



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

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**Judgment reserved on: 29 May 2024
Judgment pronounced on: 03 July 2024**

+ ITA 40/2023

**PR. COMMISSIONER OF INCOME
TAX (CENTRAL)-2**

..... Appellant

**Through: Mr. Prashant Meharchandani,
SSC.**

versus

SHRI SATYA PRAKASH GUPTA

..... Respondent

**Through: Ms. Vibhooti Malhotra, Mr.
Bhuvnesh Satija & Mr. Udit
Sharma, Advs.**

+ ITA 48/2023

**PR. COMMISSIONER OF INCOME
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Sharma, Adv.

+ ITA 82/2023

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+ ITA 85/2023

PR. COMMISSIONER OF INCOME

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Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present batch of appeals, at the instance of the Revenue seeks to assail the common order dated 09.03.2022 passed by the Income Tax Appellate Tribunal [“ITAT”] for the Assessment Year [“AY”] 2012-13 to 2017-18.

2. The brief facts that are necessary to decide the controversy at hand would reveal that the assessee, through his sole proprietorship firm namely, “Sterling Security System” entered into a contract with a non-resident entity called Cartiere Milani Fabriano [“CMF”] on 25.09.2006 for sharing of profits in lieu of services to CMF on supply of currency paper by CMF to Reserve Bank of India [“RBI”] including its subsidiaries. Pursuant to such agreement, the assessee was required to assist and aid CMF for procurement of tenders and carrying out supplies related to bank note paper to concerned buyers and in return,

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the assessee received a certain commission or share in profits. The agreement was initially valid up to 31.12.2007 and thereafter, it was extended up to 31.12.2012. From AYs 2007-08 to 2011-12, the assessee received the commission from CMF which was also duly reflected in his Income Tax Return [“**ITR**”]. For AY 2012-13, the assessee had not received any commission from CMF and eventually, the contract was terminated on 31.12.2012.

3. Shorn of unnecessary details, on 26.12.2016, a search and seizure operation was conducted in the case of the assessee under Sections 132 and 133A of the Income Tax Act, 1961 [“**Act**”]. During the course of search, a copy of agreement between the assessee and CMF was found. A notice under Section 153A of the Act was served on the assessee and the assessee responded that from AY 2012-13 onwards, he did not receive any commission from CMF pursuant to such agreement. Furthermore, it was also apprised that from 01.04.2015 i.e., AY 2015-16 onwards, the assessee had become a non-resident.

4. Thereafter, on 31.12.2019, the assessing officer [“**AO**”] passed an assessment order in the case of the assessee for AYs 2012-13 to 2017-18, wherein, it was observed that the assessee continued to receive commissions from CMF through other foreign entities of CMF’s parent group and since CMF does not have any other agent in India for supply of currency notes, therefore, the said amount was received pursuant to that agreement only. Based on the aforementioned rationale, the AO added certain amount as undisclosed income for AYs 2012-13 to 2017-18.

5. Against the said order, the assessee preferred an appeal before

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the Commissioner of Income Tax (Appeals) [“CIT(A)”]. On 22.04.2021, while deciding the appeal of the assessee, the CIT(A) partly allowed the appeal and deleted the addition for AYs 2014-15 to 2017-18. However, for AYs 2012-13 and 2013-14, it upheld the decision of the AO and added a certain amount to the total income of the assessee.

6. Aggrieved by the said order, both Revenue and the assessee preferred an appeal before the ITAT, whereby, *vide* common order dated 09.03.2022, while deleting the additions for AYs 2012-13 and 2013-14, the ITAT allowed the appeal of the assessee and dismissed the appeal of the Revenue. Assailing the said order, the Revenue has preferred the instant appeals.

7. Mr. Prashant Meharchandani, learned counsel appearing on behalf of the Revenue, submitted that the ITAT has grossly erred in deleting the additions for AYs 2012-13 to 2017-18. He argued that during the course of search proceedings, incriminating materials like email exchanges between the assessee and foreign entities from which the assessee received the amount and the agreement between the assessee and CMF, clearly showed that the assessee was planning to evade taxes in India. He submitted that pursuant to the agreement between the assessee and the CMF, which allegedly got terminated in the year 2012, the assessee continued to receive funds from CMF which was routed through foreign entities. Based on this reasoning, he submitted that the AO was correct in adding the amount as undisclosed income in the case of the assessee for AYs 2012-13 to 2017-18.

