

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.9115/Del/2019

निर्धारणवर्ष/Assessment Year:2007-08

ACIT, Central Circle-2, Faridabad, Haryana.	<u>बनाम</u> Vs.	BTL Holding Ltd. (BTL Investments & Securities Ltd.) Barakhamba Road, Connaught Place New Delhi. PAN No. AAACN5131E
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Revenue by	Shri Sunil Kumar Yadav, Sr. DR
Assessee by	Dr. Rakesh Gupta, Adv.

सुनवाईकीतारीख/ Date of hearing:	22.08.2023
उद्घोषणाकीतारीख/ Pronouncement on	25.08.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon dated 13.09.2019 for the AY 2007-08 in deleting the addition of Rs.5,30,62,000/- made protectively in respect of share capital in the absence of any incriminating material found in the course of search.

2. At the outset, the Ld. Counsel for the assessee submits that there was search and seizure operation carried on in the premises of the assessee on 09.05.2012. Pursuant to search the assessment was completed u/s 153A r.w.s. 143(3) of the Act on 30.03.2015 for the AY 2007-08 making an addition of Rs.5,30,62,000/- on protective basis in respect of share capital received by the assessee. The ld. Counsel submits that this addition was deleted by the Ld.CIT(A) in the absence of any incriminating material found in the course of search in the case of the assessee following the decision of the Hon'ble Delhi High Court in the case of CIT vs. M/s Kabul Chawla [126 DTR 130] (Del) which decision has been affirmed by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell P. Ltd. [454 ITR 212] a copy of which is placed on record. Therefore, the Ld. Counsel submits that the issue in hand is squarely covered by the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Builwell Pvt. Ltd. (supra).

3. On the other hand, the Ld. DR strongly placed reliance on the order of the Assessing Officer. Further referring to para 3 of the assessment order the Ld. DR submits that in the course of search operation and post search enquiries it was revealed that the assessee received share capital amounting to Rs.5,30,62,000/- and

since the assessee could not prove the genuineness and creditworthiness of the investor the Assessing Officer has rightly made addition on protective basis in the hands of the assessee.

4. Heard rival contentions, perused the orders of the authorities below. Search and seizure operations were carried on in the premises of the assessee on 09.05.2012 and also in the premises of M/s SRS Group. It is noticed from the assessment order that in the course of assessment proceedings the assessee was given a show-cause notice stating that on perusal of books of the assessee group concern of SRS the assessee company received Rs.5,30,62,000/- towards share capital from Richlook Market Pvt. Ltd. during FY 2006-07 and, therefore, required the assessee to furnish documentary evidence to prove the identity, genuineness and creditworthiness of the transaction. Assessee furnished reply which was disbelieved and addition was protectively made in the hands of the assessee.

5. On appeal the Ld.CIT(Appeals) deleted the addition as there was no incriminating material found during the course of search suggesting warranting addition based on any seized material. Ld.CIT(Appeals) deleted the addition placing reliance on the

decision of the Delhi High Court in the case of M/s Kabul Chawla observing as under: -

“5.1 The addition of Rs. 5,30,62,000/- was made by the AO on account of share capital received by the appellant company firm M/s Richlook Marketing Pvt Ltd u/s 68 of the Act.

5.2 A search action under section 132 of the Act, was carried out in the case of appellant on 09.05.2012 and subsequently assessment proceedings initiated and order u/s 153A read with section 143(3) of the Act was passed on 31.03.2015 making additions as mentioned above.

5.3 It is an undisputed fact, apparent from the assessment order that no incriminating documents/ records or any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the appellant. The only addition made in the assessment order under section 153A read with section 143(3) is on account of share capital received amounting Rs. 5,30,62,000/-. This addition is not borne out of search action on.

5.4 It is also undisputed fact that the appellant had submitted return of income originally u/s 139 of the Act on 24.10.2007 which was processed u/s 143(1) of the Act. At the time of search action on 09.05.2012, no assessment/reassessment proceedings were pending nor abated.

5.5 It is clear from the above that neither any incriminating material/ evidence were found and seized during the course of search in case of the appellant during the year under consideration nor any addition has been made emanating out of the search proceedings and no proceedings were pending nor abated in terms of the provision of section 153A of the Act. The addition has been made on account of unexplained credit u/s 68 as discussed in the assessment order.

5.6 *The appellant has relied upon various judicial pronouncements of various appellate authorities on the similar issues:*

1. *Continental Warehousing Corporations Ltd vs CIT [2015] 58 taxmann.com 78 (Mumbai).*
2. *Commissioner of Income Tax (Central)-III versus Kabul Chawla dated 28.08.2015 (Delhi High Court]126 DTR 130 (Del)*
3. *Pr. CIT vs Kurele Paper Mills Pvt Ltd 380ITR 571 (Delhi)*

It has been stated by the appellant that keeping in view the facts of the case and above mentioned judicial pronouncements, assessment made u/s 153A by the Ld. Deputy Commissioner of Income Tax is bad in law, therefore no addition can be made to the income of the assessee and the same may please be deleted and the order u/s 153A may please be annulled.

5.7 *The jurisdictional Hon'ble ITAT, Chandigarh Bench in case of M/s Mala Builders Pvt Ltd u/s ACIT-CC-II in the case of Mala Builders Pvt Ltd in ITA Nos. 433 to 437/Chandi/2014 (AY 2004-05 to 2008-09) and other cases on the common issue has discussed the matter under consideration and concluded the same as reproduced below:-*

"14. The undisputed facts in the present case are that on the date of search conducted on the assessee u/s 132 of the Act, i.e 17-03-2010, no assessment proceedings relating to the impugned year were pending. In fact the assessee had filed return filed u/s 139(1) of the Act on 29-06-2004 no notice u/s 143(2) had been issued to the assessee and on the date of initiation of search i.e. 17-03-2010 the time limit for issuing notice u/s 143(2) had expired. Thus, on the date of search no assessment proceedings were pending. Further in the assessment made u/s 153A of the Act, the only

addition made pertained to disallowance of interest u/s 24(b) of the Act in the absence of any documentary proof for claiming the same by the assessee. No incriminating material, found during the course of search, pertaining to the addition/disallowance made was referred to while making the disallowance.

15. The issue before us is, whether in case of assessments framed under section 153A of the Act, addition could be made in the absence of any incriminating material in those years where no assessment proceedings were pending and assessment had been made u/s 143(l)/143(3) of the Act.

16. We are in complete agreement with the contention of the Ld.AR that the issue is no longer res integra in view of various decisions of the High Courts holding that completed assessments can be interfered with by the Assessing Officer while making the assessment under Section 153 A 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.

17. We find that the issue first came up for consideration before the High Court of Bombay in the case of CIT Vs. M/s Murli Agro Products Ltd. (supra), wherein on the issue of exercise of revisionary powers by the Commissioner of Income Tax u/s 263 of the Act, on the order passed by the Assessing Officer under section 153A, it was contended by the Revenue that the impugned order was erroneous and prejudicial to the interest of the Revenue since the Assessing Officer had only determined the undisclosed income and not the total income which is the mandate of section 153A. The Hon'ble High Court, while adjudicating the issue, dealt at length with the purpose of

introduction of the new search assessment procedures, as against the earlier block assessment procedures and then went on to interpret the proviso to section 153A(l), and held that it is only pending proceedings which are abated on initiation of proceedings under section 153A of the Act while the assessments which have attained finality cannot be disturbed unless materials gathered in the course of proceedings under section 153A of the Act established otherwise.

18. Thereafter, the Delhi High Court in the case of CIT Ks. Anil Kumar Bhatia 352 ITR 493, interpreted the provisions of section 153A of the Act at length, and held that as against the earlier block assessment procedure which roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments, under the present assessment procedures prescribed under section 153A/B/C of the Act, only one assessment order in respect of each of the six assessment years had to be passed. The Hon'ble High Court held that this was sought to be achieved in case of those assessment years where assessment proceedings were pending on the date of search by abating them and framing fresh assessment including incomes relating to incriminating material found during search. In case of those assessment years where an assessment order had already been passed under section 143(l)(a) or 143(3), those assessments could be reopened and the total income reassessed taking note of the undisclosed income if any unearthed during search, the fetters to reopening, being removed by insertion of the non-obstante clause to section 153A. The entire thrust of the judgement rested on the interpretation that there cannot be multiple assessment orders in case of search assessments under section 153A/B/C of the Act and, therefore, where assessments were pending they would abate to enable the Assessing officer to assess the total income including undisclosed income, and where assessments or re-assessments

had been completed, they would not abate and the Assessing Officer would only reopen the completed assessments and include therein undisclosed income. The High Court went on to hold that such determination would be similar to orders passed in any re-assessment where the total income determined in the original assessment order and income that escaped assessment are clubbed together and assessed as total income.

19. The Bombay High Court in the case of CIT Vs. Continental Warehousing (supra) upheld the interpretation of the section by the Division Bench of the same Court in the case of Murlu Agro (supra) and held that finalized assessments cannot be touched by resorting to the provision of section 153A and addition was to be made only on the basis of material unearthed during search, since 'search' and 'requisition' are the crucial words appearing in the substantive provision and proviso and they would throw light on the issue of applicability of the provision. The Court upheld the understanding of the legal provision of section 153A by the Special Bench in the I.T.A.T. in this case and further held that the Delhi High Court had in the case of Anil Kumar Bhatia also reached to the same conclusion. It also referred to the judgment of the Karnataka High Court in the case of Canara Housing Development Co. Vs. DCIT (2014) 49 Taxmann., 98 and stated that even as per that judgment, the scope of enquiry in search carried under section 153A had to essentially revolve around search or requisition under section 132A of the Act.

20. In the case of Kabul Chawla (supra), the Delhi High Court after considering various decisions of High Courts, summarized the legal position in paragraph 37, which is reproduced below:

"37. On a conspectus of Section 153A (1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned

decisions, the legal position that emerges is as under:

Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as afresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under

Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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"

21. The Delhi High Court further reiterated the proposition laid down in Kabul Chawla (supra) in the case of CIT vs. RRJ Securities, 380ITR 612 and Pr. CIT Vs. Lata Jain in ITA No.2 74/2016 dt.29-04-2016.

22. On going through the above judgments, we find that the reason for upholding the proposition that addition u/s 153A, in case of earlier completed assessments, can be made only on the basis of incriminating material found during search or requisition is that:

1. Assessment u/s 153A can be framed only in cases where a search is initiated u/s 132 or Books of Accounts, other documents or any assets are requisitioned u/s 132A of the Act Moreover notices u/s 153A(1)(a) can be issued and income assessed or reassessed of six years preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus the crucial words "search" and "requisition" appear in the substantive provision and the proviso, which throws light on the issue of applicability of the provision .Such assessments have a vital link with the initiation and conduct of search .Since

search can be authorized only on the fulfillment of conditions enumerated in section 132, those conditions will have to be taken into account while interpreting section 153A and the interpretation arrived at is that in respect of unabated proceedings assessment has to be made on the basis of books of accounts or other documents not produced in the course of original assessment but found in the course of search and undisclosed income/property discovered in the course of search. Section 153A being enacted to a search and requisition, its construction would have to be made accordingly.

2. The second proviso to section 153A (1) states that on initiation of proceedings u/s 153A, the assessment/reassessment proceedings pending on the date of conducting search or making requisition u/s 132A of the Act, shall stand abated. The CBDT Circular no. 8 of 2003 dt. 18-09-03, clarifies that proceedings in appeal, revision or rectification against finalized assessments/reassessments shall not abate. Reading the two together, the Courts have stated that as per section 153A, Assessments/reassessments already finalized do not abate, meaning thereby that they attain finality, which cannot be disturbed unless some incriminating materials are gathered during the course of search.

3. That the words "assess" or "reassess" has been used at more than one place in the section and a harmonious construction of the entire provision would lead to the conclusion that the word "assess" has been used in the context of abated proceedings and "reassess" has been used for completed proceedings which would not abate as they are not pending on the date of initiation of search or making of requisition."

23. We may add that that the requirement of the section is limited to opening or reopening of the cases for the purpose of making assessment or reassessment of the total income of preceding six assessment years prior to the year of search. It does not contain any provision regarding the concept of making assessment of undisclosed where assessments have already income as was there in the earlier Block assessment regime under chapter XIVB. It does not specifically contain any provision regarding the nature of addition which can be made under this section. The section has provided, for the removal of doubts, by way of insertion of Explanation at the end of the section that save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to assessment made under this section. This implies that nature of assessment or reassessment made under this section shall be governed by the normal provisions of the Act. In case it is an assessment made for the first time, all provisions of assessment which are applicable to assessments made u/s 143(3) shall apply and in case it is a reassessment being made all principles of reassessment which are applicable in case of proceedings u/s 147/148 shall become applicable. Thus in cases where assessment have already been made addition to be made in proceedings u/s 153A is to be restricted to incriminating material found if any.

24. It is amply evident from the above that the issue is settled, with a number of decisions of the High Courts holding that in the case of completed assessments, no addition can be made in the absence of any incriminating material. Though we do agree that there are decisions of High courts which hold otherwise and state that u/s 153A, addition in case of completed assessments need not be restricted to incriminating material, but in view of the Apex court decision in CIT vs Vegetable Products Ltd.(1973) 88 ITR 192 which states that where there are two reasonable constructions of a statute, the construction favouring the assessee should be

adopted, we hold that in case of completed assessments under section 143(3)/143(1) of the Act, in the absence of any incriminating material found during the course of search, the Assessing Officer has no jurisdiction to make any addition under section 153A of the Act.

5.8 The facts of the above referred case are similar to the present case of the appellant. As mentioned earlier, the addition made in present case is not emanating out of any incriminating material found during the search proceedings nor any proceedings were pending or abated on the date of search, in this case.

5.9 In view of the ratio laid down by the Hon'ble High Court of Delhi in the case of CIT vs Kabul Chawla and also other judgments as discussed in order of Hon'ble ITAT reproduced above, the decision of the jurisdictional ITAT has been found applicable and accordingly, the addition of Rs. 5,30,62,000/- made on protective basis on account of share capital received by the company cannot be sustained and hence deleted looking in to the position of law and facts of the case."

6. The finding of the Ld.CIT(Appeals) that it is an undisputed fact apparent from the assessment order that no incriminating documents/records for any other evidence was found or seized during the course of search proceedings which resulted in any addition in the case of the assessee was not rebutted with evidences by the Revenue before us. In the circumstances the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT vs. M/s Kabul Chawla (supra) was rightly applied by the Ld.CIT(A). We further find that the decision of the Delhi High Court in the case of CIT vs. M/s Kabul Chawla (supra) has been affirmed by the Hon'ble

Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra). In the circumstances, we do not find any valid reason to interfere with the findings and the decision taken by the Ld.CIT(A) on the issue. Thus, we reject the grounds raised by the Revenue and sustain the order of the Ld.CIT(Appeals).

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25.08.2023

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 25.08.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi