

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

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1268/DEL/2009 (A.Y 2005-06)

Sanjeev Aggarwal 16/71-A, Civil Lines, Kanpur ABOPA4675N (APPELLANT)	Vs	ACIT Central Circle-17 New Delhi (RESPONDENT)
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I.T.A. No. 1269/DEL/2009 (A.Y 2005-06)

Superior Exim (P) Ltd. 25, Bazar Lane, Bengali Market New Delhi AAICS4361D (APPELLANT)	Vs	ACIT Central Circle Meerut (RESPONDENT)
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I.T.A. No. 3747/DEL/2011 (A.Y 2005-06)

ACIT Central Circle Meerut (APPELLANT)	Vs	Superior Exim (P) Ltd. 25, Bazar Lane, Bengali Market New Delhi AAICS4361D (RESPONDENT)
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I.T.A. No. 3748/DEL/2011 (A.Y 2005-06)

ACIT Central Circle Meerut (APPELLANT)	Vs	Sanjeev Aggarwal 16/71-A, Civil Lines, Kanpur ABOPA4675N (RESPONDENT)
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Appellant/Respondent by	Sh. Ashwani Taneja, CA
Respondent/Appellant by	Sh. N. K. Bansal, Sr. DR

Date of Hearing	13.03.2019
Date of Pronouncement	04.04.2019

ORDER

PER BENCH

These four appeals are filed by the assessee as well as by the Revenue against the orders dated 30.01.2009, 13.05.2011, 27.02.2009, and 13.05.2011 passed by CIT(A)- Meerut for A.Y. 2005-06.

2. The grounds of appeal are as under:-

I.T.A. No. 1268/DEL/2009

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in dismissing the appeal of the assessee.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition of Rs. 1,80,00,000/- made by the AO*
- 3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in holding that the assessee has paid a sum of Rs. 1,80,00,000/- to the seller over and above the sale deed.*
- 4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in relying on the third party documents and material and cash found during the search of the seller of the property.*
- 5. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in relying on the statement and the assessment of the seller by the violating of the rules of natural justice.*
- 6. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in not considering the cancellation papers found during the search of the seller.*
- 7. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in treating an amount of Rs. 1,80,00,000/-*

u/s 69 as income whereas the same is not applicable to the facts of the case.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in completing and confirming the assessment order on the basis of assessment order of the seller completed before the completion of this assessment which is against the rules of natural justice.”

9. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in completing and confirming the assessment order without considering the bank enquiries which are in favour of the assessee and also confirming the addition without considering the complete submissions including various cases laws relied upon by the appellant.

10. That the Ld. CIT(A) was not justified in confirming the addition by relying on the affidavit and the statement of the seller i.e. Smt. Veer Bala recorded behind the back of the appellant and the same being inadmissible in evidence deserved to be ignored.

11. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition without proving any actual transfer of money by the assessee and relying on the statement of others even recorded not by the A.O himself.

12. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition without considering the fact that the property under consideration was in dispute and the fact of litigation was concerned by the seller.

13. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition ignoring the fact that various observations made by the authorities their respective orders are either incorrect or are untenable.

14. Without prejudice to above grounds the additions as made is very excessive. “

On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in

- 1. dismissing the appeal of the assessee.*
- 2. Confirming the addition of Rs. 8.50 crores in the absence of valid reason, basis and evidence.*
- 3. Confirming the addition of Rs. 8.50 crores on the basis of assumption, presumption ideas and estimate.*
- 4. Confirming on the basis of circumstantial evidence which too is not correct.*
- 5. Confirming the addition on the basis of assessments of sellers.*
- 6. Dismissing the appeal in the absence of cross-examination of the persons on whose evidence reliance has been placed by the Assessing Officer .*
- 7. confirming the addition on the basis of the fact that the slip on bundle of notes found elsewhere relate to a bank in which the assessee was having a bank account though admittedly such slip and evidence could not be related to the bank account of the assessee even after enquiry.*
- 8. Confirming the addition of Rs. 8.50 crores made u/s 69 of the Income tax Act, which in fact had no application to the facts of appellant case.*
- 9. Confirming the addition on the basis of opinion of the AO as per para 3 of the order of the CIT (A).*
- 10. Confirming the addition on the basis of without proving the transfer of any cash money by the buyer to the sellers.*
- 11. Ignoring/keeping aside, the statements of the sellers recorded behind the back of the appellant of which even copies were not supplied to the appellant.*
- 12. Ignoring the fact that the assessee company had been incorporate in 31ST March 2003, but no business whatsoever had been done by the assessee company till the purchase of property in question & there was absolutely no evidence even to presume that assessee company was having any cash funds.*

13. *On the facts and in the circumstance of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition ignoring the fact that various observations made by the authorities below in their respective orders are either incorrect or are untenable.*

14. *Without prejudice to above grounds the additions as made is very excessive.”*

I.T.A. No. 3747/DEL/2011

“1. Whether CIT (A) was justified in law and on facts in deciding a separate and Independent proceedings initiated u/s 271(1)(c) entirely on the basis that the addition has been deleted but is subject matter of appeal before the Hon’ble High Court.

