

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.2578/Del/2015
Assessment Year : 2006-07**

**Braham Arenja C/o. M/s
Rohit Malik & Associates,
1403, Chiranjiv Tower, 43,
Nehru Place, New Delhi
PAN :AADPA1953D
(Appellant)** **Vs. ACIT, Central Circle-18
New Delhi
(Respondent)**

**ITA No.2579/Del/2015
Assessment Year : 2006-07**

**Brinda Arenja C/o. M/s Rohit
Malik & Associates, 1403,
Chiranjiv Tower, 43, Nehru
Place, New Delhi
PAN :ACAPA1368D
(Appellant)** **Vs. ACIT, Central Circle-18
New Delhi
(Respondent)**

**ITA No.2580/Del/2015
Assessment Year : 2006-07**

**Braham Arenja (HUF) C/o.
M/s Rohit Malik & Associates,
1403, Chiranjiv Tower, 43,
Nehru Place, New Delhi
PAN :AAEHB0364A
(Appellant)** **Vs. ACIT, Central Circle-18
New Delhi
(Respondent)**

**ITA No.3274/Del/2015
Assessment Year : 2012-13**

**The ACIT, Central Circle-18,
Jhandewalan, New Delhi
(Appellant)** **Vs. Smt. Brinda Arenja, N-51,
Panchsheel Park, New Delhi
PAN :ACAPA1368D
(Respondent)**

ITA No.3113/Del/2015
Assessment Year : 2012-13

The ACIT, Central Circle-18,
 Jhandewalan, New Delhi

Vs. Smt. Brinda Arenja, N-51,
 Panchsheel Park, New Delhi
 PAN :ACAPA1368D

(Appellant)

(Respondent)

Appellant by : Shri Satyen Sethi, Adv
 Respondent by : Smt. Sunita Singh, CIT-DR.

ORDER

PER BENCH :

ITA No. 2578/Del/2015

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-XXVII, New Delhi dated 20th January, 2015 for the AY 2006-07.

2. In this appeal, the following grounds are raised by the assessee reads as under:-

"1. That the search u/s 132 conducted at the premises of the appellant on 10.2.2012 was without jurisdiction and not based on any incriminating material on record. Therefore, the proceedings initiated u/s 153A were void abinitio. The consequent assessment u/s 153A read with 143(3) being illegal, erroneous and without jurisdiction, deserves to be quashed.

2. a) That the appellant had recorded the entire amount of investment of Rs. 1,50,00,000/- paid for purchase of space at Indirapuram Habitat Centre in his books of accounts. The CIT(Appeals) went wrong on facts and in law in sustaining the addition made by the assessing officer of a sum of Rs. 1,77,00,000/- as undisclosed amount expended for making the investment which has not been recorded in his books of accounts, based on an excel spreadsheet which has no evidentiary value.

b) The consequent addition of Rs. 1,77,00,000/- made by the assessing officer and sustained by Ld. CIT(A) being illegal, erroneous and without jurisdiction, deserves to be deleted.

3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. At the time of hearing before us, it is pointed out by the learned counsel that this issue is squarely covered by the ITAT in the case of Subhash Khattar in ITA No. 902/Del/2015 which is upheld by the Hon'ble Jurisdictional High Court in ITA No. 60/2017 vide order dated 25th July, 2017. He stated that during the course of search proceedings in the premises of Aerens Group, certain material was found and seized which was marked as Annexure-A-32 wherein the details of sales status of Indirapuram Habitat Centre were found showing the name of various persons which included the assessee in the present appeal as well as Mr. Subhash Khattar. The Assessing Officer in the case of Subhash Khattar had made the addition on the basis of said Annexure-A-32 in respect of cash component noted therein. The addition was sustained by the learned CIT(A) but when the matter reached to ITAT, the ITAT deleted the addition with the following finding:-

