

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. K.NARASIMHA CHARY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.4648 & 4649/Del/2018
Assessment Year: 2009-10 & 2010-11

Bhushan Steel Hyatt Regency Complex, Bhikaji Cama Place, New Delhi PAN No. AAACB1247M	Vs	ACIT Central Circle-3 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ashwani Kumar, CA Sh. Rahul Chaurasia, CA Sh. Bhavnesh Jindal, CA
Respondent by	Sh. Satpal Gulati, CIT DR

Date of hearing:	28/07/2021
Date of Pronouncement:	28/07/2021

ORDER

PER N. K. BILLAIYA, AM:

ITA No. 4648/Del/2018 and 4649/Del/2018 the captioned two appeals are by the assessee preferred against the order of the

CIT(A)-23, New Delhi dated 29.12.2017 pertaining to A.Y. 2009-10 and 2010-11.

2. Since common grievance is involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both these appeals relate to the levy of penalty u/s.271(1)(c) of the Act amounting to Rs.84,24,32,000/- in A.Y.2009-10 and Rs.23,96,46,000/- in A.Y.2010-11.

4. At the very outset, the counsel for the assessee pointed out that the quantum additions on the basis of which the impugned penalties have been levied in the captioned assessment years have been deleted by the Tribunal.

5. Per contra the DR fairly conceded to this.

6. We have carefully considered the orders of the authorities below and the decision of this Tribunal in ITA No.1600/Del/2018 and 1491/Del/2018 for A.Y.2009-10 and 1601/Del/2018 and 1492/Del/2018 for A.Y.2010-11.

7. We find force in the contention of the counsel the coordinate Bench in its judgment (supra) has deleted the quantum additions. The relevant findings of the Tribunal read as under :-

7.1 The Revenue is aggrieved with the above finding of the Learned CIT(A). As far as grounds no. 2 & 3 of the appeal of the Revenue is concerned, we have to examine, whether the ratio of the decision in the case of the **Kabul Chawla** (supra) is applicable on the facts of the assessee in the year under consideration. In the said decision, the Hon'ble High Court has held that in absence of incriminating material found during the course of search, no addition can be made u/s 153A of the Act in

completed assessments. Thus, for applicability of the ratio of the **Kabul Chawla** (supra), two conditions as under are required to be fulfilled:

- (i) No assessment proceedings were pending as on the date of the search.
- (ii) No incriminating material is found during the course of the search under section 132 of the Act.

7.2 As far as first condition is concerned, it is admitted position that no assessment was pending on the date of the search. The only dispute is regarding the second condition, i.e., no incriminating material was found during the course of the search. The fact that no incriminating material was found during the course of the search is evident from the order of lower authorities as under :

- (i) The Assessing Officer in para 4.1 of the assessment order has mentioned as how the said evidences were gathered through a tax evasion petition received during assessment proceedings. The relevant para of the assessment order is reproduced for ready reference:

“4.1 During the course of assessment proceedings this office received a Tax Evasion petition (TEP) in which it was stated that M/s BSL was engaged in availing CENVAT credit of central excise duty paid on Zinc Ingots bought from M/s Hindustan Zinc Ltd (HZL), Haridwar in a fraudulent manner and Zinc so purchased was sold in open market at Delhi/Aligarh/Agra and CENVAT credit was availed at their Khopali Plant, at Maharastra on the basis of invoices only & without using the same in manufacturing of finished good. Further in this TEP, it was mentioned that a search action was conducted by Directorate General of Central Excise Intelligence at various premises of M/s BSL on 20.03.2013. In this search, it was found that M/s BSL was availing the CENVAT credit in fraudulent manner without

actually using Zinc purchased from M/s HZL. Further in this TEP it was also stated that M/s BSL paid this central excise duty after the order of Hon'ble Custom & Excise Settlement commission of Rs.24,01,19,291."

- (ii) In para 4.3 of the assessment order, the Assessing Officer has mentioned the order of the Customs and Central Excise Settlement Commission is the basis of show cause notice issued to the assessee for disallowing the purchase of Zinc ingots from M/s HZL and transport expenses paid to M/s Mewar transport company. There is no reference of any incriminating material found during the course of the search action under section 132 at the premises of the assessee.
- (iii) The Ld. CIT(A) in para 10.3.2 of the impugned order has also clearly mentioned that source of the information leading to addition was only tax evasion petition and therefore, he directed the Assessing Officer to examine the case for reopening under section 147/148 of the act.

7.3 Thus, the only source of information is the tax evasion petition received during assessment proceeding. The Learned DR also could not rebut the finding of the Ld. CIT(A) that no incriminating material was found during the course of the search under section 132 of the Act and the case is squarely covered by the decision of the Hon'ble High Court in the case of Kabul Chawla (supra).

7.4 In view of the above discussion, we uphold the finding of the Ld. CIT(A) on the issue in dispute and the grounds No. 1 and 2 of the appeal of Revenue are accordingly dismissed.

8. Since the foundation has been removed the superstructure must fall. The AO is directed to delete the penalty so levied in both the assessment years under consideration.

9. In the result, both the appeals filed by the assessee are allowed.

10. Decision announced in the open court in the presence of both the representatives on 28.07.2021.

Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-28.07.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.07.2021
Date on which the typed draft is placed before the dictating Member	28.07.2021
Date on which the typed draft is placed before the Other member	28.07.2021
Date on which the approved draft comes to the Sr.PS/PS	28.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	28.07.2021
Date on which the final order is uploaded on the website of ITAT	28.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	