2. Whether CIT(A) was justified in law and on facts in deleting the penalty by not appreciating correctly the provision of law that any statement u/s 132(4) itself constitutes an admissible evidence.

3. CIT(A) has ignored the provision of section 292C according to which all statement document and papers found and seized during the course of scorch constitute or, evidence for any proceeding under the Act, Accordingly, the same shall be admissible even for the penalty proceedings.

4. Whether in view of the above position of law CIT(A) was justified in deleting the penalty by ignoring tire direct evidence of “Sale-cum-receipt’ agreement found and which was executed by the same vendor and vendee for the same property ur.der their respective signatures signifying the value of property under consideration, und also other circumstantial evidence in the form of proportionate share of on-money found in individual lockers, opening and operations of lockers after the date execution of sole deed etc.

5. That the order of the Ld. CIT(A) deserves to be vacated and the assessment order passed by the A.O. be restored.”

I.T.A. No. 3748/DEL/2011

“1. Whether CIT (A) was justified in law and on facts in deciding a separate and Independent proceedings initiated u/s 271(1)(c) entirely on the basis that the addition has been deleted but is subject matter of appeal before the Hon’ble High Court.

2. Whether CIT(A) was justified in law and on facts in deleting the penalty by not appreciating correctly the provision of law that any statement u/s 132(4) itself constitutes an admissible evidence.

3. CIT(A) has ignored the provision of section 292C according to which all statement document and papers found and seized during the course of search constitute or, evidence for any proceeding under the Act, Accordingly, the same shall be admissible even for the penalty proceedings.

4. Whether in view of the above position of law CIT(A) was justified in deleting the penalty by ignoring tire direct evidence of “Sale-cum-receipt’ agreement found and which was executed by the same vendor and vendee for the same property ur.der their respective signatures signifying the value of property under consideration, und also other circumstantial evidence in the form of proportionate share of on-money found in individual lockers, opening and operations of lockers after the date execution of sole deed etc.

6. That the order of the Ld. CIT(A) deserves to be vacated and the assessment order passed by the A.O. be restored.”

3. ITA Nos. 1268 & 1269/DEL/2009 are quantum appeals filed by the assesseees and ITA Nos. 3747 & 3748/DEL/2011 are penalty appeals filed by the Revenue. The brief facts are narrated herewith in common as the issues in quantum and penalty appeal are identical for both the assesseees.

4. The property No. 2, Underhill Road, Civil Lines, New Delhi was owned by four Jain brothers, namely Shri Ashok Kumar Jain, Shri Deepak Kumar Jain, Shri Pradeep Kumar Jain and Shri Vipin Kumar Jain. The adjacent portion of

land belonged to one Smt. Veer Bala Agarwal, w/o Dr. D. C. Agarwal. As per the registered sale deed, M/s Superior Exims (P) Ltd. had purchased the property from the Jain Brothers for a consideration of Rs. 8 crores. Similarly, Shri Sanjeev Agarwal, who is the Director in M/s Superior Exims (P) Ltd., in his individual capacity, also purchased from Smt. Veer Bala Agarwal for a consideration of Rs. 45 lacs. A search and seizure operations was conducted at the residential premises of Jain Brothers and Smt. Veer Bala Agarwal. Their bank lockers were also seized. From the bank lockers, huge cash amount was found and seized. Their statements were recorded. The Jain Brothers stated that the recovered amount of Rs. 8.5 crores was received "on-money" for the sale of the property in question, as the deal was for Rs. 16.5 crores. The Jain Brothers specifically stated that out of 16.5 crores, Rs. 8 crores were declared in the sale-deed and remaining amount of Rs. 8.5 crores was received in cash. Similarly, Smt. Veer Bala Agarwal, in her statement stated that total consideration was Rs. 2.25 crores, out of which Rs. 45 lacs were shown in the registered sale-deed and remaining amount of Rs.1.80 crores was received in cash from Sanjeev Agarwal. On the basis of the statement of the vendors, the Assessing Officer made the addition of Rs. 8.5 crores in the hands of M/s Superior Exims (P) Ltd. where Shri Sanjeev Agarwal is the Director. Similarly, an addition of Rs. 1.80 crores was made in the hands of Shri Sanjeev Agarwal in his individual capacity. Both the additions were confirmed by the CIT(A). The Tribunal vide order dated 22.10.2010 deleted the additions. The Revenue filed appeal before the Hon'ble Allahabad High Court wherein the Hon'ble High Court while remanding back the matter to Tribunal vide order dated 25.08.2014 held as under:

