

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2657/DEL/2018 (A.Y 2009-10)
I.T.A. No. 2658/DEL/2018 (A.Y 2010-11)
(THROUGH VIDEO CONFERENCING)**

Parveen Kumar Kapoor, C/o. RRA Tax India, D-28, South extension, Part-1 New Delhi ABMPK7969F (APPELLANT)	Vs	DCIT Central Circle-2 Faridabad (RESPONDENT)
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Appellant by	Sh. Somil Agarwal, Adv
Respondent by	Sh. Sushma Singh, CIT DR

Date of Hearing	05.07.2021
Date of Pronouncement	26.07.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 19/01/2018 passed by CIT(A)-2, Gurgaon, for assessment year 2009-10 & 2010-11 respectively.

2. The grounds of appeal are as under:- **I.T.A. No. 2657/DEL/2018**

1) *That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153 A of the Act.*

2) *That in any case and in any view of the matter, the assessment framed under section 153A(l)(a) of the Act, is bad in law and against the facts and*

circumstances of the case.

3) *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs. 1,26,000/- on account of cash deposited in the bank account as alleged income from undisclosed sources and that too in the proceedings u/s 153 A of the Act.*

4) *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,26,000/- is bad in law and against the facts and circumstances of the case.*

5) *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.*

I.T.A. No. 2658/DEL/2018

1. *That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issuing of notice u/s 153 A of the Act.*

2. *That in any case and in any view of the matter, the assessment framed under section 153A(l)(a) of the Act, is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making addition of Rs. 1,56,800/- on account of cash deposited in the bank account as alleged income from undisclosed sources and that too in the proceedings u/s 153 A of the Act.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,56,800/- is bad in law and against the facts and circumstances of the case.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT (A)*

has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.

3. By virtue of the authorization of the Director of income-tax (Investigation), Delhi, under section 132(1)(A) in the case of the assessee, the residential as well as business/office premises of M/s SRS Group, were subjected to search and seizure operations on 09.05.2012. Assessment jurisdiction over the assessee has since been transferred to this circle passing an order u/s 127 of the Income Tax Act, 1961 by the Commissioner of Income Tax Faridabad. During the previous year relevant to the A.Y. 2009-10, the assessee was drawing income from salary and income from house property. In accordance with the provisions of section 153A (I) (a) of the Income Tax Act, 1961 (in short, "the Act", henceforth), a notice dated 06.08.2013, u/s 153A (1) (a) was issued and properly served upon the assessee, requiring to file his return of income in respect of assessment year 2009-10, an assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted. In his case, the search was conducted on 09.05.2012. In response to the said notice, the assessee filed his return of income, duly verified and signed as per the provisions of section 140 of the Act, returning a total income of Rs. 3,41,940/- on 10.09.2013. Notices under section 143(2) and 142(1) along with a questionnaire were issued to the assessee on 08.08.2014. which were duly served upon the assessee. In response to the said notices, Authorized Representatives on behalf of the assessee attended the assessment proceedings from time to time. On perusal of bank account statement of the assessee, the Assessing Officer noticed that cash deposits were made by the assessee for which the Assessing Officer asked the explanations regarding source of the said cash deposits. The Assessing Officer held that the assessee failed to provide documentary evidence of those bank statement and accordingly made addition of Rs. 1,26,00,000/- for the Assessment Year 2009-10 as income from

undisclosed sources.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that no incriminating material was found during the search and there are no reasons given as to why the addition is made as all the documentary evidences were before the Assessing Officer as well as before the CIT(A). The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT v. Kabul Chawla 380 ITR 573 (Del) and submitted that as per the decision when no incriminating document were found under the proceedings u/s 153A read with Section 143(3) the assessment itself is bad in law. The Ld. AR further submitted that the assessment is abated in Assessment Year 2009-10 & 2010-11, since the assessment should have been completed by 30th September, 2009 and 30th September 2010. The Ld. AR further submitted that no pending assessment were there, in both these Assessment Years.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further relied upon the following decisions:

- Kishore Kumar Vs CIT (62 taxmann.com 215. 234Taxman771)
- Kishore Kumar Vs CIT (52 taxmann.com 449) Madras High Court confirmed.
- CIT Vs. Raj Kumar Arora [2014] 52 taxmann.com 172(Allahabad) [2014] 367 ITR 517 (Allahabad)
- PCIT vs. Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)
- Conventional Fastners Vs. CIT 2018-TIOL-202-S.C-IT
- CIT vs. Jyoti Apparels [2008] 166 Taxman 343 (Delhi)/ [2007] 209 CTR 288 (Delhi).

7. We have heard the Ld. DR and perused all the relevant material available on record. The Hon'ble Delhi High Court in case of CIT(A) vs. Kabul Chawla 380 ITR 573 held that no additions to be made in assessment framed u/s 153A of

the Act in the absence of any incriminating material, their assessment were not abated. In the present Assessment Year 2009-10, the return was filed on 12th November, 2009 and the due date of issuing of notice u/s 143(3) is 30th September, 2009 the date of search is 9/5/2012 and date of filing of return post search is 10/09/2013. Thus, from the above, it can be observed that no proceedings were pending on the date of search for Assessment Year 2010-11. The date of filing original returns u/s 139(1) was on 6/8/2010, the date of search was 9/5/2012. The return filed u/s 153A was on 10/9/2013 and due date of issuance of notice was 30th September, 2010. As the date of search is 9/5/2012. Thus, in Assessment Year 2010-11 as well no proceedings were pending as on the date of search. Thus, the applicability of decision of the Hon'ble Delhi High Court in case of Kabul Chawla is relevant in the present case as no incriminating material was found and there is no mention in the assessment order as well as in the order of the CIT(A) relating to the reliance of any material for making specific addition in the assessment. Thus, assessment itself becomes void ab initio. In result, both the appeals of the assessee are allowed.

8. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 26th Day of July, 2021.

Sd/

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 26/07/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI