

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA No.5963/Del./2017  
Assessment Year: 2009-10

DCIT, Circle-1(1), Gurgaon	<b>Vs.</b>	M/s. DLF Universal Ltd., 9 <sup>th</sup> Floor, DLF Centre, Sansad Marg, New Delhi
<b>PAN :AAACJ1655P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

**C.O. No. 12/Del./2018**

[Arising out of ITA No.5963/Del./2017]  
Assessment Year: 2009-10

DLF Universal Ltd., 3 <sup>rd</sup> Floor, Shopping Mall, Arjun Marg, Phase-1, Gurgaon	<b>Vs.</b>	DCIT, Circle-1(1), Gurgaon
<b>PAN :AAACJ1655P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Nidhi Srivastava, CIT(DR)
Assessee by	Sh. Satyajeet Goel, CA

Date of hearing	17.03.2021
Date of pronouncement	26.03.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue and the Cross objection by the assessee are directed against order dated 30/07/2017 passed by the Learned Commissioner of Income-tax (Appeals)-1, Gurgaon [in

short 'the Ld. CIT(A)'] for assessment year 2009-10. The respective grounds raised by the Revenue and assessee are reproduced as under:

**(i) Grounds of appeal of the Revenue:**

1. *The Ld. CIT(A) has erred on facts and in law in observing that the proceedings u/s 153A of the Act are not initiated where no incriminating documents found during the course of search and seizure operation in view of decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (2015) 380 ITR 573 (Del.).*
2. *The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.3,84,01,375/- made by the AO on account of disallowance under Section 14A.*
3. *That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing of appeal.*

**(ii) Grounds of Cross Objection of the assessee:**

1. *In law and in the facts and circumstances of the case, the learned CIT (A) has grossly erred by not adjudicating on the ground raised by the respondent challenging the initiation of proceedings u/s 153 A when no search has been conducted on the respondent, as*
  - a) *the respondent was merely joint owner of the searched lockers namely, 733 and 852 of Corporation Bank and was not intimated about search, even no copy of Panchnama was served on completion of the search,*
  - b) *no inquiry of any nature, during the period from 30.01.2013(date of search) to 10.03.2015(service of notice u/s 153A), has been carried out either by the Investigating Division or by the Assessing Officer, till the initiation of proceedings u/s 153 A of the Act.*
2. *In law and in the facts and circumstances of the case, the Learned CIT(A) has erred in not adjudicating on the ground raised by the respondent challenging the validity of the assessment order passed u/s 153A/143(3)*
3. *That on the facts and in the circumstances of the case the learned CIT(A) has erred in upholding the validity of assessment order dated 30.03.2015 u/s 153A/143(3) passed of the Assessing Officer, which is void-ab-initio.*
4. *That the respondent craves leave to add, alter, amend, substitute, and forgo any or all the grounds of appeal before or at the time of hearing.*

**2.** Briefly stated facts of the case are that a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out in respect of Locker No. 852, maintained with Corporation bank, Gurgaon (Haryana), which was held by M/s 'Oris Infrastructure Private Limited' and M/s 'DLF Retail Developers Ltd.' jointly. The Assessing Officer in the assessment order has reported that the warrant for search of said locker was conducted on 30/01/2013.

**2.1** M/s DLF Retail Developers Ltd. later on merged with the assessee, i.e., M/s DLF Universal Ltd., and therefore, the Assessing Officer issued notice under section 153A of the Act asking the assessee to file return of income under 153A proceedings. In response, the assessee submitted that the return filed originally, which was further revised on 31/03/2010 declaring total income of ₹ 182,30,17,936/- might be treated as return in response to notice under section 153A of the Act.

**2.2** According to the Assessing Officer, in this case proceeding under section 147 of the Act, were initiated by way of issue notice under section 148 of the Act, which were pending on the date of issue of notice u/s 153A of the Act, and same got abetted due to commencing of proceeding under section 153A of the Act. The Assessing Officer, thereafter computed 153A proceedings on 30.03.2015 and made disallowance of Rs. 3,84,01,375/- under section 14A of the Act. Before the Ld. CIT(A), the assessee challenged validity of making addition for disallowance under section 14A of the Act as well as challenged the addition on merit. According to the Ld. CIT(A), facts of the case are covered by the decision of the Hon'ble Delhi High Court in the case of **Kabul**

**Chawla, 380 ITR 573.** The Ld. CIT(A) held that as on the date of the search, i.e., 30/01/2013, no assessment/reassessment proceedings were pending in the relevant assessment year and the proceeding under section 147 which have been claimed to be pending by the Assessing Officer, were actually initiated on 23/10/2013 i.e. beyond the date of the search. The Ld. CIT(A) has also observed that there is no reference of any incriminating material as far as addition under section 14A of the Act is concerned. Accordingly, the learned CIT(A) allowed the appeal of the assessee. Aggrieved, the Revenue is before the Tribunal by way of this appeal and the assessee has also raised its cross objections.

