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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14.11.2019

+ ITA 186/2019

THE PR. COMMISSIONER OF INCOME TAX-CENTRAL-3

..... Appellant

Through: Mr. Ajit Sharma, Senior Standing
Counsel with Ms. Adeeba Mujahid,
Junior Standing Counsel.

versus

ANKUSH SALUJA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. The present appeal under Section 260A of the Income Tax Act (hereinafter referred to as 'Act') is directed against the order dated 07.12.2017 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') Bench B New Delhi in ITA 2047/De1/2016 for the Assessment Year (AY) 2007-08, whereby the appeal filed by the Appellant against the order of CIT (A) dated 25.01.2016, challenging the deletion of additions made under Section 68 of the Act on account of unexplained cash credit has been upheld.

2. The factual matrix of the case giving rise to the present appeal is that a search and seizure operation under Section 132 of the Act was initiated by the investigation wing of the Department on 12.01.2011 in respect of the

Saluja group. Cash and jewellery belonging to the Respondent (hereinafter referred to as 'Assessee') was also found and seized from the residence of the assessee's father – Mr. Vinod Saluja, in whose name the search warrant of authorization was issued. The satisfaction note was recorded by the Assessing Officer in this regard and a notice under Section 153C read with Section 153A was issued and served on the assessee. In response thereto, the assessee filed his return of income, declaring an income of Rs. 4,97,608,70/-. The Assessing Officer (AO) after considering the explanation of the assessee treated the unsecured loans, in the sum of Rs. 11,90,57,300/- as unexplained credit under Section 68 of the Act and made an addition to that effect. The assessment was completed under Section 153C read with Section 153A of the Act on 14.03.2013, determining the total taxable income of Rs. 16,88,18,170/-.

3. The assessee filed an appeal before CIT (A), which was allowed in favour of the assessee. Following the decision of this Court in the case of **CIT v. Kabul Chawla** 380 ITR 573 (Del) dated 25.01.2016, the addition made by the AO was deleted. The operative portion of the said order of the CIT (A) reads as under:

“5.3 "Findings: The findings are as under:-

5.4 I have carefully considered assessment order, written submissions, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant, are discussed as under:-

(i) It has been submitted by the Appellant that the original assessment u/s 143(3) was completed on 18.12.2009, consequent of search and seizure action u/s 132 on 12.01.2012. In the

assessment order, no addition was made and the assessment was completed at returned income of Rs.4,97,60,866/-.

However, in the subsequent search and seizure action u/s 132 of the Act on 12.01.2012, no incriminating document was found. It has been further submitted that the earlier assessment u/s 143(3), was completed on 18.12.2009, before initiation of action u/s 132 on 12.01.2012 and therefore, the assessment was not abated at the time of initiation of second search on 12.01.2012, consequence of which, the assessment order passed by the A.O. on 14.3.2014, is challenged in this appeal.

(ii) It has been further submitted by the Appellant that subsequent to the search and seizure action u/s 132 of the act, assessment u/s 153A/153C was completed on 14.3.2014, at total income of Rs.16,88,18,170/-, after making addition u/s 68 as unexplained cash credit on account of unsecured loan, but without referring any incriminating document found/seized during the search and seizure action u/s 132. Therefore, it is submitted that addition made by the A.O., is without any jurisdiction for making such illegal and untenable addition u/s 68 of the Act.

In view of the above facts, it is submitted by the appellant that decision of the Hon'ble jurisdictional High Court of Delhi, in the case of CIT vs. Kabul Chawla 61 Taxmann.com 412 (Del.), is squarely applicable to the facts of the appellant.

In view of the above, it is clear that:

- (a) The original assessment order dated 18.12.2009, passed u/s 143(3), was completed before the initiation of search and seizure action u/s 132, on 12.01.2012. Therefore, I hold that no assessment/ reassessment proceedings, were abated as on 12.01.2012 i.e. the date of initiation of action u/s 132 of the Act.*
- (b) It is also clear from the assessment order that the addition made by the A.O. u/s 68, is not based on any incriminating document found/seized during the search action u/s 132 and*

therefore, I hold that the A.O. has no jurisdiction to make an addition u/s 68, while passing order u/s 153A/153C. This view is also supported by the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi, in the case of CIT Vs. Kabul Chawla 61 Taxmann.com 412 (Del), which is squarely applicable to the facts of the appellant.

In view of the above, I agree with the arguments of the appellant and therefore, addition made by the A.O. u/s 68, in absence of any incriminating document/evidence, cannot be sustained.

Accordingly, ground no. 3 and 8, are hereby, allowed.”

4. With respect to the addition of Rs. 11,90,57,300/-, the CIT (A) made the following observations:

“6.5 Findings: The findings are as under:

6.6 I have carefully considered assessment order, written submission, case laws relied upon, remand report of the A.O., rejoinder filed by the appellant and oral arguments of Ld. AR. The objections/arguments of the appellant, are discussed as under:

(i) The addition of Rs. 11,90,57,300/-, on account of unsecured loans u/s 68 of the Act, has been made u/s 153C/153A, without referring any incriminating document found during search and seizure action u/s 132. Therefore, it is submitted by the appellant that in absence of any incriminating document, no addition can be made u/s 153C/153A, when the assessment of this year, is not abated.

(ii) As, I have already held (supra), while deciding in ground no. 3 & 8, that no addition can be made in the assessment order u/s 153A, in view of the ratio laid down by Hon'ble Jurisdictional High Court of Delhi, in the case of CIT Vs. Kabul Chawla (supra), if:

- Assessment is not abated, at the time of initiation of action u/s 132 of the Act and
- No incriminating document is found during action u/s 132.

In view of the above, it is not necessary to adjudicate ground no. 1, 4 to 7.

7. Ground no. 9 is against charging of interest u/s 234A and 234B of the Act. This ground is consequential in nature. The A.O. is directed to charge interest as per provision of the Act, on total income, after giving effect to this order. Therefore, for statistical purposes, ground no. 9, is treated as allowed.

8. In the result, the appeal is partly allowed.”

5. Aggrieved with the aforesaid order of the CIT (A), Revenue filed an appeal before the ITAT. The Tribunal concurred with the findings of the CIT (A), and also relying upon the decision of this Court in **Kabul Chawla** (supra), dismissed the appeal, inter alia holding as under:

“8. In the present case, even no incriminating document was found during the course of search so as to make the addition under section 68 of the I.T. Act on account of unexplained cash credit. The Ld. CIT (A) in view of these findings did not decided the issue on merit. The above discussion clearly show that department has no case for interference. The Ld. D.r. has not pointed out any infirmity in the order of the Ld. CIT (A).

9. In the result, appeal of the department stands dismissed. Order pronounced in the open Court.”

6. The Revenue has filed the present appeal challenging the impugned order

passed by the ITAT contending that the AO had correctly assumed jurisdiction under Section 153C of the Act. The ITAT has failed to appreciate that the documents belonging to the assessee were found and seized during the course of search under Section 132 of the Act.

7. We have perused the orders passed by the Tax Authorities. There are concurrent findings of fact to the effect that the additions made by the Assessing Officer under Section 168 are not based on any incriminating document found/seized during the search action under Section 132 of the Act. In this view of the matter, the assumption or jurisdiction under Section 153C by the AO was not justified and accordingly the additions made under Section 68 cannot be sustained. The concurrent factual position is squarely covered by the decision of this Court in *CIT v. Kabul Chawla* (supra). Thus, the present appeal does not raise any substantial question of law and we therefore are not inclined to entertain the present appeal and accordingly the same is dismissed.

SANJEEV NARULA, J

VIPIN SANGHI, J

NOVEMBER 14, 2019

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