

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.320/Chd/2016**

Assessment Year: 2009-10

Hiteish Arora  
SCO 164, Sector 37-C  
Chandigarh

Vs.

The Dy. CIT  
Circle 4(1),  
Chandigarh

PAN No. ADNPA6661R

**ITA No.321/Chd/2016**

Assessment Year: 2009-10

Ashish Arora  
SCO 164, Sector 37-C  
Chandigarh

Vs.

The Dy. CIT  
Circle 4(1),  
Chandigarh

PAN No. AEXPA8162Q

(Appellant)

(Respondent)

Appellant By : Shri. Jaspal Sharma  
Respondent By : Smt. Chandrakanta

Date of hearing : 24/07/2018  
Date of Pronouncement : 06/08/2018

**ORDER**

**PER BENCH:**

Both the above appeals have been filed by the Assessee against the separate orders of Ld. CIT(A)-2, Chandigarh dt. 01/02/2016.

2. Assessee has raised following Grounds of appeal in ITA No. 320/Chd/2016 :

1. *The impugned order is both against facts and erroneous in law.*
2. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeals) has erred in having confirmed the action of the Ld.AO in reopening the assessment u/s 148.*
3. *On the facts and circumstances of the case the Ld. CIT(Appeals) has erred in having confirmed the finding of the Ld.AO in having treated the additional sale consideration of Rs.35 lacs from sale of house property, surrendered during the course of survey, as deemed income from undisclosed sources.*
4. *On the facts and circumstances of the case the Ld.CIT(Appeals) has erred in having held that no deduction u/s 54 is available to the assessee.*

2.1 The assessee has filed revised grounds of appeal which are as under:

1. *The impugned order is both against facts and erroneous in law.*
2. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeals) has erred in having confirmed the action of the Ld.AO in reopening the assessment u/s 148 which is illegal, bad in law and without jurisdiction.*
3. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeals) has erred in having confirmed the finding of the Ld.AO in having treated the additional sale consideration of Rs.35 lacs from sale of H.No.2107,Sector 21D, Chandigarh, surrendered during the course of survey, as deemed income from undisclosed sources in spite of the fact that the assessee has surrendered and declared the income from specific source.*
4. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeals) has erred in having confirmed the finding of the Ld.AO in having rejected the claim of the assessee in having treated the additional sale consideration of Rs.35 lacs on account of sale of house property, as part of total sale consideration for purposes of computing long term capital gains and in having claimed deduction u/s 54 of the Income Tax act against long term capital gains.*

3. Brief facts on the issue are that a survey u/s 133A of the Act was carried out on 10.12.2008 at the business premises of the assessee. As a result of survey, certain documents were found showing cash transactions in the sale and purchase of property. To cover up this unexplained cash, assessee agreed to surrender a sum of Rs. 70,00,000/- equally in the hands of the appellant and the other partner Sh. Ashish Arora. The assessee filed return of income in which long term capital gains were computed taking the additional income declared as part of the sale consideration from house property and appellant claimed deduction u/s 54 of the Act. The Assessing Officer has treated the income declared/ surrendered during the survey under section 133A as deemed income in view of the decision of the jurisdiction High Court in the case of Kim Pharma Pvt. Ltd. (2013) 35 Taxman and did not allow the Long Term Capital Gain computed by the assessee.

4. Before us, the Ld. AR submitted the statement wherein the amount of Rs. 35,00,000/- has been surrendered being the additional sale consideration received over and above the sale consideration mentioned in the registered sale deed. The letter dt. 18/12/2008 signed by Shri. Hitesh Arora and Shri Ashish Arora submitted before the DDIT(Inv) Chandigarh reads as under:

*"A survey under section 133A was carried out at the business premises of the firm noted in the subject on 10/12/2008. During the course of survey, certain documents showing cash transactions in respect of sale of H.No. 3107, Sector 21-D, Chandigarh were found. Therefore, in order to buy peace of mind and to avoid litigation, we hereby agree to surrender a sum of Rs. 70 lakhs by way of additional sale consideration received by us over and above the sale consideration as mentioned in the registered sale deed in this regard. The above disclosure is subject to no penal action by the department including any penalty under section 271(1)(c).*

*The above disclosure is made in the hands of Shri Hiteish Arora and Shri Ashish Arora who are equal co-owners in the above said property. Further this disclosure has been made by us without any pressure or coercion from the department."*

5. It was argued that since the sources have been proved, the income has been surrendered, taken as additional income in the return, the additional amount was added to the sale price of the House, then the cost price was deducted rightly, and then the resultant capital gain is claimed as deduction under section 54 which should be allowed.

6. Ld. DR argued that since the declared income has to be treated under the head Income From Other Sources, no benefit of deduction while computing the capital gains be given.

7. We have heard the arguments and gone through the material before us. The judgment of Kim Pharma Pvt. Ltd. relied by the Ld. DR is perused. The excerpts from the judgments are as under:

- *The moment a satisfactory explanation is given about such nature and source by the assessee, than the source would stands disclosed.....and the income would be treated under the appropriate income.*
- *When the income cannot be so classified under any one of the head of income under section 14 it follows that the question of giving any deduction under the provisions which correspond to such head of income will not arise.*
- *In the absence of the explanation / evidence regarding the sources of the additional income being satisfactorily explained by the assessee & applying the ratio of the Hon 'ble Gujrat High Court in Fakir Mohmed Haji Hasan Vs. CIT (supra), we hold that the additional income offered is deemed income assessable u/s 69A of the Act and no deduction is allowable against such deemed income assessed u/s 69A of the Act in the hands of the assessee. Following the ratio laid down by the Gujrat High Court in Fakir Mohmed Haji Hasan Vs. CIT (supra), once the assessee has failed to explain the nature and source of cash found available with it and the same is assessed as deemed income u/s 69A of the Act, therefore, the corresponding deductions under the head Profits and gains are not available to the assessee.*

8. Further we have also perused the judgment of Hon'ble Gujarat High Court in the case of Fakir Mohammad Hazi Hasan Vs. CIT 247 ITR 290 while interpreting the scope in describing the scheme of Section 69, 69A, 69B and 69C which is as under:

*"The scheme of sections 69, 69A, 69B and 69C of the Income-tax Act, 1961, would show that in cases where the nature and source of investments made by the assessee or the nature and source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, then, the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of such assessee. It*

*follows that the moment a satisfactory explanation is given about such nature and source by the assessee, then the source would stand disclosed and will, therefore, be known and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act. However, when these provisions apply because no source is disclosed at all on the basis of which the income can be classified under one of the heads of income under section 14 of the Act, it would not be possible to classify such deemed income under any of these heads including income from "other sources" which have to be sources known or explained. When the income cannot be so classified under any one of the heads of income under section 14, it follows that the question of giving any deductions under the provisions which correspond to such heads of income will not arise*

8.1 From the perusal of the material, concurrent reading of the judgments juxtaposed against the facts of the case, we find that the Hon'ble Courts have treated the amounts disclosed / surrendered as deemed income where the nature and source of investment / expenditure / income are not satisfactorily explained by the assessee. The moment a satisfactory explanation is given about such nature and source by the assessee then, the source would stand disclosed and will therefore be known and the income would be treated under the appropriate head of income for the assessment as per the provisions of the Act. Since, in the instant case the assessee declared the income and proved the sources sufficiently satisfactorily as the amount received over and above the sale consideration mentioned in the registered deed and subsequently rightly claimed the deduction under section 54 as per the scheme of the Act and in tune with the judgments articulated with regard to deemed income and hence the addition confirmed by the Ld.CIT(A) is liable to be deleted.

9. As the result the appeals of the Assessee are allowed.

Order pronounced in the open Court.

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated : 06/08/2018  
AG

Copy to: 1.The Appellant, 2.The Respondent,3. The CIT, 4.The CIT(A), 5.The DR