"We have heard both the parties and perused the material available on record. From the record, it appears that main grievances of the assessee is that no opportunity was provided to cross-examine the vendors, who categorically made the statement that "on-money" was received by them from the assessee. At the same time, it also appears that the AO has not made any

attempt to verify the accounts of the assessees. Whether any search was conducted at the business premises of the assessees, is not clear from the record.

In the instant case, huge amount was found from the bank lockers of the vendors, who made the statement that the same was received from the assessee as “on-money”. It is a common practice that the property is registered on the circle rate and remaining money is paid as “on-money”. But in the absence of any evidence/document, the same cannot be applied by closing of the eye. There must be evidence on record to prove that “on-money” was received from the assessee. Assesseees have purchased the property from the vendors. The vendors were not having sufficient source of income to accumulate the huge amount, which was recovered from the lockers alongwith the bank slips of Punjab National Bank. The AO has not examined the accounts especially withdrawal of the assesseees in a proper manner.

In these circumstances, we are of the view, that the matter needs deep investigation. Whether opportunity to cross-examine the vendors can make any difference, specially when assesseees will always deny and vendors will endorse their statement. This aspect was not examined either by the Tribunal or by the lower authorities. Hence, we set aside the impugned order and restore the matter to the Tribunal for fresh adjudication in the light of the above discussion.”

5. Thus, the present Income Tax Appeals are before us as per the directions of the Hon’ble High Court. At the time of the hearing the Ld. AR submitted that since the cross examinations of the statements relied by the Assessing Officer during the Assessment proceedings has not been allowed to the assessee as well as the evidences produced before the Assessing Officer was not considered properly by the AO, the matters may be remanded back to the file of the Assessing Officer for verification and allowing assessee to prove their case by following principles of natural justice on part of the revenue. The Ld. DR did

not object for these submissions of the Ld. AR.

6. We have heard both the parties and perused all the relevant material available on record. We have also gone through the order/directions dated 25.08.2014 of the Hon'ble Allahabad High Court. After going through the records especially the statement of Shri Sanjeev Agarwal dated 02.03.2005 in the very first answer to a question, Shri Sanjeev Agarwal one of the assessee hereinabove stated that the contents of affidavit/statement given by Smt. Veer Bala Agarwal is not correct. Besides that from the order sheet dated 22.06.2007, it can be seen that the assessee Shri Agarwal wanted to examine/cross examine the seller. From the perusal of the Assessment Record before us it can be seen that on the note sheet of 02.07.2007 there is no mention as to cross examination of the seller. Thus, there is no opportunity given to the assessee for cross examination of the seller. From the summary of the findings of the Assessing Officer it can be seen that the total money paid by buyer in cash which was found in the lockers was on the estimated basis. But no verifications were done by the Assessing Officer as relates to the slips of the PNB bank found in the locker. The Assessing Officer has also not specified particular activities carried out by the vendors for earning income. Instead has given a general finding that the vendors were engaged in numerous activities. Besides that no valuation of the property was done by the Assessing Officer to arrive at the proper findings. Thus, it will be appropriate to remand back these issues to the file of the Assessing Officer for verification as well as allow the assessee to cross examine the sellers. Thus, we are accepting the submissions of the Ld. AR to remand back these matters to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

7. As relates to penalty appeals the same are consequential hence are also remanded back to the files of the Assessing Officer.

8. In result, all the four appeals filed by the assessee and the revenue are partly allowed for statistical purpose.

Order pronounced in the Open Court on 04th April, 2019.

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

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 04/04/2019
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	14.03.2019
Date on which the typed draft is placed before the dictating Member	15.03.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	04.04.2019
Date on which the final order is uploaded on the website of ITAT	04.04.2019
Date on which the file goes to the Bench Clerk	04.04.2019
Date on which the file goes to the Head Clerk	