INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E": NEW DELHI

BEFORE SHRI H. S. SIDHU , JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2953/Del/2018

(Assessment Year: 2014-15)

Hari Mohan Sharma, 60, Basti Harpool Singh, New Delhi PAN: AARPS6592G	Vs.	ACIT, Circle-63(1), New Delhi
(Appellant)		(Respondent)

ITA No. 2954/Del/2018

(Assessment Year: 2014-15)

Madan Mohan Sharma, 60, Basti Harpool Singh, New Delhi PAN: AARPS6590E	Vs.	ACIT, Circle-63(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Salil Aggarwal, Adv Shri Sahilesh Gupta, Adv Shri Madhur Aggarwal, Adv
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	08/01/2019
Date of pronouncement	31/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the two appeals filed by the different assesses, joint owners of the one property and involving identical grounds of appeal, therefore both these appeals are heard together and disposed of by this common order

2. Shri Hari Mohan Sharma , assessee has raised the following grounds of appeal in ITA No. 2953/Del/2018 for the Assessment Year 2014-15:-

1. That the learned CIT(A) has erred both on facts and in law, in confirming the order of assessment and has further erred in vaguely enhancing the income of the appellant.

1.1 That the order of learned CIT(A) in enhancing the income is without jurisdiction and is wholly arbitrary and is thus unsustainable in law.

2. That even when enhancing, the income, the learned CIT(A) has neither stated the income by which the total income is enhanced or even the source of income or head of the income, which is stated to have been enhanced.

3. That the order of the learned CIT(A) in confirming the assessment is based on misconceived and erroneous assumption and on non-existent facts and hence is unsustainable in law.

4. That the learned CIT(A) has failed to appreciate that the assessee had sold its 1 /3rd share of property bearing No. R - 515, New Rajinder Nagar, New Delhi, under an registered agreement of sale of which possession had been handed over to the vendee, who took the possession thereof, which had been duly confirmed. The finding that the assessee had not transferred the property is entirely erroneous and is based on no valid material.

5. That the learned CIT(A) has failed to appreciate that having established the vendee had entered into an agreement of sale and had paid the consideration through cheques, which had duly been recorded in the accounts of the vendee who took the possession, could not have held that the assessee is not entitled to claim of deduction in accordance with provisions of section 54 of the Income Tax Act.

6. That the learned CIT(A) has also failed to appreciate that the claim of deduction had been made when the assessee had acquired the property at 1 Ajmal Khan Road, which too was duly registered in his name and as such the claim of exemption of the capital gain was made after due compliance of statutory provision.

7. That the learned CIT(A) has erred in rejecting the claim of the assessee made u/s 54 of the Act on the assumption that subsequently the said

sale deed stood cancelled. In doing so, the learned CIT (A) has failed to appreciate that under law, a transaction is complete soon the sale deed is executed and is transfer in law.

8. *That in any case and without prejudice, the learned CIT(A) has failed to appreciate that the burden was on the revenue to establish that the assessee had neither sold the asset nor had acquired the asset so as to disallow the claim made of computing the capital gain which was in accordance with the statutory provisions. He has failed to appreciate that before disallowing the claim, the burden was on the revenue, which had not been discharged by leading any valid material.*
9. *The learned CIT (A) has further erred in placing the burden on the assessee to establish the source of the funds which he had received as consideration of purchase by the vendee.*
10. *The learned CIT (A) has further erred in not appreciating that the assessee had also led the prima-facie evidence to establish the source of the funds of the vendee and the vendee having not disputed that the consideration was paid by the vendee, could not have held that the source of the funds was that of assessee which was not even the case of the learned AO.*
11. *The learned CIT (A) has failed to appreciate that the burden to establish the source of the funds in the account of vendee was not on the assessee. In holding that the bur den was on the assessee, she has ignored the law' laid down by the Patna High Court in the case of Jhaverbhai Bihari Lai & Co. vs. CIT reported in 154 ITR 591 at page 597. That in any case and without prejudice even such a burden which though was not on the assessee, was discharged by him which establishes beyond doubt the source of the funds of the vendee was the vendee's own funds and not of the assessee.*
12. *That further the learned CIT (A) has also failed to comprehend that the assessee had discharged his onus, when it had furnished the confirmation from the vendee, who had acquired the property from the assessee and paid the consideration which consideration, had been paid by the vendee through its accounts. The learned CIT (A) has not only misread the evidence but has drawn erroneous inferences. The*

inferences drawn by the learned CIT(A) is on complete misreading of the evidence and is based on a biased and pre-determined approach and is thus vitiated in law.

13. *That further the adverse finding recorded by the learned CIT (A) in her order that the transaction was colorable is entirely and wholly erroneous. In fact she has failed to comprehend that the assessee having obtained the balance sheet in support that the vendee has not disputed the purchase of property which is duly reflected iii their account, could not have ignored the balance sheet.*

14. *That in enhancing the income, the learned CIT(A) has failed to appreciate that the Full Bench of Delhi High Court in 251 ITR 864 which is binding on the learned CIT(A) has held that the learned CIT(A) in appeal before him could not tackle a new source of income and thus when the learned CIT(A) proposed to enhance the income by tackling a new source of income, the same having been objected, should not have proceeded to tackle the said source of income. The judgment referred to by the learned CIT(A) in the order have duly been considered by the Full Bench and as such the learned CIT(A) has committed a gross error of law when the binding decision has been overreached by her on the basis of imaginative and non-supportive grounds.*

15. *That the learned CIT (A) has misread the judgments in the case of Jute Corporation of India vs. CIT, reported in 187 ITR 688 and also in the case of CIT vs. Nribherarn Deluram (sic Daluram) reported in 224 ITR 610. Both the cases cited by the learned CIT(A) in her order had duly been considered by the Full Bench of Delhi High Court when it held that the CIT(A) has no power of enhancement in respect of a new source of income, not considered in the course of proceedings by the AO and was not even the subject matter of appeal before him, was bound to have held that notice of enhancement had erroneously been issued and ought to have dropped the proceedings. That further the learned CIT(A) has erred in holding that the enhanced sum is an income from undisclosed sources arid taxable u/s 115BBE of the Act despite the fact even the sum was not the income and was exceeding the jurisdiction. The order of CIT (A) is thus vitiated in law.*

16. *That the order of the learned CIT(A) is not only contradictory, vague, inconsistent but is wholly based on the facts which are erroneous or are non existing.*

17. *That in any case and without prejudice, the learned CIT(A) has further erred in failing to grant a valid and meaningful opportunity, despite the fact the assessee had no opportunity to rebut the; report which was unsupported by any evidence by the AO. That the: learned CIT (A) has further erred in failing to appreciate that the burden to establish the source of funds in the account: of the vendee was that of the assessee which has been used by the vendee. The learned CIT(A) has erred in, holding that such burden was of the assessee, despite the fact that even the vendee did not dispute the source of funds of his, who was himself assessed to tax and had acquired the property."*

3. In ITA number 2954/del/2018 for assessment year 2000 1415, another assessee Mr. Madan Mohan Sharma has also raised identical grounds of appeal.

4. Ground no 1,2,3,14,1,5 and 16 are with respect to enhancements of assessment by CIT (A), Ground no 9,10,11, 12 and 13 are with respect to addition u/s 68 on enhancement made by CIT (A), Ground no 4,5 and 8 are with respect to sales of the house property which has been held by CIT (A) on enhancement that assessee has not sold the house and hence there is no capital gain earned by the assessee but the sales consideration is chargeable to tax u/s 68 of the act, Ground no 6 and 7 on claim of deduction u/s 54 of the act and ground no 17 on violation of natural justice by not affording proper opportunity of hearing.

5. Brief facts of the case as extracted from the orders of Shri Hari Mohan Sharma shows that assessee is an individual, engaged in the business of brokerage and deriving income from house property, income from capital gains, business income and income from other sources. He filed his return of income declaring an income of INR 15830870/– on 31/10/2014. His case was selected by The Assistant Commissioner of Income Tax, Circle – 63 (1), New Delhi (the learned AO) for a limited scrutiny through computer assisted scrutiny system (CASS).

6. Assessee disclosed capital gain on sale of a residential house property at Rajendra Nagar, New Delhi jointly held with his 2 brothers Shri Brij Mohan Sharma and Shri Madan Mohan Sharma to one shri Devki Nadan Taneja (HUF) on 22/5/2013 vide 'Agreement To Sale' for the total consideration of INR 187,500,000 with one third share of INR 62,500,000 of each brother. Assessee disclosed capital gain of Rs. INR 6,01,54,171/– on sale of this property.

7. Assessee also claimed exemption / deduction u/s 54 F of the act as sale consideration was invested by all the brothers jointly for the purchase of property at Karol Bagh, New Delhi from one company Solitaire world private limited [Solitaire] for the consideration of INR 54,000,000 by each brother and the sale deed is registered on 2/5/2014 with the sub- registrar – III, New Delhi. In substance, Assessee disclosed capital gain on the sale of property to Devki Nandan Taneja HUF and also claimed exemption u/s 54 F of the act for property purchased from Solitaire.

Assessment Proceedings

8. The learned AO noted that assessee has claimed deduction under section 54F of the income tax act of INR 55611328/– which needs to be examined as case was selected for scrutiny for one of those reasons. Therefore the AO asked assessee to submit the details of properties purchased. The learned AO noted that the claim of the assessee under section 54F is invalid due to the fact that two residential properties were sold by the assessee. According to the AO the deduction under section 54F is only available if property other than a residential property is sold and assessee purchases a residential property and further assessee should not have more than one property in possession except the new property in which the assessee is investing the consideration on sale of other than residential property. Accordingly the deduction u/s 54F was denied. As learned AO noted that assessee is owner of various residential properties, On being confronted with above facts, the assessee filed an application for revised computation and requested for the deduction alternatively u/s 54 of the income tax act. The AO denied the deduction or the alternative claim relying upon the decision of the honourable Supreme Court in case of Goetz India Ltd vs.

CIT (2006) 284 ITR 323 as the claim was not through revised return. Therefore the learned AO held that assessee cannot be allowed deduction under section 54 of the income tax act also. Accordingly the deduction claimed by the assessee u/s 54F of the act of Rs. 55611328/- was denied and claim of the alternative deduction under section 54 of the act was also rejected. Accordingly the total income of the assessee was assessed at INR 71442200/– against the returned income of INR 1 5830870 by an order u/s 143 (3) of the income tax act, 1961 on 27/12/2016.

Appellate proceedings before CIT (A)

9. The assessee aggrieved with the order of the learned AO preferred an appeal before The Learned Commissioner of Income Tax (Appeals) – 20, New Delhi. It was submitted before her that the AO should have granted deduction under section 54 of the act as it was a revised claim of the assessee alternatively. The assessee also relied upon several decisions of the coordinate benches and the circular number 14 (XL – 35) dated 11/4/1955 stating that the assessing officer was to consider even claims of refunds even if not made by the assessee by drawing attention of the assessee to his rights. Accordingly assessee submitted that if the claim of the assessee was not found tenable under section 54F of the act but under section 54 of the act, assessee should have been granted such deduction. It was further stated that there was no requirement of filing the revised return for the above claim relying upon the decision of the Solaris biochemical Ltd vs. DCIT ITA number 987 of 2011 dated 13/7/2012. It was further stated that that such new or additional claim can well be entertained by the CIT – A and for this proposition assessee relied on decision of the honourable Bombay High Court in CIT vs. Pruthvi Share brokers and shareholders private limited (2012) 349 ITR 336 (Bom).