**3.** Before us, the parties appeared through Video Conferencing facility and filed documents electronically.

**4.** The learned DR relied on the order of the Assessing Officer. She referred to the remand report as reproduced in para 3.7 of Ld. CIT(A), where the Assessing Officer has mentioned the date of the search as 23/01/2016. She submitted that in case search is conducted on 23.01.2016, the reassessment proceedings initiated on 14/11/2013 are validly pending as on date of search, and therefore ratio in the case of **Kabul Chawala** (supra) would not be applicable over the facts of the instant case.

**5.** On the other hand, Learned Counsel of the assessee submitted that search on the locker was conducted on 30/01/2013 as mentioned in the assessment order by the Assessing Officer. He also supported the date of conduct of the search by way of Panchnama of search proceedings in case of locker. The assessee submitted that the ratio in the case of **Kabul**

**Chawala** (supra) has been validly applied by the Learned CIT(A). He further submitted that in the assessment year 2008-09, also the Tribunal has deleted the addition made under section 153A proceedings, without any incriminating material found from the premises of the assessee, applying the ratio in the case of **Kabul Chawla** (supra).

**6.** We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case the Ld. CIT(A) has deleted the addition applying the ratio in the case of **Kabul Chawal** (supra) that no addition could be made under 153A proceedings under absence of any incriminating material, in case of completed assessments. Thus, for invoking the ratio of **Kabul Chawla** (supra), the two conditions are required to be satisfied. Firstly, no incriminating material has been found during the course of the search. Secondly, no assessment/reassessment proceedings were pending in the relevant assessment year as on the date of the search.

**6.1** As far as first condition is concerned, in the instant case addition under section 14A of the Act has been made and evidently there is no reference of any incriminating material in the assessment order, with regard to the addition under section 14A of the Act. Thus, there is no dispute that there was no incriminating material found during the course of the search relevant to the assessment year under consideration.

**6.2** Regarding the second condition, according to the Assessing Officer notice under section 148 of the Act for commencing reassessment proceeding was issued on 23/10/2013 and notice under section 153A was issued on 10/03/2015 and therefore

assessment was pending in instant assessment year. However, the Ld. CIT(A) held that no proceedings were pending as on the date of the search and, therefore, notice under section 148 issued after the date of the search was void ab initio. The finding of the Learned CIT(A) is reproduced as under:

*“3. On the date of search no proceedings were pending u/s 148 and issue of notice u/s 148 after the date of search was ab-initio void. From the facts discussed above, it is evident that the search pertaining to which the assessment u/s 153A has been initiated in this case was conducted on 30/01/2013. The appellant has contended that on this date no proceedings u/s 143(2) or 148 were pending and in these circumstances, the notice u/s 148 issued on 23/10/2013 is abinitio void. To examine the appellant’s contention, it may be relevant to refer to the second proviso to section 153 A which reads as under:-*

*“Provided further that assessment or re-assessment, if any, relating to any assessment year falling within the period of six AYs referred to in this subsection pending on the date of initiation of search u/s 132 or making of requisition u/s 132A, as the case may be shall abate.*

*b. The plain reading of the aforesaid proviso shows that for any proceedings I of assessment or re-assessment to abate as the consequence of search u/s 132, the same should be pending on the date of initiation of search. In the appellant’s case, it is undisputed fact on record that no proceedings were pending u/s 143(2) or u/s 148 on the date of search i.e. 30/01/2013. Therefore, there is no question of any re-assessment proceedings u/s 148 having been abated on the date of search. Further, once a case has been subjected to search u/s 132, the assessment or re-assessment of the income in respect of each assessment year falling within six assessment years prior to the date of search has to be made by the AO u/s 153A. In these circumstances, the issue of notice u/s 148 by the AO after date of search is void-ab-initio.*

*B. Keeping in view the aforesaid factual and legal position, the proceedings u/s 148 in this case are held to be bad in law.”*

**6.3** In view of finding, the Ld. CIT(A) held that no addition under section 14A could be made under section 153A proceedings observing as under:

**“II The validity of addition u/s 14A vide order u/s 153A/143(3)**

*A. In this regard, the appellant has contended that as the proceedings u/s 148 were bad in law, no assessment or re-*

*assessment proceedings were pending when the notice u/s 153A was issued and in these circumstances, any addition may be made only on the basis of incriminating documents found during the course of search. Similar issue was decided by me in the appellant's own case for AY 2008-09 in Appeal No. 140/15-16. In this case, vide order dated 23/06/2017, I held as under:-*

*3.7 It is seen from the facts recorded in the assessment order and the submissions of the appellant and the AO's report dated 16/01/2017 that no document pertaining to the appellant was found from any of the two lockers in respect of which warrant of authorization bearing the appellant's name was issued. The only documents found pertaining to the appellant were seized from the office of M/s Orris Infrastructure Pvt. Ltd. which does not belong to the appellant. Even in these documents there was nothing pertaining to the issue of any exempt income being earned by the appellant on the basis of which the disallowance u/s 14A could be made. In these circumstances, the disallowance made by the AO u/s 14A read with rule 8D is legally not sustainable. The issue is squarely covered by the decision of the Hon'ble Delhi High Court in the case of CIT V/s Kabul Chawla (2015) 380 ITR 573 and Pr. CIT V/s Kurele Paper Mills Ltd 380 ITR 571. It may be relevant to note here that the SLP filed by the Department against this order in the case of Kurele Paper Mills has been dismissed by the Hon'ble Supreme Court vide order dated 07/12/2015 (2016) 380 ITR (St) 64 - Ed.*

*3.8 Keeping in view the aforesaid factual and legal position the disallowance made by the AO is deleted. This ground of appeal is allowed."*

*B. The facts for the current year i.e. AY 2009-10 are the same as the proceedings u/s 153A relate to the same search. Keeping in view the factual and legal position discussed above, the addition made by the AO is deleted"*

**6.4** We have perused the Panchnama of search operation in the case of the locker in the joint name of the entity merged with the assessee and it is evident from said Panchanama that the search was conducted on 30/01/2013. Since the notice under section 148 was issued on 23/10/2013, which is after the date of the search, it is evident that as on the date of the search no assessment/ reassessment proceedings were pending in the instant assessment year. The Learned Assessing Officer has

wrongly considered the pendency of the assessment proceeding on the date of the issue of the notice under section 153A of the Act.

**6.5** The Tribunal in the case of the assessee in assessment year 2008-09 in ITA No.5558/Del/2017 has deleted the identical disallowance under section 14A of the Act, observing as under:

*“6. We have gone through the record in the light of submissions made on either side. The assessment order does not show any material seized in the search and seizure proceedings to form a basis for addition u/s. 14A read with Rule 8D of the Rules. It is not in dispute that as on the date of assumption of jurisdiction by the Assessing Officer u/s. 153A, the assessment for the assessment year 2008-09 was a concluded one and therefore, it does not get abated. It is settled principle of law that in terms of decision of Hon'ble jurisdictional High Court in the case of Kabul Chawla (supra), Chintels India Ltd vs. DCIT, 397 ITR 416 (Del), PCIT vs. Best Infrastructure (India) Ltd., 397 ITR 82 (Del), PCIT Vs. Meeta Gutgutia, 395 ITR 526 (Del), Ld. PCIT vs. Ms Lata Jain, 384 ITR 543 (Del), the assessments and reassessments pending on the date of the search shall abate and the total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise; and that although Section 153A of the Act 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. In the absence of any material to the contrary, it is not possible for us to find fault with the findings of the ld. CIT(A) while following the decision of Hon'ble Jurisdictional High Court in the case of Kabul Chawla (supra) to reach a conclusion that the addition made u/s. 14A read with Rule 8D cannot be sustained in the absence of any incriminating material un-earthed during the search proceedings. We, accordingly find the grounds of appeal as devoid of merits and the same are liable to be dismissed and are accordingly dismissed. In the result, the appeal of the Revenue is dismissed and consequently, the cross objections filed by the assessee becomes infructuous. The cross objections of the assessee are, therefore, also dismissed as infructuous.”*

**6.6** In view of our discussion above, in absence of no incriminating material found during the course of the search and



no assessment/reassessment proceedings pending as on the date of the search, the ratio in the case of decision of the Hon'ble Delhi High Court in the case of **Kabul Chawal** (supra) is squarely applicable on the facts of the case and accordingly, no addition could have been made in the instant assessment year. The addition made by the Assessing Officer has rightly been deleted by the Learned CIT(A), and we uphold the same.

**6.7** The grounds of appeal of the revenue are accordingly dismissed.

**7.** Since the additions in dispute have already been deleted, the Cross Objections filed by the assessee are rendered infructuous and accordingly, we dismiss the same.

**8.** In the result, the appeal filed by the Revenue as well as the cross objection filed by the assessee are dismissed.

***Order pronounced in the open court on 26<sup>th</sup> March, 2021***

***Sd/-***  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 26<sup>th</sup> March, 2021.

RK/-(DTPDS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi