IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R KUMAR, ACCOUNTANT MEMBER

ITA.Nos.427, 428, 429, 430, 431 & 432/Del./2017
Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

&

ITA.Nos.434, 435, 436, 437, 438 & 439/Del./2017
Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

Late Shri Bhushan Lal Sawhney, through his L.R / Wife Smt. Sneh Lata Sawhney, 6, Link Road, Jangpura Extension, New Delhi – 110 024. **PAN EJKPS1519F [AABFS5250R]**	vs.	The DCIT, Central Circle-7, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, Advocate And Shri Somil Aggarwal, Advocate
For Revenue :	Shri Satpal Gulati, CIT-DR

Date of Hearing :	05.04.2021
Date of Pronouncement :	01.06.2021

ORDER

PER BHAVNESH SAINI, J.M.

All the above appeals are directed against the different Orders of the Ld. CIT(A)-25, New Delhi, Dated 25.10.2017, for the A.Ys. 2006-2007 to 2011-2012 on quantum assessments and Orders Dated 26.10.2016

challenging the levy of penalty proceedings under section 271(1)(c) of the I,.T. Act, 1961 for the A.Ys. 2006-2007 to 2011-2012.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. An application have been filed on behalf of the assessee intimating therein that assessee got expired on 02.12.2018 and Smt. Sneh Lata Sawhney, wife of the assessee, wants to implead as his legal heir in all he above appeals. The Death Certificate of the assessee along with Affidavit of the Legal Representative are placed on record. In view of the above, the assessee is substituted through Legal Representative Smt. Sneh Lata Sawhney. Before proceeding further, it would be relevant to dispose of the quantum appeals as under :

ITA.Nos.427 to 432/Del./2017 – A.Ys. 2006-07 to 2011-12 :

4. Briefly the facts of the case are that in all the assessment years under appeals a search and seizure operation under section 132 of the I.T. Act, 1961 was carried-out on assessee and other Group of cases on 28.07.2011. Warrant of Authorization under section 132 of the I.T. Act, 1961 was also issued in the name of the assessee. Notice under section 153A of the I.T. Act were issued to the assessee requiring him to file return of income for the assessment year under appeal. The assessee in response to the notice filed return of income under section 153A of the I.T. Act, 1961. The A.O. issued statutory notices and asked for the details. The A.O. noted that during the assessment year under consideration, the assessee derived income from other sources, the details of the same are placed on record. The A.O. in A.Y. 2006-2007 noted that as per information available with the Investigation Wing the assessee was having Foreign Bank Account with HSBC Bank at Geneva, Switzerland bearing A/c. No.IBNxx78840

with IDxx52687. This account was having a client profile name Bhushan Lal Sawhney and/or Smt. Sneh Lata Sawhney in Client Profile Code xx91436. This information was received from the competent authority under exchange of information framework of DTAC/DTAA between India and France. The A.O. has noted the account details in para 5.1 of the assessment order and noted that assessee had made telephonic conversation with the Officials of HSBC Bank, Geneva. The A.O. further noted that assessee has not declared the above bank account in the return of income and the funds of this account was also not disclosed by the assessee. The explanation of assessee was called for with regard to deposits in this bank account and source of the same was also asked to be explained. The A.O. noted that initially no details have been furnished by the assessee. During the search proceedings, statement under section 132(4) of the I.T. Act of the assessee was recorded, relevant extract of the statement are reproduced in para-5.3 of the assessment order in which A.O. has referred to statement of Son of the Assessee Mr. Praveen Sawhney recorded

intimating that assessee has maintained bank accounts with HSBC, Geneva, Switzerland, to which, assessee explained that he was wrong in giving this information because assessee has never maintained any bank accounts outside India. The A.O. then referred to statement of Mr. Praveen Sawhney, Son of the Assessee recorded on 28.07.2011 with reference to the bank account maintained with HSBC, Geneva, Switzerland. Later on, statement of assessee was also recorded on 09.11.2015, details of which are noted in the assessment order, to which, assessee denied to have maintained any such bank account. The A.O, however, on the basis of the information received in this matter, made addition of Rs.9,18,54,176/- on account of maximum outstanding balance lying in the bank account maintained with HSBC, Geneva, Switzerland. The A.O, thus, completed the assessment for the A.Y. 2006-2007 under section 153A read with Section 143(3) of the I.T. Act, 1961, vide assessment order Dated 02.03.2015.

4.1. It may be noted here that in the remaining A.Ys i.e., 2007-2008 to 2011-2012, the A.O. on the similar basis concluced that since assessee has unexplained bank deposits with HSBC, Geneva, Switzerland in A.Y. 2006-2007, therefore, in subsequent A.Ys i.e., A.Ys. 2007-2008 to 2011-2012 assessee has earned interest on the same deposits, therefore, addition was made on account of unexplained interest earned on the aforesaid deposits in HSBC Bank, Geneva, Switzerland. The A.O. passed the assessment orders under section 153A read with Section 143(3) of the I.T. Act, 1961, Dated 02.03.2015.

4.2. The assessee challenged the above addition on merits as well as on legal grounds before the Ld. CIT(A), however, the appeals of the assessee have been dismissed.

5. The assessee in the present appeals have challenged the legality of the assessment orders passed as being time barred as well as since no incriminating material have been recovered during the course of search, therefore, no addition could be made against the assessee. The

assessee also challenged the additions made on account of unexplained deposit in the bank account maintained with HSBC, Geneva, Switzerland and interest earned thereon. Various grounds of appeals has been taken by the assessee in these appeals.

5.1. We have heard both the the Parties who have also filed written submissions which are also taken into consideration.

6. Learned Counsel for the Assessee submitted that it is an undisputed fact that search was conducted on 28.07.2011 on the assessee. Learned Counsel for the Assessee referred to paper book filed by the Ld. D.R. containing letter Dated 22.08.2019 of ACIT, Central Circle-7 [A.O.] to the CIT-DR in which it was categorically stated that last panchanama was drawn on 26.09.2011. He has, therefore, submitted that in F.Y. 2011-2012 search is executed and last panchanama drawn. Learned Counsel for the Assessee, therefore, submitted that impugned

assessment orders passed on 02.03.2015 are barred by limitation because of search took place on 28.07.2011 as mentioned in the assessment orders and thus the limitation to pass assessment orders expire on 31.03.2014 as per Section 153B(1)(a) of the I.T. Act, 1961. But, the impugned orders have been passed on 02.03.2015. The Ld. CIT(A) did not appreciate the above issue. He has submitted that reason of passing the assessment orders Dated 02.03.2015 advanced by the Ld. CIT-DR was that since a reference under section 90 of the I.T. Act, 1961 was made to Swiss Authority and no information was received till the time of passing of the assessment orders, hence, the time limit was extended by one year under Explanation-IX of Section 153B of the I.T. Act, 1961. He has submitted that the Ld. CIT-DR has furnished a letter Dated 26.06.2015 together with information asked for in relation to the assessee received from Swiss Authority. It may be seen that as per A.O's admitted case, reference was made under section 90 of the I.T. Act, 1961 under the provisions of *"Exchange of Information",* Article of Indo-Switzerland Double Taxation

Avoidance Agreement [DTAA] and such information was required for the period from 01.04.1995 to 31.03.2012 seeking information under the provisions of "Exchange of Information" Article 26 of Indo-Switzerland Double Taxation Avoidance Agreement [DTAA]. He has submitted that the above stated such reference made under section 90 is bad in Law and Revenue could not have made any such reference for seeking information for the period prior to 01.04.2011 and hence such illegal reference could not have been made in Law, could not have lead to extension of time limit for passing the assessment orders. Thus, the time limit in passing the impugned assessment orders in the case of the assessee expired on 31.03.2014 itself. He has further submitted that in fact the Revenue could not have made reference for the period prior to 01.04.2011 which is evident from the following :-

6.1.1. Administrative assistance by Swiss Competent Authority in their letter dated 26th June, 2015

addressed to Government of India, MOF, FT & TR and filed by Ld. CIT(DR) on 11.1.2021 through email reads as under:

> *"In accordance with Article 26 DTA CH-IN, administrative assistance for questions concerning the application of domestic law can only be provided for information starting from the financial years 2011/2012 as the prior years are not covered by temporal scope of Article 26 of the amended Double Tax Agreement between India & Swtizerland.*
>
> *Therefore we can only provide you with information from 1 April 2011 (see decision A-4232/2013 of 12 December 2013 of the Swiss Federal Administrative Court).*

6.1.1.2. The Learned Counsel for the Assessee submitted that the Agreement between The Republic of India and The Swiss Confederation for avoidance of double taxation with respect to taxes on income as modified by Notification No.S.O.2903(E) Dated

27.12.2011. Copy of Notification No.S.O.2903(E) Dated 27.12.2011together with amended protocol filed to show it apply to later period. Therefore, reliance is placed on the following judicial decisions which hold that if the Reference based upon which the limitation is sought to be extended is held bad, limitation so extended would also be bad in law. :-

6.1.2. The ITAT, Pune Bench, Pune in the case of ITO vs. Vilsons Particle Board Industries Ltd., ITA.No.447/PN/2013, dated 21.12.2016 (Pune) in which it was held as under :

> *"41. Applying the principles laid down by the Apex Court in Sahara India (Firm) Vs. CIT and Another (supra), we hold that where no show cause notice was given to the assessee before making the order proposing conduct of special audit under section 142(2A) of the Act, in the present case and the CIT having approved the said proposal though*

after giving opportunity of hearing to the assessee is vitiated because of non-compliance with the principles of natural justice. Accordingly, the assessment order passed in the facts of present case is beyond the period of limitation and hence, the same is invalid and bad in law "

6.1.3. The ITAT, Delhi Benches, Delhi in the case of *PHI Seeds Ltd. vs. DCIT, (2015) 45 CCH 318 held as under:*

"7.4. In the present proceedings what we are examining, is whether the extended period of limitation as provided under Explanation l(iii) of Section 153 is available to the Assessing Officer for completion of assessmen t u/s 143(3), or not. The assessee contends that the order u/s 142(2C), extending the period granted for completion and submission of audit report is made without an application being made for extension by the assessee

and for any good and sufficient reason, and hence the extension is bad in law and hence the A.O would not get the benefit of the extended period of time to specified in Explanation l(iii) of Section 153 of the Act. In our view, the Tribunal has jurisdiction to adjudicate the issue as to whether an order of assessment 143(3), is passed within the period of limitation prescribed under the Act or not. For coming to such a conclusion, in our view the Tribunal can examine whether the order passed u/s 142(2A) or u/s 142(2C) is in accordance with law or not. The order passed u/s 142(2A) or u/s 142(2C) cannot be appealed separately. But when an assessment order is challenged, then the different aspects which are integral to the process and ultimate completion of amount can be challenged in Appeal. For example a notice u/s 148 or reasons recorded by the A. O prior to re-opening of assessment cannot be challenged separately. But an assessment order can be challenged in an Appeal before the Ld. CIT(A) or the

ITAT on the ground that the re-opening itself is bad in law, as the notice is illegal or not served or that there is no material based on which reasons were recorded etc. Every facet of an assessment can be challenged in appeal to deny once liability to be charged to tax or to challeng the quantum of tax demanded. In the case of hand, the legality of the orders passed u/s 142 (2A) or u/s 142(2C) can be challenged to demonstrate that the order of assessment has been passed beyond the period of limitation. Thus, we reject this contention of the Ld. CIT. DR.

8. In view of the above, discussion, we have no hesitation in holding to hold that the extension of time framed by the A.O for submission of audit report u/s 142 (2C) of the Act vide order dated 28th June, 2004 is bad in law. Consequently the Assessing Officer would not get extension of time for completion of assessment in terms of Explanation 1 (iii) to Section 153 for the purpose of computation of limits. Hence,

the assessments are barred by limitation as per the table given at Para 7 of the order. The Assessment for the A. Y1996-97 was to be complete on or before 31/3/2004 and the assessment order for the Assessment Year 1997-98 to 2000-01 had to be completed on or before 22/9/2004 and the assessment for the A. Y 2001-02 had to be completes on or before 23/8/2004, but all these assessments were completed on 27/9/2004, which is beyond the period of limitation specific in the Act. Hence they are bad in law."

6.1.4. The ITAT, Delhi Bench, Delhi in the case of Consulting Engineering Services India Pvt. Ltd. & Anr. vs. Asstt. CIT & Anr., reported in (2019) 198 TTJ 0121 (Del) held as under :

"15. We have given a thoughtful consideration to the orders of the authorities below and have carefully perused the records qua the issue. It is true that noticed dated 21.11.2011 was for both the A.Ys

i.e. 2008-09 and 2009- 10. However, each A.Y is considered to be a separate unit and, therefore, for each A. Y, the Assessing Officer must bring out his case. A perusal of the said notice, which is exhibited at pages 67 to 70 of the paper book, clearly reveals that though the notice pertained to accounts of A.Y. 2008-09, but entire financial details referred to therein pertain to A.Y 2009-10. Even the order u/s 142(2A) of the Act dated 27.12.2011 which is exhibited at pages 91 to 98 of the paper, the ACIT has specifically mentioned that "the special audit u/s 142(2A) of the Act in the case of captioned assessee for A.Y 2009-10 is ordered accordingly". This clearly proves that while making a reference u/s 142(2A) of the Act and thereafter passing the order u/s 142(2A) of the Act, the Assessing Officer did not apply his mind and mechanically adopted the figure of A.Y. 2009-10 and passed the order u/s 142(2A) of the Act for A.Y 2009-10 without realising that he is dealing with A.Y 2008-09.

16. The contention of the Id. DR that the letter to the appellant referred to both the A. Ys i.e. 2008-09 and 2009- 10 and, therefore, there is no error in the same. We do not find any force in this contention of the Id. DR. As mentioned elsewhere, since each A.Y is considered as a separate unit the Assessing Officer should have made out a case for A. Y 2008-09 only and since the order framed u/s 142(2) of the Act also refers to A.Y 2009-10, then the same cannot be used for A. Y 2008-09.

17. The quarrel before us is as to whether the assessment order framed u/s 143(3) is passed within the period of limitation period prescribed under the Act or not. In our considered opinion, for coming to such a conclusion, we can examine whether the order passed u/s 142(2A) of the Act is in accordance with law or not. It is true that the order passed u/s 142(2A) of the Act is not appealable but when an assessment order is challenged, then the

different aspects, which are integral to the process and ultimate completion of the amount can be challenged in appeal and since the ground before us is challenged for assessment being barred by limitation, we are well within our rights to consider all material aspects which were considered while framing the assessment order u/s 143(3) of the Act. ”

6.1.5. In the case of Sunder Exports vs. DCIT, reported in (2009) 126 TTJ 0853) (Del), the ITAT, Delhi Bench held as under :

“Assessment—Limitation—Extension of limitation under Explanation l(iii) to s. 153—As per the proviso to s. 142(2C) as applicable during the relevant asst. yr. 2003- 04, the AO can extend the time for furnishing of report under s. 142(2A) only on an application made by the asses see— Assessee having made no such application, AO erred in extending the time for filing such report on the application of the auditor and, therefore, the assessment order passed by the AO after receiving the audit report was barred by limitation.”

6.1.6. In the case of DCIT vs. Ramachandra Dashrath Hande & Co., reported in (2010) 36DTR 0431 (Mum), the ITAT, Mumbai Bench, Mumbai held as under :

"Assessment—Limitation—Extension of limitation under Expln.-1 (iii) to s. 153 - Prior to amendment in s.142(2C), the AO had no power to suo motu extend the period for furnishing the report by special auditor and therefore excluding such period, assessment was barred by limitation- further, the IT Act being a specific Act, the General Clauses Act may not generally apply to the limitation period. "

6.1.7. The Hon'ble High Court of Rajasthan in the case of CIT vs., Bajrang Textiles reported in [2007] 294 ITR 561 (Raj.) (HC), it was held as under:

"Direction of the AO for special audit of assessee's accounts under s. 142(2A) one day before the expiry of limitation for completing the block assessment being merely to get extension of time and AO having asked the special auditor to prepare the books of account in

the form of cash book and ledger on the basis of seized documents/papers and also trading and P&L a/c which is apparently beyond the scope of the provisions of s. 142(2A), the direction for special audit was illegal and consequently, the assessment was barred by time "

6.1.8. In the case of Sadana Electric Stores vs. CIT, reported in (2013) 219 Taxman 0294 (All) it was held as under :

"Assessment—Time limit for completion— Order passed beyond limitation period—Sustainability-Assessee was subjected to special audit by approval of CIT—Assessee was asked to obtain special audit report u/s 152(2A)—Accounts audited in report was submitted—However limitation for completion of assessment u/s 153(l)(b) expired—Assessee contended that subsequent assessment order passed by AO was time barred—Held, in case of Sadana Electric Company vs. Commissioner of Income Tax and another ITA.No. 167 2008, 152(2A), identical facts were dealt wherein Court

held that section 153(1)(a) reads that no order of assessment shall be made u/s 143 or Section 144 at any time after expiry of two years from end of A.Y. in which income was first assessable—Order of assessment had been passed in violation of period prescribed in aforesaid provision, therefore, order passed by AO, CIT and ITAT was set aside—Therefore order passed by lower authorities including Tribunal could not be sustained as facts and circumstances were identical"

6.1.9. In the case of IPF India Property Cyprus (No. I) Ltd. vs. DCIT, ITA No. 6077/2018, (also reported in (2020) 183 ITD 0046) (Mum), the ITAT Mumbai Bench, Mumbai held as under :

"7. Coming to the second point, we find that there is no dispute that if no draft assessment order was to be issued in this case, the assessment would have been time barred on 31st December 2017 but the

present assessment order is passed on 17th August 2018. Once we hold that no draft assessment order could have been issued in this case, as the provisions of Section 144C(1) could not have been invoked in this case, the time limit of completion of assessment was available only upto 31st December 2017. The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for completing the assessment under section 143(3). We, therefore, uphold the plea of the assessee on this point as well. The impugned assessment order is indeed, in our considered view, time barred. We, accordingly, hold so."

6.1.10. The Learned Counsel for the Assessee further submitted that in under-mentioned cases the Hon'ble Courts have held that restraint order under section 132(3) was bad and such bad restraint order cannot give authority to extend the limit under section 158BE of the I.T. Act, 1961.

1.	Late D.T.S. Rao through L/H D.S. Manjunath vs.Asstt. CIT, (2007) 106 ITD 570 (Bang)
2.	Rakesh Sarin vs. DCIT, (201 1) 333 ITR 451 (Mad)
3.	S.K. Katyal through L/H Mrs. Ranjana Katyal vs. DCIT, (2007) 111 TTJ 0008 (Del)
4.	CIT vs. S.K. Katyal, (2009) 308 ITR 168 (Del)
5.	Golderest Finance (India) Ltd. vs. DCIT, (2006) 105 TTJ 926 (Mum)
6.	CIT vs. Pawan Kumar Garg, (2011) 334 ITR 240

6.1.11. Learned Counsel for the Assessee, therefore, submitted that since no information could have been provided for assessment years under appeals i.e., 2006-2007 to 2011-2012 and the protocol also started from 01.04.2011, therefore, no reference could be made by the Revenue Authorities for assessment years under appeals i.e., 2006-2007 to 2011-2012. The Reference is, therefore, invalid and no limitation could have been extended to pass the assessment orders after 31.03.2014. He has, therefore, submitted that limitation extended on the basis of such Reference which could not have been made in Law in the instant case for the period prior to 01.04.2011 i.e., for A.Ys. 2006-2007 to 2011-2012 is bad and impugned assessment orders are barred by limitation.