“8. Considering the above submissions, we find that the Learned CIT(Appeals) has upheld the addition in question mainly on the basis of (i) the details written on the hard disc found during the course of search from the premises Aerens Group, wherein payment through cheque and cash have been mentioned against the name of assessee at Sr. No.32, Shri I.E.Soomar appearing at Sr. No. 39 of the said hard disc had admitted the cash investment of Rs. 6.64 crores being made in the said project and had paid the taxes on the same; (iii) the said hard disc cannot be relied upon in part as the assessee has admitted the payment through cheque but denied the cash payment shown therein etc. In our view, a huge addition of Rs.3,21,00,000 cannot be made in a casual manner without having corroborative evidence in support. It is a prevailing practice in the dealings of immoveable properties that cash amount, if any, out of the agreed consideration is paid during the course of execution/registration of the sale deed and admittedly in the present case no sale deed or other mode of transfer has been effected. Merely because name of the assessee is appearing in the said hard disc and amongst other investors are investor Shri I.E. Soomar appearing in the said hard disc has admitted payment of cash amount, cannot be a basis for arriving at a definite conclusion, in absence of corroborative evidence in

support, that the assessee had also paid the amount of Rs.3,21,00,000 in cash. The Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Prem Prakash Nagpal (supra) wherein Assessing Officer had made certain additions under sec. 69 of the Act on the basis of the documents found during search at a place of third party which indicated that assessee had purchased a plot by paying consideration in cash, it was held by the Hon'ble High Court that the Assessing Officer could not prove by evidence that said documents belonged to the assessee and that any on money transaction had taken place. The documents at the best only showed tentative/projected purchase consideration held the Hon'ble High Court. Again, in the case of CIT vs. Alpha Impact Pvt. Ltd. (supra), the Hon'ble Bombay High Court has been pleased to hold that addition to assessee's income in respect of additional sales consideration received in sale of land merely on the basis of Email recovered during the course of search action at the premises of another person and there being no independent material available supporting such additions, was not justified. Besides, we also find substance in the contention of the Learned AR that assessment under sec. 153 A of the Act in absence of incriminating material found during the course of search at the premises of the assessee and in absence of abatement of assessment on the date of search, cannot be made in the present case as per the above cited decisions including the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Kabul Chawla (supra). Under the circumstances, we are of the view that the Assessing Officer was not justified in assuming jurisdiction under section 153 A and authorities below were also not justified in making and sustaining the addition in question merely on the basis of a hard disc found during the course of search at the premises of Aerens Group without any corroborative evidence in support. We thus hold that the assessee/appellant succeeds on both the above issues i.e. on validity of assumption of jurisdiction under sec. 153A and the addition in question. The grounds involving the above issues are accordingly allowed."

4. The Revenue filed appeal against the above decision of the ITAT vide ITA No. 60/2017, the Hon'ble jurisdictional High Court vide order dated 25.7.2017 upheld the decision of the ITAT with the following finding:-

"7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it,

that the notice to the Assessee under Section 153 A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153 A. This goes to the root of the matter.

8. Consequently, the impugned order of the ITAT calls for no interference of this Court. The question framed by this Court on 7th February, 2017 is answered in negative, that is, in favour of the Assessee and against the Revenue."

5. He stated that in the case of the assessee also, the addition has been made under section 153A on the basis of same Annexure A-32 and therefore, the above decision of Hon'ble ITAT as well as Jurisdictional High Court would be squarely applicable. The learned DR on the other hand relied upon the orders of the authorities below.

6. We have carefully considered the arguments of both the sides and perused the material placed before us. From the reading of para 6.1.7 of the order of the learned CIT(A), it is evident that the learned CIT(A) has recorded a finding which is reproduced below for ready reference that the facts of the assessee's case are similar to the facts of Shri Subhash Khattar and in fact he dismissed the assessee's appeal following his own decision in the case of Shri. Subhash Khattar which reads as under:-

"6.1.7. A reference to the seized material, as mentioned in the above paragraphs is made to portray that the cash transactions (payments & receipts) is found to be a normal feature, the way or manner in which the appellant conducts his business affairs. Therefore, denial of cash payment to the extent of Rs. 1.77 crores to the builder found recorded on the excel sheet fortifies the probability of investment made in cash. In the case of the appellant, payment is not a random event but repeated in several instances, the sequence of events exhibiting certain pattern, which can be predicted. I find that cheque payments are found recorded in the books of accounts, but the cash payment is not accepted. This is the case of not only the appellant, but also the facts are similar in all the cases whose names are found recorded on this excel sheet. In case of Sh. Subhash Khattar and Lakhota group of case, pertaining to the amounts found recorded on D.P. Correction sheet.xls, the

Assessing Officer made addition to the extent of cash investment made in Indirapuram Habitat Centre. In appeal, the addition made by the Assessing Officer is confirmed by me vide orders passed on 27.11.2014, in both the above cases. The Assessing Officer reasoned out to prove the fact. There may not be a direct evidence gathered by the Assessing Officer for cash investment made by the appellant, but a probable conclusion from the circumstances are so strong that there is little doubt as to a vital fact. "preponderance of the evidence" which became essential in this case. The essential facts are similar in all the case, and the appellant is likely to loose, as the essential fact which is vital to the case i.e. investment in cash is proven or admitted by one of them. There is a relevancy of facts forming part of the same transactions."

7. Thus, admittedly the facts in the case of the assessee as well as Shri Subhash Khattar are identical. The appeal of Shri Subhash Khattar is decided in his favour by the ITAT in ITA No. 902/Del/2015 which is upheld by the Hon'ble Jurisdictional High Court. The relevant portion of both the above orders are reproduced above in this order. In view of the above, we respectfully following the above ITAT as well as Hon'ble Jurisdictional High Court in the case of Shri Subhash Khattar (supra) hold that the addition of Rs. 1,77,00,000/- made by the Assessing Officer, under section 153A, in the case of the assessee on the basis of seized document in the case of Aerence Group is not sustainable. Accordingly, the addition made by the Assessing Officer and upheld by the learned CIT(A) is deleted and assessee's appeal is allowed.

ITA No. 2579/Del/2015

ITA No. 2580/Del/2015

8. In these two appeals also the additions have been made on the basis of same Annexure-A-32 amounting to Rs. 90,00,000/- and Rs. 60,00,000/- respectively. Both the parties admitted that the facts in these two cases are identical to the facts in the case of Mr. Braham Arenja in ITA No. 2578/Del/2015. For the detailed discussion above in the case of Braham Arenja, we delete the additions in these two cases also.

ITA No. 3274/Del/2015

9. In this appeal, the only ground raised is against the deletion of addition of Rs. 36,04,087/- under section 69A of the Income Tax Act on account of unexplained investment in jewellery. Admittedly the tax effect in this appeal is below Rs. 20 Lac and therefore Circular No. 3/2018 dated 20th July, 2018 as amended vide letter dated F.No. 279/Misc. 142/2007-ITJ (Pt) dated 20th July, 2018 would be squarely applicable. Respectfully applying the same, we dismiss the Revenue's appeal.

ITA No. 3113/Del/2015

10. In this appeal, the following grounds are raised:-

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 6,00,000/- on account of cash payment of the assessee.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 26,59,000/- on account of cash found and seized of the assessee.*
3. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition to Rs. 50,000/- as against Rs. 1,00,000/- on account of unexplained expenditure in purchase of foreign liquor of the assessee.*
4. *(a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on facts.
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

11. Thus the total deletion made by the CIT(A) is Rs. 33,09,000/-. Admittedly the tax effect in this appeal is below Rs. 20 Lac and therefore Circular No. 3/2018 dated 20th July, 2018 as amended vide letter dated F.No. 279/Misc. 142/2007-ITJ (Pt) dated 20th July, 2018 would be squarely applicable. Respectfully applying the same, we dismiss the Revenue's appeal.

12. In the result, assessee's appeals are allowed while Revenue's appeals are dismissed.

Decision pronounced in the open Court on 12.12.2018.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

Dated : 12.12.2018
SH

Copy forwarded to: -

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

Assistant Registrar

		Date	Initial	
1.	Draft dictated on	10.12.2018		PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Date of uploading	12.12.2018		