8. Mrs. Vibhooti Malhotra, learned counsel appearing on behalf of

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the assessee, vehemently opposed the submissions and argued that the instant appeals do not raise any substantial questions of law. She submitted that as per the contention of the Revenue, all the alleged incriminating material pertains to AYs 2016-17 and 2017-18 and therefore, the ITAT was correct in deleting the additions from AYs 2012-13 to 2015-16 as they are unabated assessments. Furthermore, she submitted that the material recovered during the search proceedings was not incriminating as the agreement between the assessee and CMF was already in the knowledge of the Revenue. She also argued that the ITAT was correct in holding that the Revenue was not able to show any indelible link that the payments received from the foreign entities were in relation to the agreement between CMF and the assessee for supply of banknote paper in India. In order to substantiate her arguments, she placed reliance on the decision of *CIT (Central)- III v. Kabul Chawla*¹.

9. We have heard the learned counsel appearing on behalf of the parties and perused the record.

10. At the outset, it is imperative to point out that the agreement between the assessee and the CMF was terminated on 31.12.2012 and since AY 2015-16 onwards, the assessee has become a non-resident.

11. It is also pertinent to iterate that as per the dictum laid down by this Court in *Kabul Chawla (supra)*, it is a settled position of law that the Revenue cannot be permitted to sustain any addition in the absence of any incriminating material for that relevant AY. The significant observations made by this Court in *Kabul Chawla (supra)* on that aspect are reproduced herein for reference, wherein, the aforementioned

¹ 2015 SCC Online Del 11555.



legal position came to be summarized in the following terms:-

“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 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer 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 assessment years "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) Although section 153A 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 Assessing Officer 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 the seized material."

(v) In the 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 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to the completed assessment proceedings.

(vi) In so far as the pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one

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assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A 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. Moreover, the above position of law was also fortified by the Supreme Court in the decision of *Principal Commissioner of Income Tax, Central – 3 v. Abhisar Buildwell Private Limited*², wherein, it was observed as under:-

“28. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in *Kabul Chawla* [CIT v. *Kabul Chawla*, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] and the Gujarat High Court in *Saumya Construction (P)* [CIT v. *Saumya Construction (P) Ltd.*, 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] , taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

29. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153-A in the 1961 Act and when there shall be a block assessment under Section 153-A of the 1961 Act.

30. That prior to insertion of Section 153-A in the statute, the relevant provision for block assessment was under Section 158-BA of the 1961 Act. The erstwhile scheme of block assessment under Section 158-BA envisaged assessment of “undisclosed income” for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime

² (2024) 2 SCC 433

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i.e. : (i) block assessment under Section 158-BA to assess the “undisclosed income”, and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the “undisclosed income” was chargeable to tax at a special rate of 60% under Section 113 whereas income other than “undisclosed income” was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, Section 153-A came to be inserted and brought on the statute. Under Section 153-A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the “undisclosed” income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153-A and in case of search, there shall be block assessment for six years. Search assessments/Block assessments under Section 153-A are triggered by conducting of a valid search under Section 132 of the 1961 Act. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of Sections 153-A/153-C is detection of undisclosed income by undertaking extraordinary power of search and seizure i.e. the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153-A/153-C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

31. On a plain reading of Section 153-A of the 1961 Act, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same.

33. As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, the AO gets the jurisdiction to assess or reassess the “total income” in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153-A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall

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abate. As per sub-section (2) of Section 153-A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the “total income” for the entire six years’ period/block assessment period. The intention does not seem to be to reopen the completed/unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153-A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under Section 153-A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under Sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

36. In view of the above and for the reasons stated above, it is concluded as under:

36.1. That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;

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36.2. All pending assessments/reassessments shall stand abated;

36.3. In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved.”

13. Undeniably, it becomes evident from a perusal of the factual matrix of the case that all the receipts with respect to transactions with foreign entities pertain to AYs 2016-17 and 2017-18. Thus, the ITAT has rightly deleted the additions pertaining to AYs 2012-13 to 2015-16 based on the settled legal position as enunciated above.

14. Furthermore, regarding the alleged incriminating material unearthed during the course of the search operation, it is apposite to elucidate that the agreement between the assessee and CMF was already in the knowledge of the Revenue and the commission received by the assessee pursuant to that agreement was duly reflected in his ITR. Additionally, the ITAT has rightly concluded that on the conspectus of the replies furnished by the assessee and the factual

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matrix of the case, the Revenue was not able to show any indelible link that the payments received from the foreign entities were in relation to the agreement between CMF and the assessee for supply of banknote paper in India. The aforementioned rationale also finds mention in the ITAT order, which was impugned before us. For the sake of clarity, the relevant extracts of the impugned order are reproduced herein for reference:-

“25....Admittedly, there was no agreement post 31.12.2012 and secondly, even after 01.04.2011 as discussed herein fore that there was no iota of evidence or any material information which could remotely prove that assessee received any money from CMF for any India operation. The entire premise of the AO is based on certain hypothetical presumption that even after the termination of the agreement or end of the agreement on 31.12.2012 the assessee might have continued to render services for supply of currency notes which has not been shown in the return of income in India, albeit has diverted his income through certain alleged foreign entities abroad and now the income has been shown outside India. Even if such allegations are correct that assessee was having some kind of interest in these entities as discussed in the assessment order and appellate order, but there is not an iota of any evidence that these entities or the assessee had carried out any operation in India either for supply of currency notes or otherwise on or behalf of CMF or Fedrigoni. The Revenue has not brought anything on record that there was any business connection with assessee in India for carrying out such activities or either RBI or the CMF has stated that any payment for supply of currency notes or rendering of any services was made to assessee post 01.04.2011 to AY 2017-18, The allegations made by the AO and the interpretation on which he has drawn his presumption after referring to certain foreign entities, has been duly explained by Id. counsel as stated above which has not been rebutted before us nor has been found favour by the Id. CIT (A). Id. CIT(A) has given a very categorical finding statement that no to evidence prove that has agreement been found in the form of seized material or statement to prove that agreement of 2006 between CMF and assessee was extended beyond 31.12.2012 and beyond this period, CMF was under any obligation to share the profits with the assessee. Even in various information received true FTTR, not single

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information has been received that either Fedrigoni or CMF has given any money for their India operation for supply of currency notes to assessee. This finding of Id. CIT(A) without any rebuttal or material information on record cannot be tinkered with. Accordingly, the finding of Id. CIT(A) that after the assessee had become NRI, no income has arisen or accrued in India, i.e., after 01.04.2015 and therefore even in terms of section 9(1)(i) no income is taxable in the hands of assessee is upheld.

26. In fact, the Id. CIT (A) has held that post 31.12.2012, the assumption made by the AO after the period 01.01.2013 is purely based on presumption that there might be continuation of terms and conditions of this agreement which was without any basis or evidences albeit on conjectures and surmises. The alleged money received by the assessee through various dubious entities during FYs 2015-16 & 2016-17 as alleged by the AO that assessee might have received money on account of share of profit from CMF in connection of its Indian activities is wholly erroneous and none of these informations or material found which he has been referred to by the Id. CIT DR or by the AO even remotely point out that through these dubious entities, assessee had carried out any activities in India and accordingly, independently also, we find that no income has been taxed in India from AYs 2013-14 to 2017-18.

27. Now, coming to the additions sustained or enhanced by the Id. CIT (A) in AY 2012-13 first of all, even though Id. CIT (A) had admitted that there is no incriminating material or document or any evidence either found during the course of search or even after the post search in the year that post 2012, any payment received by the assessee from CMF or any of its entities. Once it is an admitted fact then in the case of unabated assessment where the assessment has attained finality at the time of search, no addition can be made on the presumption or estimate basis without any reference to any seized material. Therefore, entire addition/ enhancement made by the Id. CIT (A) has no legs to stand and the same is directed to be deleted in view of the judgment of Hon'ble jurisdictional High Court in the cases of Kabul Chawla and Meeta Gutgutia (supra).

28. Insofar as additions made in AYs 2016-17 and 2017-18 are concern which are abated assessment and assessment of year of search, there is no evidence indicating that assessee had carried out any operation in India or has received any payment from any entity for business carried out in India. In

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so far as strong relaince made by the CIT DR to FTTR information as incorporated above, we find that, none of these informations even remotely suggest that assessee has earned or received any payment in any account for supply of currency paper from CMF or Fedrigoni entity for Indian supply. The observation and information as supplied by the CIT DR has been rebutted by learned counsel for the assessee as incorporated above and from the perusal of the same, we find that there is nothing which can lead to any inference or the conclusion that the receipts from foreign companies were in relation to services rendered by the assessee to Fedrigoni in India. Thus, even the FTTR reference cannot be considered as material on record to support the case made out by the Assessing Officer, which goes to prove that his assessment of income was purely based on surmises and presumptions as noted above. Thus, not only the. finding. of the Id. CIT (A) is confirmed but the information supplied by the CIT DR has. no correlation or effect so as to reverse the finding of the Id. CIT .(A). Accordingly, the submissions of the Id. CIT DR are rejected and the order of the Id. CIT (A) is affirmed.”

15. Therefore, in view of the abovementioned judicial pronouncements and reasoning assigned therein, we come to the conclusion that the instant appeals do not raise any substantial questions of law which would merit consideration and thus, we find no reason to interfere with the judgement rendered by the ITAT.

16. The instant appeals are dismissed and disposed of, alongwith pending applications, if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

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