

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.5113/Del/2016  
निर्धारणवर्ष/Assessment Year:2010-11

DCIT Central Circle-8, Room No. 333 ARA Centre, Jhandewalan Extn., New Delhi.	<u>बनाम</u> Vs.	Madhyam Housing Pvt. Ltd. B-2/6, Plot No. 2, Ashok Nagar, DB Gupta Road, Near Faiz Chowk, Karol Bagh, New Delhi.
		PAN No. AADCM7666G
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Ms. Pramita M. Biswas, CIT DR
निर्धारितीकीओरसे /Assessee by	Ms. Swati Rana, Adv.

सुनवाईकीतारीख/ Date of hearing:	11.02.2020
उद्घोषणाकीतारीख/Pronouncement on	11.02.2020

**आदेश /O R D E R**

**PER BHAVNESH SAINI, J.M.**

1. This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-24, New Delhi dated 29.07.2016 for Assessment Year 2010-11.
2. Briefly the facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on K-World Group of Cases on 05.04.2012. The case of the assessee was also covered u/s 132 of the Act. The assessee in response to notice u/s 153A of the Act issued on 09.07.2014 submitted its return of income on 24.11.2014 declaring total income of Rs. 90,200/-. The assessee filed the requisite details before the

Assessing Officer. The AO noted from the details that assessee has received share capital from 7 parties in a sum of Rs. 2.07 crores. The AO noted that assessee has failed to prove the genuineness of the transaction u/s 68 of the Act and, accordingly, made addition of Rs. 2.07 crores in the order u/s 153A read with section 143(3) of the Act.

3. The assessee submitted before Ld. CIT(A) that during the course of search, no incriminating material was found for making the above addition. The assessee relied upon judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 and others. The Ld. CIT(A) found issue is covered in judgment of Hon'ble Delhi High Court in the case of Kabul Chawla (supra). Following the same, Ld. CIT(A) held that since no incriminating material was unearthed during the course of search. Therefore, no addition could be made u/s 153A of the Act of this nature. The addition was, accordingly, deleted.

4. The Revenue in the present appeal challenged the order of Ld. CIT(A) in quashing the order u/s 153A of the Act following the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra).

5. We have heard Ld. Representatives of both the parties.

6. Ld. DR relied upon the order of the AO and submitted that section 153A does not restrict the assessment to incriminating documents. On the other hand, Ld. Counsel for assessee reiterated the submissions made before the authorities below.

7. After considering the rival submission, we do not find any merit in the Departmental appeal. The assessee in the statement of facts before Ld. CIT(A) has mentioned that original return was filed on 25.09.2010 showing total income of Rs. 83,685/- and the same was processed u/s 143(1) of the Act. It would show that the return was completed and no assessment was pending from the date of the search. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra) held that "Completed assessments can be interfered with by the AO while making assessment u/s 153A only on the basis of some incriminating material unearthed during the course of search which were not produced or not already disclosed or made known in the course of original assessment". The Hon'ble Delhi High Court following the aforesaid decision took the same view in the case of Meeta Gutgutia 395 ITR 526 in which SLP of the Department has been dismissed by the Supreme Court reported in 96 taxmann.com 468. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) in allowing the appeal of the assessee.

8. In the result, the departmental appeal is dismissed.

Order pronounced in the open court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 11<sup>th</sup> February, 2020

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

By order

**Assistant Registrar, ITAT: Delhi Benches-Delhi**