6.1.12. Learned Counsel for the Assessee has also submitted that the assumption of jurisdiction under section 153A of the I.T Act, 1961 for assessment years under appeals is also bad in Law when there was no incriminating material found as a result of search relevant to assessment years under appeals. In support of his contention he has relied upon Judgments of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla reported in 380 ITR 573 (Del.) and Pr. CIT vs., Meeta Gut Gutia reported in 395 ITR 526 (Del.) in which the Departmental SLP have been dismissed by the Hon'ble Supreme Court reported in 96 taxmann.com 468 (SC). He has also referred to panchanama executed in the case of assessee which did not find mention any incriminating material relevant to any assessment years under appeals which could be the basis for making any addition. He has, therefore, submitted that since no incriminating material was found in assessment year under appeals, therefore, no addition could be made against the assessee. Learned Counsel for the Assessee again by referring to the above evidences submitted that since no

information could have been provided by the Swiss Authorities to the Revenue Authorities in India for assessment years under appeals, therefore, no incriminating evidence was found to show that additions are based on any incriminating material. Learned Counsel for the Assessee also submitted that assessee since the very beginning has denied to have maintained any bank accounts with HSBC, Geneva, Switzerland. Therefore, onus is upon the A.O. to prove by specific and reliable evidence that assessee maintained any such bank account. Therefore, in the absence of any evidence or material on record against the assessee, even the addition on merit are without any basis. The additions on account of notional interest are based on mere suspicion and as such no addition could be made.

7. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below. The Ld. D.R. submitted that assessee challenged that assessments in these cases were time barred. In this regard, it is relevant to note that time barring date as per provisions of Section 153B is

31.03.2015 as against 31.03.2014 because the exclusion of the time period as provided by Clause-ix of Explanation to Section 153B of the I.T. Act, 1961 as applicable in the case of the assessee. He has submitted that in this case information was called for from Foreign Competent Authority under Exchange of Information through Reference Dated 05.12.2012 and the information thereto was received back as on 10.07.2015. As per the Explanation, the time barring date would got extended by one year if response could not have been received within one year. The Ld. D.R. however, did not dispute that last panchanama was drawn on 26.09.2011 as is also confirmed by the A.O. vide his letter Dated 22.08.2019. The Ld. D.R. also filed copies of the panchanama in these cases on record. The Ld. D.R. also did not dispute the letter Dated 26.06.2015 referred to by the Learned Counsel for the Assessee during the course of arguments. The Ld. D.R. further submitted that Son of the Assessee Mr. Praveen Sawhney admitted that assessee has maintained bank account with HSBC, Geneva, Switzerland in his statement recorded on 28.07.2011. Seized document

Annexure-A1 of Party-SR-1 was found and seized during the course of search proceedings at the residence of the assessee which reflects details of Swiss Bank Account which document was confronted to the assessee, but, assessee did not reveal any information. The Ld. D.R, therefore, submitted that addition have been rightly made in the case of the assessee and decisions of the Hon'ble Delhi High Court in the cases of Kabul Chawla (supra) and Meeta Gut Gutia (supra) are not applicable in this case.

8. We have considered the rival submissions and perused the material on record. It is not in dispute that search was conducted in the case of assessee on 28.07.2011. Both the parties have placed on record copies of the panchanama drawn in the case of assessee at the time of search and thereafter, but, the same did not disclose if any, incriminating material much less than the material was found during the course of search to connect the assessee with maintenance of any bank account with HSBC, Geneva, Switzerland. The Ld. D.R. also placed on record

letter of the A.O. Dated 22.08.2019 in which it is clearly mentioned by the A.O. that last panchanama was drawn on Dated 26.09.2011. Learned Counsel for the Assessee also placed on record letter Dated 26.06.2015 issued by Swiss Competent Authority addressed to the Government of India in which it is specifically mentioned that information as required could be provided from F.Y. 2011-2012 as the prior years are not covered by temporal scope of Article 26 of the Amended Double Taxation Avoidance Agreement between India and Switzerland. Therefore, such information could be provided from 01.04.2011. Learned Counsel for the Assessee also placed on record Notification Dated 27.12.2011 between India and Switzerland Confederation for avoidance of double taxation. These would clearly show that these are applicable after assessment years under appeals and as per information provided vide letter Dated 26.06.2015 no such information could be provided prior to 01.04.2011. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland

for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011-2012. Thus, there is no incriminating material available on record to make any addition in any assessment years. It may also be noted here that assessee since the very beginning denied to have maintained any such bank accounts with HSBC, Geneva, Switzerland. There is no material available on record that assessee made deposits in HSBC Bank A/c in A.Y. 2006-2007 or thereafter earned any interest in remaining assessment years under appeals.

8.1. Considering the totality of the facts and circumstances of the case above, it is also clear that during the course of search no incriminating material was found against the assessee for maintaining any such bank accounts with HSBC, Geneva, Switzerland. Whatever information was supplied by the Swiss Authorities subsequently to the Revenue Authorities in India, no such information was provided for the period prior to 01.04.2011. Therefore, it is clear that no information have been provided by the Swiss Authorities

that assessee maintained any bank account with HSBC, Geneva, Switzerland in assessment years under appeals i.e., 2006-2007 to 2011-2012. Therefore, it is clear that no incriminating material was found against the assessee so as to make any addition against the assessee. The Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra) held as under :

> *"vii. Completed assessments can be interfered with by the A.O. 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"*

8.2. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia (supra) in paras 69 to 72 has held as under :

"69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua *the AY for which he sought to make additions of franchisee commission.*

70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the

Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

Conclusion

72. To conclude :

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153 A of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04."

8.2.1. The above Judgment is confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. Therefore, on this reason alone no addition could be made of any unexplained bank deposits or interest earned thereon in any of the assessment years. In view of the above, we set aside the Orders of the authorities below and delete the entire additions. In view of the above, there is no need to decide the remaining grounds of appeals which

are left with academic discussion only. Accordingly, all the appeals of the Assessee are allowed.

9. In the result, all the appeals of the Assessee are allowed.

ITA.Nos.434 to 439/Del./2017 – A.Ys 2006-07 to 2011-12:

10. In all these appeals, assessee challenged the levy of the penalty under section 271(1)(c) of the I.T. Act, 1961 in all the assessment years under appeals i.e., 2006-2007 to 2011-2012.

11. Learned Counsel for the Assessee has placed on record copy of the notice issued by A.O. under section 274 read with Section 271(1)(c) of the I.T. Act, 1961 Dated 02.03.2015 issued by the A.O. before levy of the penalty for assessment years under appeals in which the A.O. has mentioned *"have concealed the particulars of your income or furnished inaccurate particulars of such income".* He has, therefore, submitted that A.O. was not sure as to for which limb of Section 271(1)(c) of the I.T. Act whether penalty is to be initiated for concealment of particulars of income or

furnishing inaccurate particulars of such income. Therefore, the show cause notices are illegal and bad in law and liable to be quashed. He has submitted that issue is covered by the Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs., Sahara India Life Insurance Company Ltd., 2019 (8) TMI 409 (Del.) vide Judgment Dated 02.08.2019 in paras 21 and 22 held as under :

> *"21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA's Emerald*

Meadows (2016) 73 Taxman.com 241 (Kar), the appeal against which was dismissed by the *Supreme Court of India in SLP No.11485 of 2016 by order dated 5th August, 2016.*

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises."

11.1. He has, therefore, submitted that penalty is not leviable in any of the assessment years under appeals.

12. The Ld. D.R. on the other hand relied upon the Orders of the authorities below.

13. After considering the rival submissions, we are of the view that no penalty is leviable in any of the assessment years under appeals. In assessment years under appeals since quantum addition have already been deleted by us on quantum appeals (supra), therefore, no basis is left for levying of penalty under section 271(1)(c) of the I.T. Act. Further the show cause notices issued by the A.O. on

02.03.2015 prior to levy of the penalty, the A.O. has not mentioned therein specifically for which limb of Section 271(1)(c) of the I.T. Act, 1961, the penalty proceedings have been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of such income. therefore, show cause notices issued by the A.O. are illegal and bad in Law and vitiate the entire penalty proceedings. Thus, no penalty could be levied against the assessee. In view of the above discussion, we set aside the Orders of the authorities below and cancel the penalty in all the assessment years under appeals.

14. In the result, all the appeals of the Assessee are allowed.

15. To sum-up, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(B.R.R. KUMAR)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 01st June, 2021
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.