

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

	I.T.A. No.1462 & 1463/DEL/2014	
	A.YRS. : 2006-07 & 2007-08	
M/S TEGH INTERNATIONAL A-14, WESTEND, NEW DELHI – 110 021 (PANAAAFT1749D)	VS.	ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-10, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI
(ASSESSEE)		(RESPONDENT)

Assessee by : Sh. Amit Goel, CA & Sambhav
Goel, CA
Department by : Sh. Amit Jain, Sr. DR

Date of Hearing : 19-05-2016
Date of Order : 27-05-2016

ORDER

PER H.S. SIDHU : JM

These Appeals are filed by the Assessee against the separate Order of the Ld. CIT(A)-XXXII, New Delhi both dated 20.1.2014 relevant to assessment year 2006-07 & 2007-08. Since the issues involved in both the cases are same and identical, hence, the appeals were heard together and disposed of by this common order for the sake of brevity, by dealing with assessment year 2006-07.

2. The grounds raised in ITA No. 1462/Del/2014 for the assessment year 2006-07 read as under:-

“1. On the facts and circumstances of the case and in law, the addition of Rs. 1,66,62,715/- made by the AO on account of alleged bogus purchase is beyond the jurisdiction of provisions of section 153A of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs. 1,66,62,715/- made by the AO on account of alleged bogus purchases.

The assessee craves leave to add one or more ground of appeal, or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid ground are without prejudice to each other.”

3. The grounds raised in ITA No. 1463/Del/2014 for the assessment year 2007-08 read as under:-

“1. On the facts and circumstances of the case and in law, the addition of Rs. 1,89,64,850/- made by the AO on account of alleged bogus purchase is beyond the jurisdiction of provisions of section

153A of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs. 1,89,64,850/- made by the AO on account of alleged bogus purchases.*

The assessee craves leave to add one or more ground of appeal, or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid ground are without prejudice to each other.”

ITA NO. 1462/DEL/2014 - ASSESSMENT YEAR (2006-07)

4. The brief facts of the case are that the assessee firm is engaged in the business of manufacturing and export of artificial jewellery. Although the assessee's registered address is 3/4 South Industrial Area, Kirti Nagar, New Delhi, the main business activity of the firm is carried out from 49, Udyog Vihar Ph-IV, Gurgaon. Besides, the assessee firm is also using Plot No. 110, Sector 8, Manesar, Gurgaon, Haryana as godown for storing the goods. A search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred as the Act) was conducted by the Investigation Wing of the Department in M/s Tegh group of cases on 26.04.2010 and simultaneously the assessee's business premises at 49, Udyog Vihar, phase-IV, Gurgaon, Haryana, was also

covered u/s 132(1) of the IT Act, 1961. The case of the assessee was centralized u/s 127 of the IT Act, 1961 vide order F.No.CIT- IXIITO(HQ)/127/2010-11/809 dated 13.08.2010 and the jurisdiction over the assessee's case was assigned to the Assessing Officer, Central Circle-10 New Delhi. Thereafter, a notice u/s 153A of the IT Act, 1961 dated 13.04.2011 was issued and served upon the assessee, in response to which the assessee filed its return on 02.05.2011 declaring a total income of Rs.6,29,87,718/-. Subsequently, notices u/s 142(1) of the Act alongwith a detailed questionnaire and u/s 143(2) of the Act were issued and served upon the assessee. In response to the same, the ARs of the assessee attended the assessment proceedings from time to time and filed the necessary details, information and documents which were examined by the Assessing Officer and the case was discussed. Thereupon, the assessment was completed in terms of an order u/s 153A of the Act read with section 143(3) of the Act dated 22.03.2013 at a total income of RS.7,96,50,433/- as against the returned income of Rs.6,29,87,718/- wherein the Assessing Officer made an addition of Rs.1,66,62,715/- on account of bogus purchases made through accommodation entries.

5. Against the aforesaid assessment order dated 22.3.2013, assessee preferred an appeal before the Ld. CIT(A), who vide impugned order dated 20.1.2014 has partly allowed the appeal of the assessee.