A. Enquiry made by CIT (A) of new property purchased by the assessee

On instruction of CIT -A , Therefore to check the authenticity of the documents, verification was made by the office of AO central circle – 25 where the company solitaire word private limited was assessed and it was gathered that that company has cancelled sale deed by a memorandum of understanding dated 11/4/2016 signed by the appellant with his other brothers and the confirmation was filed in case of the company by them that

these are the advances against the sale which was returned back by the company subsequently and , therefore, in effect Solitaire never purchased the property from the brothers. This fact was confronted to the assessee and assessee explained that the possession of property purchased by the assessee and his brothers from the above company was not handed over to the appellant on the ground that property could not be released as it was hypothecated with a Finance company from whom the seller has raised the loans. Due to this one of the brothers did not get the property registered and therefore the memorandum of understanding was entered. On 3/5/2016 the cancellation agreement was entered and subsequently a mediation petition was filed before Hon. Delhi High Court. Subsequently on 3/8/2017, settlement agreement was executed between the solitaire word private limited and the 3 brothers, by which the company has repurchased 2/3rd share of Shri Madan Mohan Sharma and Brij Mohan Sharma for a total consideration of INR 120,000,000. Appellant has entered into a contract with the company for developing the property by constructing residential dwelling units with the promise to get 5 units with basement along with 2 car parking and one servant quarter for each unit in lieu of his one third undivided share of the property. The assessee also produced a partition deed dated 24/10/2017 for a consideration of INR 60,100,000. Therefore as per the terms and conditions of the agreements of the deed , appellant is the joint owner of the entire built up property of 1/3 undivided share in the company as 2/3rd undivided share. The assessee also stated that one third share which is sold to Sri Brij Mohan Sharma was never registered because of the property being hypothecated to the finance company.

B. <u>Enquiry made by CIT (A) for capital gain shown by the assessee</u>

i. Now the CIT –A desired to know about the sale of the property made by the assessee on which he has earned the capital gain. CIT asked the learned assessing officer to conduct further enquiry regarding the authenticity of the sale made by the appellant of the property at Rajendra Nagar as assessee has produced only the agreement to sale

and registered sale deed was not produced by the appellant. The AO did conduct enquiry which showed that

a) Till the date the property is not registered in the name of the purchaser HUF nor was the possession of the property handed over to the purchaser.
b) On physical verification of the property the nameplate of the wife of the appellant was appearing and office was running in the name of Munna Lal Sharma Buildcon private limited,
c) on the record of sub- registrar the property was not registered for any sale and purchase,
d) on the Face book page the address of Munna Lal Sharma Buildcon private limited appears at that address of which seem of Hari Mohan Sharma and Sri Brij Mohan Sharma are directors and
e) In the return of income of that company for assessment year 2017 – 18 the above address of new Rajendra Nagar property is shown.

ii. When confronted with this enquiries, assessee submitted that property is owned by Devki Nandan Taneja HUF, it is was rarely used by the brother of the assessee and no modifications were carried out by the buyer, therefore the logo of the company as well as the name of the wife of the assessee was not removed. The assessee also submitted affidavits by the buyer to confirm the above facts.

iii. The learned CIT – A therefore made a further enquiry from the bankers of the buyer of the property regarding the source of money which was claimed by the assessee as received from the buyer of the property. Information was also gathered by the CIT Appeal that the purchaser of the property has not reflected these transactions in the return of income for assessment year 2017 – 18. Therefore she issued summons to the buyer of the property at the address given in the agreement to sale. Summons came back unserved. On confronted, assessee submitted latest address of the buyer. Summons were further issued and served but same was not complied with.

iv. The learned CIT – A also got enquiry into the bank account of the buyer with Indian bank which revealed that just before making the payment by buyer to the appellant on 29/10/2013 of Rs. 18,75,00,000, there were deposits made in that bank account on the same date totaling to INR 187,400,000.

v. Therefore the learned CIT – A noted that the property was never sold, as neither the registry was made nor physical possession was given and the source of money given by the purchaser to the assessee also could not be explained. Hence , enhancement notice was given to the appellant on 15/3/2018 to show cause why the sale consideration of INR 62,500,000 should not be treated as unexplained.

vi. The learned CIT – A also continued the further bank enquiry through the assessing officer which revealed that appellant and his 2 brothers have transferred the amount of INR 52,500,000 each on 29/10/2013 which in a circular route came back to the assessee which resulted into the so-called sale consideration received by the assessee. As per the report of the AO, three brothers transferred INR 52,500,000 each to one company Logic Commercial Enterprises Private Limited, which in turn issued the sums to Om Shivam Informatics Pvt Ltd, Paramount infra developers private Limited, Divya Jyoti Softech P Ltd , and Trinity farms P Ltd. All these companies in turn transferred the sum to Sri Devki Nandan Taneja (HUF) and then that HUF transferred the sum of INR 62,500,000 to each of the brothers. Therefore another enhancement notice under section 251 (1) and 251 (2) was issued to the assessee to show cause why a sum of INR 62,500,000 should not be treated as unexplained as the claim of the sale consideration received from the HUF was found to be a false claim.

vii. On 27/3/2017, assessee submitted objecting to the enhancement notice stating that the CIT – A is tackling a new source of income, which is not permitted. The assessee relied on the decision of the honourable Delhi High Court in 251 ITR 864 and also 240 ITR 556. It was further stated that even if such addition is required to be made there is a separate provision in law under section 147/148 and

section 263 of the income tax act but such right does not vests in CIT – A. The assessee also relied upon the decision of the honourable Supreme Court in 66 ITR 443.

viii. On the fact of the issue, assessee also stated that the buyer, on 29/10/2013 transferred above sum through RTGS and on perusal of the bank statement of the buyer there was an opening balance on that date amounting to INR 196,200,000 and thereafter there are further credits and before making RTGS there is credit balance of INR 125,188741/- in the bank account of the buyer. Therefore before issuing enhancement notice the learned CIT – A has not considered bank account of the transferee. Therefore it was stated that it is a misconception that the money received by the assessee was routed through bank accounts and is the sum of the assessee only. The assessee submitted statement of account of the buyer duly confirmed which clearly shows that buyer has made investment in various properties. The affidavit of the buyer was also placed on record. The assessee also submitted that even if the observation of the CIT appeal are presumed to be correct even then since the amount credited in the bank account of the transfer duly recorded in the bank account of the transferee along with the source thereof, appellant has not been able to understand that how could same be treated as unexplained credit under the provisions of section 68 of the income tax act. The assessee also asked the learned CIT – A to summon the buyer of the property and also explained that what is the reason that the document was not registered and constructive possession was already given to the buyer.

ix. Learned CIT – A rejected the argument of the assessee with respect to the new source of income stating that the assessee has shown capital gain on sale of the property and claimed deduction under section 54F which was denied by the AO and on enquiry it was gathered that there was no sale of the property and therefore the provisions of section 68 of the income tax act are attracted. The learned CIT – A rejected various decisions relied upon by the assessee and stated that the power of the learned CIT – A ranges over the whole assessment to correct the assessing officer not only with regard to a matter raised by

the assessee in appeal but also with regard to any other matter which has been considered by the assessing officer and determined in the course of assessment. She further referred to the powers of the learned CIT – A under section 251 of the income tax act and held that the powers are validly executed by her. She relied on the decision of the honourable Supreme Court in case of jute Corp of India Ltd vs. CIT 187 ITR 688 and 224 ITR 610. She further relied upon the decision of honourable Punjab and Haryana High Court in 297 ITR 72 and stated that the only precondition mentioned for exercising the powers to enhance the income is that the same should be done only after providing adequate opportunity of hearing to the assessee. She further stated that there is no restriction under the act that the information which could form the basis of the enhancement of income could not be sourced from the assessing officer. She therefore rejected the argument of the assessee against the power of the learned CIT – A of enhancement.

x. On the merits of the case she stated that that the claim of the assessee that the property was purchased by the buyer through constructive physical possession since it was found that the market value of the property has fallen down and they did not get it registered and buyer wanted to resile from the agreement and was seeking compensation and therefore the agreement of sale has not yet culminated into a sale deed, she stated that this fact is proved against the appellant that the said transaction is nothing but a colorable transaction by which the appellant has routed his own unaccounted money in the form of the sale consideration which never took place in reality. Therefore, as the property was not sold by the appellant, capital gain has not at all arose to the assessee. She therefore held that the evidences collected in the case substantiate that money received by appellant as sale consideration is nothing but unexplained credit in the hands of the appellant for the reason that physical possession of the property was never transferred, no registration of the property took place, result of the bank enquiries show that the money routed through various companies returned

back to the appellant. She , therefore on the principle of preponderance of probability, made addition holding that assessee has failed to give any satisfactory explanation of sum received on the alleged sale consideration of the property under section 68 of the act. She further relied upon the host of the decisions in her order to hold that the addition u/s 68 is required to be made. She therefore held that the sale consideration of INR 62,500,000 claimed by the appellant to have received a sale consideration is nothing but a colourable transaction by which the appellant has routed his own unaccounted money in the form of the sale consideration which never took place in the reality. She also initiated the penalty proceedings u/s 271 (1)(c) for concealment of the income. She further held that assessing officer is directed to reduce the capital gain shown by the appellant in the return of income from the sale of the property of Rajendra Nagar as transaction never took place. In nutshell , learned CIT – A held that the sale consideration received by the assessee of INR 62,500,000 is assessable under section 68 of the income tax act as unexplained cash credit (unexplained income) of the assessee applying the provisions of section 115BBE of the act and further the capital gain shown by the assessee of INR 6,01,54,171/– is not chargeable to tax in the hands of the assessee.

xi. Consequently , Learned assessing officer passed an order under section 250 read with section 143 (3) of the income tax act on 15/05/2018 reducing the assessed income of the assessee of INR 7,14,42,200/– by the capital gain offered by the assessee on the sale of property of INR 6,01,54,171/- and making an addition on account of enhancement made by the learned CIT – A under section 68 read with section 115 BBE of the income tax act of INR 62,500,000/- . Thereby net income of the assessee was enhanced by INR 23,45,829/- resulting into the net taxable income of the assessee of INR 7,37,88,029/–. Assessee, aggrieved with the order of the learned CIT – A, has preferred this appeal.

Submission of the Assessee

10. The learned authorised representative has made the extensive arguments on the following points:-

i. That the learned CIT – A has deleted/reduced the income of the assessee by not considering the long-term capital gain offered by the assessee in the return of income. The revenue has not challenged this issue before the tribunal in an appeal, therefore now the issue has become final that the long-term capital gain shown by the assessee in the return of income is not chargeable to tax even otherwise. He stated that this issue has now become final that the sum of INR 6 0154171/– shown by the assessee as the long-term capital gain from the sale of property is not chargeable to tax in the hands of the assessee. He submitted that this issue is not challenged by the assessee also, therefore now the capital gain cannot be charged in the hands of the assessee irrespective of the fate of the other issues in the appeal of the assessee with respect to enhancement and addition u/s 68 of the Act.

ii. That by filing revised computation of the total income before the assessing officer, no new claim was made but only the correct provision of the law was applied by the assessee as for claiming deduction under section 54 of the income tax act. Assesses can hold any number of houses and condition of owning only one residential house is only present in section 54F and not under section 54 of the act. Hence ld AO as well as CT (A) should have allowed the deduction u/s 54 of the Act. Assessee relied on the decision of the coordinate bench in 150 TTJ 581, 44 SOT 617, and 56 SOT 473.

iii. With respect to the sales made of the residential house property and consideration received it was stated that that the flowchart prepared by the learned CIT – A is contrary to the facts and material available on record as the appellant along with his brothers has 1st received the money against the sale of property from the buyer. For this he prepared a flow chart showing that the above money was first credited into the bank account of the assessee and after that the cheques were issued. He stated that out of the sale consideration received , assessee has transferred money to the company and not

before that. He also explained the same by filing a separate chart of the funds.

iv. With respect to investment made in the new property he submitted that further developments are with regard to the later assessment years and have no bearing insofar as the instant case for assessment year 2014 – 15 is concerned. The effect of the subsequent even shall be given in the year in which the said event took place and as such the assessee is entitled to claim of deduction under section 54 of the act. He further relied on the decision of the coordinate benches to substantiate his claim.

v. With respect to the enhancement made by the learned CIT – A he challenged it vehemently and stated that it is beyond the powers of the learned CIT – A to find out the new sources of the income. He further stated that the subject matter of the appeal was limited to the allowability of the claim of deduction under section 54 of the income tax act and the learned CIT – A has tackled a new source of income which is not permitted under the law. He stated that while examining the allowability of claim of deduction under section 54 of the act the learned CIT – A has altogether held that the sale of the property is false and the amount of INR 62,500,000/- received by the assessee towards the sale of the property, which is confirmed by the buyer, is an unaccounted income of the assessee. He stated that such powers are not vested with CIT Appeal.

vi. He relied upon the decision of the honourable Supreme Court in commissioner of income-tax (central), Calcutta v.Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443, decision of the honourable Delhi high court in commissioner of income-tax v. Sardari lal and co. 251 ITR 864, commissioner of income-tax v. union tyres 240 ITR 556, commissioner of income-tax v. B. P. Sherafudin 399 ITR 524.

vii. He further submitted that the instant case of scrutiny before the learned assessing officer was of a limited scrutiny and therefore the learned CIT – A cannot travel beyond the issues which were specifically mentioned in the limited scrutiny notice and as such the enhancement notice so issued is without jurisdiction. To support his

proposition he relied upon the decision of the coordinate benches in 93 ITD 144, 108 TTJ 312 and 162 taxmann 212.

11. He also referred to the chronological sequence of the events and the facts occurring on those dates along with a chart showing source of funds of the assessee and the buyer of the property. He further submitted a copy of the several documents in the form of the paper book submitted before the lower authorities along with the several bank accounts of the assessee and the buyer. He also submitted a copy of the several judgments relied upon by him.

Arguments of the Revenue

12. Learned senior departmental representative vehemently supported the orders of lower authorities. She extensively read order of the learned CIT – A with respect to the finding given by her that there is no sale of the property and therefore there is no reason to grant any deduction under section 54 or 54F of the income tax act. She further heavily supported the powers of the learned CIT – A regarding enhancement of income. She submitted that the new source of income has not been tackled by the learned CIT – A but she has just looked at the return of income of the assessee and examined the detail of the sale of the property against which the deduction has been claimed by the assessee. She further stated that it is conclusively proved by the learned CIT – A by the extensive enquiry carried out through the learned assessing officer that the impugned sale consideration shown by the assessee is an unaccounted and unexplained income of the assessee and therefore same is rightly added under section 68 of the income tax act.

Issues before us

13. On the basis of above facts, orders of lower authorities and arguments of the parties following issues emerges for our consideration raised in various grounds of appeal.

i. Whether the ld CIT (A) has correctly assumed the power while enhancing income of the assessee?

ii. Whether the ld CIT (A) has correctly made the addition of income u/s 68 of the act of Rs 62500000/-,

iii. In the given facts , Whether the assessee is entitled to deduction u/s 54 of the act or not

Decision and Reasons

14. Coming to the first issue of challenge to powers of enhancements by the ld CIT (A), Powers of ld CIT (A) are enshrined u/s 251 of the act as under :-

"251. POWERS OF THE(...)COMMISSIONER (APPEALS).

(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers--

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment ;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment ;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant."

15. Honourable Delhi High court in [2012] 348 ITR 170 (Del) GURINDER MOHAN SINGH NINDRAJOG v. COMMISSIONER OF INCOME-TAX has

visualized in para no 19 and 20 has laid down the guidance when the powers of the enhancement by the ld CIT (A) are validly invoked. The Honourable High court held that

"19. We have considered the submissions of both the parties. There is no doubt about the fact that while framing the assessment even under section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-tax Act provides for remedial measures which can be taken under these circumstances. While framing an assessment under section 143(3) of the Act, any of the following situations may occur :

(a) the Assessing Officer may accept the return of income without making any addition or disallowance ; or

(b) the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums ; or

(c) he makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income ;

(d) yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry ;

(e) further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue, or

(f) where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.

20. To ensure for each of such situations, an income which ought to have been taxed and remained untaxed, the Legislature has provided different remedial measures as are contained in sections 251(1)(a), 263, 154 and 147 of the Act.

21. In the category stated in (a), obviously if an income escapes an assessment, the provisions of section 147 of the Act can be invoked, subject to the condition stated in the proviso to the said section. In the category of cases falling in category (b), section 251(1)(a) provides the Commissioner of Income-tax (Appeals) could enhance such an assessment qua the under assessed sum, i.e., where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal. In category falling in (c) and (e), the Commissioner of Income-tax has been empowered to take an appropriate action under section 263 of the Act In the category of cases falling under clauses (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the Commissioner of Income-tax (Appeals) against the said addition and disallowance, the said disallowance and addition being the subject-matter of appeal before the Commissioner of Income-tax (Appeals) in such cases, the Commissioner of Income-tax (Appeals) has been empowered under section 251(1)(a) of the Act to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the same was the subject-matter of the appeal as per the grounds of the appeal raised before him. In other words, the Commissioner of Income-tax (Appeals) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject-matter of appeal."

16. On the basis of the above decision following remedial matrix as per the law is as under :-

Sr No	Situation	Remedial Measures under the Income tax Act
a	Assessing Officer may accept the return of income without making any addition or disallowance ; or	U/s 147 of the act subject to limitations contained therein
b	the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums ;	u/s 251 (1) (a) where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal
c	AO makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income	U/s 263 of the act
d	where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry	u/s 147 of the act
e	where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue,	U/s 263 of the act
f	where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts	u/s 147 of the act

	necessary for computation of income	

17. In the same decision honourable Delhi High court after considering the provision of section 251(1) (a) of the act further held that

"25. In CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC) where the Supreme Court interpreted the corresponding provision under the old Income-tax Act, 1922, the legal position was stated as under (page 450) :

"The principle that emerges as a result of the authorities of this court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the Income-tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and, therefore, the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the

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Act is restricted to the subject-matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the taxability of the assessee. It was argued by Mr. Vishwanath Iyer on behalf of the appellant that by applying the principle to the present case, the Appellate Assistant Commissioner had jurisdiction to enhance the quantum of income of the assessee. It was pointed out that the fact of alleged transfer of Rs. 5,85,000 to Forbesganj branch was noted by the Income-tax Officer and also the fact that it did not reach Forbesganj on the same day. So it was argued that in the appeal the Appellate Assistant Commissioner had jurisdiction to deal with the question of the taxability of the amount of Rs. 5,85,000 and to hold that it was taxable as undisclosed profits in the hands of the assessee. We are unable to accept the argument put forward on behalf of the appellant as correct. It is true that the Income-tax Officer has referred to the remittance of Rs. 5,85,000

from the Calcutta branch, but the Income- tax Officer considered the dispatch of this amount only with a view to test the genuineness of the entries relating to Rs. 4,30,000 in the books of the Forbesganj branch. It is manifest that the Income-tax Officer did not consider the remittance of Rs. 5,85,000 in the process of assessment from the point of view of its taxability. It is also manifest that the Appellate Assistant Commissioner has considered the amount of remittance of Rs. 5,85,000 from a different aspect, namely, the point of view of its taxability. But since the Income-tax Officer has not applied his mind to the question of the taxability or non-taxability of the amount of Rs. 5,85,000 the Appellate Assistant Commissioner had no jurisdiction, in the circumstances of the present case, to enhance the taxable income of the assessee on the basis of this amount of Rs. 5,85,000 or of any portion thereof. As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record, i.e., the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under section 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability. In this context 'consideration' does not mean 'incidental' or 'collateral' examination of any matter by the Income-tax Officer in the process of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the

particular source of income with a view to its taxability or to its non taxability and not to any incidental connection. In the present case, it is manifest that the Income-tax Officer has not considered the entry of Rs. 5,85,000 from the points of view of its taxability and, therefore, the Appellate Assistant Commissioner had no jurisdiction in an appeal under section 31 of the Act, to enhance the assessment."

26. To the same effect is the judgment of another Division Bench of this court in CIT v. Union Tyres [1999] 240 ITR 556 (Delhi) reiterating that

the first appellate authority cannot consider new scope of income under section 251(1) of the Act. The following question from the same judgment can aptly be (page 559) :

> "Section 251 of the Act prescribes the power of the Appellate Assistant Commissioner, now the Commissioner (Appeals). Section 251(1)(a) of the Act empowers the Appellate Assistant Commissioner in disposing of an appeal by the assessee against an order of assessment to confirm, reduce, enhance or annul the assessment or to set aside and refer the case back to the Income-tax Officer for making fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner. The Explanation to section 251 provides that the Appellate Assistant Commissioner may hear and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding that such a matter was not raised before the Appellate Assistant Commissioner by the appellant.
>
> The issue with regard to the scope of powers of the first appellate authority in disposing of an appeal has come up before the courts umpteen times but we do not propose to burden the judgment by making reference to all the decisions on the point. We will notice a few decisions which we consider are relevant to answer the question referred. In CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC), while construing the corresponding provisions of the Indian Income- tax Act, 1922, relating to the jurisdiction of the Appellate Assistant Commissioner in such an appeal, the Supreme Court held that, in an appeal filed by the assessee, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income, not considered by the Income-tax Officer in the order appealed against. Similar views were expressed by the apex court in CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC). It was held

that the power of enhancement under section 31(3) of the 1922 Act was restricted to the subject-matter of the assessment

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or the source of income which had been considered expressly or by clear implication by the Income-tax Officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess a source of income which had not been processed by the Assessing Officer."

27. At the same time, the court also clarified that the power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. This principle can be traced to the following discussion in the said judgment (page 561) :

"Thus, the principle emerging from the aforenoted pronouncements of the Supreme Court is, that the first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz., that it is not open to the Appellate Assistant Commissioner to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which where the subject-matter of original assessment."

28. The aforesaid view taken by the Division Bench was confirmed by the Full Bench of this court in CIT v. Sardari Lal and Co. [2001] 251 ITR 864 (Delhi) [FB] observing as under (page 871) :

"Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres' case [1999] 240 ITR 556 (Delhi)

of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of."

[underline supplied by us]

18. Further Honourable kerala High court in B P Sherafudin's case [supra) while examining the powers of CIT (A) u/s 251 (1) (a) of the act on enhancement has examined the whole judicial precedent as under :-

'Precedential position :

39. A Full Bench of this court in CIT v. Best Wood Industries and Saw Mills [2011] 331 ITR 63 (Ker) [FB] has examined the powers of the Assessing Officer, but not the appellate authority. It has held that once the assessment is reopened for any valid reason recorded under section 148(2), then the entire assessment is open for the Assessing Officer to bring to tax any item of escaped income which comes to his notice in such reassessment.

40. Under the old Income-tax Act, the corresponding provision is section 31. Interpreting that provision, the Supreme Court in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225 (SC) has held that under section 31(3)(a), in disposing of an appeal, the appellate authority may

confirm, reduce, enhance or annul the assessment ; under clause (b), he may set aside the

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assessment and direct the Income-tax Officer now AO to make a fresh assessment. The appellate authority has, therefore, plenary powers in disposing of an appeal. "The scope of his power is conterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do".

41. As we can see, CIT v. P. Mohanakala [2007] 291 ITR 278 (SC) deals with the powers of the High Court in interfering with the findings of fact—and concurrent findings, at that by re-appreciating the evidence. The Supreme Court has held in the negative. The Supreme Court in Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 (SC) has stated that the declaration of law is clear that the power of the appellate authority is co-terminus with that of the Income-tax Officer, and if that is so, there appears to be no reason why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income-tax Officer. No exception could be taken, held the Supreme Court in CIT v. Nirbheram Daluram [1997] 224 ITR 610 (SC) to this view as the Act places no restriction or limitation on exercising appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. Absent any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have.

42. In CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC), the assessment year was 1947-48, and the case was finally decided in February 14, 1962. So the Act considered was pre-Independence enactment. Examining section 31 of the old Act, the Supreme Court has held that there is no doubt that the appellate authority can "enhance the assessment". This power must, at least, fall within the

words "enhance the assessment", if they are not to be rendered wholly nugatory.

43. Now, we may examine the authorities that also have dealt with the powers of the appellate authority but seem to have taken a divergent path.

44. In CIT v. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC) a three-judge Bench of the Supreme Court has observed that it is only the assessee who has a right conferred under section 31 to prefer an appeal against the order of assessment made by the Income-tax Officer. If the assessee does not appeal the order of assessment becomes final subject to any power of revision that the Commissioner may have under section 33B of the Act. Therefore, it would be wholly erroneous to compare the powers of the appellate authority with the powers possessed by a court of appeal,

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under the Civil Procedure Code. The Appellate Assistant Commissioner is not an ordinary court of appeal. It is impossible to talk of a court of appeal when only one party to the original decision is entitled to appeal and not the other party, and because of this peculiar position the statute has conferred very wide powers upon the appellate authority once an appeal is preferred to him by the assessee.

45. Chamaria goes on to hold that the appellate authority has no jurisdiction under section 31(3) of the Act to assess a source of income not processed by the Income-tax Officer "and which is not disclosed either in the returns filed by the assessee or in the assessment order," and therefore the appellate authority cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the sources of income considered expressly or by clear implication by the Income-tax Officer from the viewpoint of the taxability of the assessee.

46. A question regarding powers of the first appellate authority came up for consideration before the Supreme Court recently in CIT v.

Nirbheram Daluram [1997] 224 ITR 610 (SC). Following the earlier decisions in Kanpur Coal Syndicate and Jute Corporation of India, the Supreme Court reiterated that the appellate powers conferred on the Appellate Commissioner under section 251 could not be confined to the matter considered by the Income-tax Officer, as the Appellate Commissioner is vested with all the plenary powers which the Income-tax Officer may have while making the assessment.

47. Indeed, examining Daluram's holding, a Division Bench of the Delhi High Court in CIT v. Union Tyres, Delhi [1999] 240 ITR 556 (Delhi) has observed that Daluram did not comment whether these wide powers also include the power to discover a new source of income. So, Union Tyres concludes that the principle of law laid down in Shapoorji and Chamaria still holds the field.

48. The principle emerging from various pronouncements of the Supreme Court, Union Tyres observes, is that the first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only regarding a matter raised by the assessee in appeal but also regarding any other matter considered by the Assessing Officer and determined in assessment.

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49. There is a solitary but significant limitation, according to Union Tyres, to the power of revision : It is not open to the Appellate Commissioner to introduce in the assessment a new source of income and the assessment must be confined to those items of income which were the subject-matter of the original assessment.

50. In course of time, Union Tyres was doubted. In CIT v. Sardari Lal and Co. [2001] 251 ITR 864 (Delhi) [FB], the same issue whether the appellate authority has the power under section 251 to discover a new source of income was referred to a Full Bench. After examining the authorities holding the fielding on that issue, the learned Full Bench

has held that the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147, or section 148, or even section 263 of the Act if requisite conditions are fulfilled. It is inconceivable, according to Sardari Lal, that in the presence of such specific provisions, a similar power is available to the first appellate authority. Eventually, Sardari Lal upheld the decision in Union Tyres.

51. Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide ; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act.

52. Therefore, we are in respectful agreement with the view taken by the Full Bench of the High Court of Delhi in Sardari Lal. As a corollary, we hold that the Tribunal's deleting the enhancement of Rs. 22,15,116 and cancelling the order of the Commissioner of Income-tax (Appeals) on that issue call for no interference."

[Underline supplied by us]

19. The principle culled out from the above judicial precedents clearly shows that words "enhance the assessment" are confined to the assessment reached through a particular process. It cannot be extended to the amount which ought to have been computed. There being other provisions which allow escaped income from new sources to be taxed after following a certain prescribed procedure. So long as a certain item of income had been considered and examined by the Assessing Officer from the point of view of its assessability and so long as the CIT(A) does not travel beyond the record of the year, there has never been any doubt as to his powers of redoing the categorization and bringing the assessment within the true description of the law

20. In the facts of the present case only issue considered and discussed by the assessing officer is with respect to claim of the assessee u/s 54F of the act which was rejected after inquiry and further claim alternatively made u/s 54 of the act was also rejected relying up on the decision of the Honourable Supreme court. The issue of verification of capital gain was not the issue which was at all dealt with by the assessing officer, or even a question of verification made by ld AO. There was no inquiry made by the ld AO on the issue of capital gain shown by the assessee. The ld AO has not at all considered the issue of sales consideration received by the assessee on sale of house as an issue of dispute before him. Therefore according to us, ld CIT (A) could not have made enhancement on the issue holding that capital gain shown by the assessee itself is not in accordance with the law and given a finding that no capital gain has accrued to the assessee. CIT (A) further held that funds received by the assessee is unaccounted income of the assessee and chargeable to tax u/s 68 of the act. On the matrix as held by the Honorable Delhi high court the above issue falls within the scope of the provision of section 147 of the act and not u/s 251 (1) (a) of the act. Further the Honourable Delhi high court in para no 27 has also held that power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. Therefore for the purpose of enhancement of income by CIT (A) , it is necessary that either the matter should be raised in the appeal by the assessee or even otherwise the matter should ld have been considered and determined in the course of assessment proceedings. It is not at all necessary that AO should have made any adjustment to the total income of the assessee. Hence, enhancement u/s 251 (1) (a) of the act is prohibited on the issues which have not at all been considered by the AO during assessment proceedings. This gives the common understanding that the ld CIT (A) cannot enhance income of the assessee on altogether 'new Source'. Therefore it is clear that Therefore, the CIT(A) is not competent to enhance

the assessment taking an income which income was not considered expressly or by necessary implication by the Assessing Officer at all. Such is the mandate of the decisions of various high courts such as in CIT vs. National Company Ltd. (1993) 199 ITR 445 (Cal), Sait Bansilal and Raggisetti Veeranna vs. CIT (1972) 83 ITR 750 (AP), Sterling Construction & Trading Co. vs. ITO (1975) 99 ITR 236 (Kar) and Lokenath Tolaram vs. CIT (1986) 50 CTR (Bom) 237 : (1986) 161 ITR 82 (Bom). Hence issue no 1 I enlisted in para no 13 of the order is decided in favour of the assessee. In view of our decision on issue no (i), issue no (ii) does not survive and issue no (iii) is dealt with separately. In view of this we allow ground no 1,2,3,14,15 and 16 of the appeal of the assessee.

21. As we have held that ld CIT (A) has exceeded his jurisdiction in enhancing the income of the assessee by considering the new sources of income not at all considered by the ld AO, consequently we allow the ground no 9, 10,11,12 and 13 of the appeal of the assessee where the addition u/s 68 of the act has been made by the ld CIT (A) enhancing income of the assessee holding that sale consideration received by the assessee on sale of property is chargeable to tax as undisclosed income u/s 68 of the act.

22. Consequently we also allow ground no 4 ,5 and 8 of the appeal of the assessee where the sales consideration received by the assessee of sale of property is chargeable to tax as capital gain and not as undisclosed income u/s 68 of the act. Further Ground no 6 and 7 of the appeal with respect to claim of deduction u/s 54 of the act , we set aside it back to the file of the ld AO with a direction to verify whether assessee is eligible for deduction u/s 54 or not. The Assessee is directed to put its claim in its entirety and ld AO may proceed in accordance with law after granting roper opportunity of hearing.

23. Ground no 17 is against not affording reasonable opportunity of hearing to the assessee. On conjoint reading of the assessment order as well as appellate order we do not find any merit in this ground of appeal as the assessee has been granting enough opportunities at every stage. Hence Ground no 17 is dismissed.

24. In the result appeal of the assessee is partly allowed for statistical purposes.

25. Identical issues are decided in case of Shri Madan Mohan Sharma In iTA no 2954/Del/2018 based on our decision in ITA No 2953/del/2018 , our decision in ITA No 2953/del/2018 applies Mutatis Muntandis in that appeal too. Accordingly that appeal is also partly allowed for statistical purposes.

26. In the result both the appeals are partly allowed for statistical purposes.

Order pronounced in the open court on 31/01/2019.

-Sd/-	-Sd/-
(H.S.SIDHU) JUDICIAL MEMBER	(PRASHANT MAHARISHI) ACCOUNTANT MEMBER

Dated: 31/01/2019

Copy forwarded to

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

ASSISTANT REGISTRAR

ITAT, New Delhi