue. This shows that multiple views are possible on the same set of facts. The AO has followed one plausible view and the Pr. CIT is of different view. When two views are possible assumption of jurisdiction u/s. 263 of the Act is unwarranted and bad in law as held by the Hon'ble Supreme court in Malabar Industries Company 243 ITR 83.

14. Respectfully following the ratio laid down by the Hon'ble Supreme Court (supra) on the facts of the case in hand we set aside the order of the Pr. CIT dated 31.03.2021 framed u/s. 263 of the Act and restore that of the assessing officer dated 17.08.2017 framed u/s.153A r.w.s. 143 (3) of the Act.

15. Before parting the DR has also relied upon various judicial decisions in her written synopsis which were duly considered but found to be not at all applicable on facts discussed here in above.

16. In the result, all the captioned appeals are allowed.

Order pronounced in the open court on 20.04.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .04.2023

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi