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

+ **ITA 190/2022 & CM APPL.29957/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX-20..... Appellant

Through: Mr. Ajit Sharma, Sr. Standing
Counsel.

versus

KAVITA AGARWAL

..... Respondent

Through: Mr. Gautam Jain, Advocate with
Mr.Piyush Kumar Kamal, Advocate.

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Date of Decision: 14th July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

CM APPL.29957/2022 (condonation of delay)

For the averments made in the application, the delay of 177 days in filing the present appeal is condoned.

Accordingly, the application stands disposed of.

ITA 190/2022

1. The present Income Tax appeal arises out of common impugned order dated 6th October, 2020 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT') in ITA No. 6178/Del/2018 for assessment year 2010-11.

2. The facts giving rise to the present appeal are that the Investigation Wing of the Income Tax Department carried out a search and seizure



operation against M/s K.R. Pulp & Papers Limited under Section 132(1) of the Income Tax Act, 1961 (hereinafter referred to 'the Act') on 8th July, 2015 at various residential and business premises. The said company is stated to be managed and controlled by Shri Madho Gopal Agarwal, Shri Raj Gopal Agarwal and Shri Gopal Agarwal. The statement of Shri Gopal Agarwal was recorded on 8th July, 2015 and the statement of Shri Madho Gopal Agarwal was recorded during post search inquiry.

3. Pursuant to the aforesaid search, notice under Section 153A of the Act was issued on 26th September, 2016 by the Assessing Officer and the same was duly served upon the assessee. In response, the assessee filed her Income Tax Return declaring income of Rs. 5,98,600/- on 2nd March, 2017. The Assessing Officer after making reference to the documents discovered during the raid, vide order dated 29th December, 2017 made the following additions to the income of the assessee under Section 69B and Section 68 of the Act respectively:

Total income computed by the assessing officer	Rs
Income as declared	5,89,600
Add: Forfeiture amount against property Vatika	40,00,000
Add: Investment in share	5,18,75,175
Total taxable Income	5,64,64,775

4. Being aggrieved by the same, an appeal was filed by the assessee before the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)']. Vide order dated 17th July, 2018, the CIT(A) allowed the appeal of the assessee, deleted additions and held as under :-



“...However, the perusal of the said documents reveal that it is nothing but the list of transfer of shares for the period from 01.04.2010 to 31.03.2011 in respect of different companies of the group wherein, in four columns, the date of transfer of shares, name of transferor company, number of shares and in the last column, the name of transferee company has been mentioned. There is nothing incriminating in these details which could indicate that there was any evasion of tax on the part of assessee. These details are merely plain details which do not lead to any adverse findings in the case of appellant. The basis of addition made by AO is also not the details mentioned in these papers rather post-search enquiries made by him during the regular course of assessment proceedings as in any other case taken up for scrutiny u/s 143(3) of I. T. Act.”

5. The department preferred an appeal before the ITAT which was dismissed vide an order dated 6th October, 2020.
6. The ITAT concluded that the additions made by the Assessing Officer for the assessment year under consideration was not based on any incriminating material found during the course of search on 8th July, 2015. It held that the documents referred to by the Assessing Officer pertains to the period w.e.f. 1st April, 2010 to 31st March, 2011 which relate to the assessment year 2011-12 and not for the impugned assessment year 2010-11. The ITAT observed that the original return of income was filed by the



assessee for the assessment year under appeal on 28th September, 2011. The search was conducted on 8th July, 2015 and on the date of the search, the assessment under appeal was completed as the time period to issue notice under Section 143(2) of the Act for the said year has expired. The ITAT thus, observed that on the date of search i.e. on 8th July, 2015, assessment for the assessment year 2010-11 had attained finality and was not pending assessment. The ITAT, therefore, held that any additions over and above the earlier assessed income could not be made in the absence of any incriminating material found during the course of search.

7. No material has been placed on record before this Court to rebut the aforesaid findings of the ITAT.

8. The ITAT, upon appreciation of the documents on record, concluded that the documents referred to by the Assessing Officer as ‘incriminating’ were admittedly not found from the address of the assessee. Further, upon appreciation of the material, the ITAT concluded that the said list of transfer of shares relied upon by the Assessing Officer could not be considered as an incriminating material, as it merely reflected the date, name of the transferor and transferee as well as the number of the shares. The documents did not record any unexplained investment made by the assessee. The ITAT concluded that no material was found during the course of search so as to indicate any unaccounted investment made by the assessee. The ITAT, therefore, determined that the Assessing Officer made the additions of the unaccounted investment merely on the basis of presumptions. The ITAT while dismissing the appeal observed that in the group cases of ***ACIT vs. Madho Gopal Agarwal*** in ITA No. 6184/Del/2018 and ***ACIT vs. M/s Kapis Impex LLP*** in ITA No. 6180/Del/2018 the department’s appeal had been



dismissed by the ITAT vide its orders dated 13th January, 2020 and 30th June, 2020. Upon inquiry from the learned counsel for the appellant, he stated that he has no instructions if any challenge has been laid by the department to the aforesaid orders ITAT passed in the case of *ACIT vs. Madho Gopal Agarwal and ACIT vs. M/s Kapis Impex LLP*.

9. In group cases of *Madho Gopal Agarwal and M/s Kapis Impex LLP (supra)*, the ITAT has noted that identical grounds of appeal have been raised and the said appeals, already stood dismissed. The ITAT, therefore, concluded that there was no new ground made out by the department for taking a view different from *Madho Gopal Agarwal and M/s Kapis Impex LLP (supra)*.

10. The ITAT, therefore, concluded that since no assessment was pending for the relevant assessment year 2010-11 on the date of search and no incriminating material was found during the course of search, the issue is covered in favour of the assessee by the judgment of this Court in the case of *Commissioner of Income Tax vs. Kabul Chawla (2016) 380 ITR 573* and *Principal CIT vs. Meeta Gutgutia (2017) 395 ITR 526* as well as by the orders of the ITAT in the group cases of *Madho Gopal Agarwal and M/s Kapis Impex LLP (supra)*.

11. A predecessor Division Bench of this Court in *Kabul Chawla (supra)* has held that if no incriminating material is found during the course of the search in respect of an issue, then no addition in respect of such an issue can be made in the assessment under Sections 153A and 153C of the Act. The legal position summarized in the subsequent decision of *Meeta Gutgutia (supra)* is reproduced hereinbelow:-

"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:

- 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 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."

12. Though the judgment in *Kabul Chawla* (supra) has been challenged in connected matters and is pending before the Supreme Court, yet there is no stay of the said judgment till date. Accordingly, this Court finds no ground not to follow the said judgment.

13. Keeping in view the aforesaid, this Court is of the opinion that the question of law raised in present appeal has been settled by earlier Division Bench in *Kabul Chawla* (supra) and no incriminating documents or materials had been found and seized at the time of search.

14. The present appeal is dismissed along with all the pending applications.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

JULY 14, 2022

j/ msh