6. Aggrieved with the order of the Ld. CIT(A), the Assessee is in appeal before the Tribunal.

7. At the threshold, Ld. Counsel of the assessee stated that the issues in dispute relating to upholding the validity of the order of assessment passed u/s. 153A on 23.2.2012, is squarely covered in favor of the assessee by the decision dated 28.8.2015 of the Hon'ble Delhi High Court passed in the case CIT(Central)-III vs. Kabul Chawla in ITA No. 707, 709, 713/Del/2014 wherein the Hon'ble High Court has held that if the additions are made, but not based on any incriminating material found during search operation, then these additions are not sustainable in the eyes of law. He further stated that the additions have no relation with any incriminating material found and undisclosed income or property discovered in the course of search and as such are bad in law being beyond the scope of jurisdiction u/s. 153A of the I.T. Act. In support of his contention, he filed a Paper Book containing pages 1 to 111 of Compilation of following Case laws by which the issue in dispute is squarely covered .

- CIT vs. Kabul Chawal (Delhi High Court) (2015_ 61 taxmann.com 412 (Delhi).
- CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 58 Taxmann.com 78 (Bombay High Court)

- CIT vs. Lata Jain (Delhi High Court) ITA No. 274/2016 & Ors. Order dated 6.5.2016.
- Neeta Saha vs. ITO (ITAT, Delhi)
- CIT vs. JMD Computers & Communications Pvt. Ltd. (Delhi High Court) (2009) 20 DTR (Del) 317
- CIT vs. Bholanath Polyfab Pvt. Ltd. (Gujrat High Court) (2013) 355 ITR 290 (Guj)
- CIT vs. Nikunj Exmp Enterprises Pvt. Ltd. (Bombay High Court.) 2013 (1) TMI 88
- Punjab Metal Store vs. ITO (ITAT, Delhi) – ITA No. 1612/Del/2015 (AY 2006-07) dated 2.12.2015.
- Radhey Sham & Co. vs. ITO (ITAT Delhi) ITA No. 1429/Del/2015 (AY 2006-07) dated 30.11.2015.
- Unique Metal Industries vs. ITO (ITAT Delhi) ITA No. 1372/Del/2015 (AY 2006-07) dated 28.10.2015.

7.1 At the time of hearing, Ld. DR relied upon the order of the authorities below and stated that the provision of section 153A has rightly been applied in the case of the assessee on the material available with them.

8. We have heard both the counsel and perused the relevant records available with us, especially the orders of the revenue authorities and the cases referred by the Ld. Counsel of the Assessee in the shape of Paper Book. We find that the additions made by the AO are beyond the scope of section 153A of the Income Tax Act, 1961, because no incriminating material or evidence had been found during the course of search so as to doubt the purchases. It was noticed that as on the date of search i.e. 26.4.2010, no assessment proceedings were pending for the year under consideration and the AO was not justified in disturbing the concluded assessment without there being any incriminating material being found in search. In fact, in the entire assessment order, the AO has not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of assessee, leave alone the question of any incriminating material for the year under appeal. Therefore, in our considered opinion, the action of the AO is based upon conjectures and surmises and hence, the additions made on the assessed bogus purchases is not sustainable in the eyes of law, because this issue in dispute is now no more res-integra, in view of the decision dated 28.8.2015 of the Hon'ble Delhi High Court in the case of ***CIT vs. Kabul Chawla*** passed in ITA No. 707, 709 and 713/2014 wherein the Hon'ble High Court of Delhi has held as under:-

“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 ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.

ii. 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 a fresh 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 ITA Nos. 707, 709 and 713 of 2014 of 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.

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.”

9. Respectfully following the precedent of the Hon’ble Jurisdictional High Court in the case of CIT vs. Kabul Chawla, as aforesaid, we allow the appeal of the Assessee, because AO has completed the assessment and made the addition in dispute without any incriminating material found during the search and seizure operation and the addition in this case was purely based on the material already available on record. Hence, the addition in the case is deleted and the ground raised by the assessee in the appeal is allowed.

ITA NO. 1463/DEL/2014 - ASSESSMENT YEAR (2007-08)

10. Following the consistent view in assessment year 2006-07 in Appeal no. 1462/Del/2014, as aforesaid, the other Appeal of the Assessee being ITA No. 1463/Del/2014 (AY 2007-08) stands allowed.

11. In the result, both the Appeals filed by the Assessee stand allowed.

Order pronounced in the Open Court on 27/05/2016.

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 27/05/2016

“SRBHATNAGAR”

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches