

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1132/Del/2016
(Assessment Year: 2008-09)

ACIT, Central Circle-7, New Delhi	Vs.	Usha Gupta, A-1, CC Colony, Opp. RP Bagh, New Delhi - 110 007. PAN: AEIPG6462J
(Appellant)		(Respondent)

Revenue by :	Shri J. K. Mishra, CIT DR
Assessee by:	None
Date of Hearing	27/01/2020
Date of pronouncement	30/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the Assistant Commissioner of Income Tax, Central Circle-07, New Delhi (the learned Assessing Officer) against the order of the Commissioner of Income Tax (Appeals)-24, New Delhi, for assessment year 2008-09 raising the following grounds of appeal:-

- “ 1. *The order of Ld. CIT (Appeals) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the CIT (Appeals) has erred in law in deleting the addition of Rs.1,95,27,886/- made by the AO on account of re-computation of capital gain by substituting the sale value with market value.*
3. *On the facts and circumstances of the case, the CIT (Appeals) has erred in law in deleting the addition of Rs.21,50,000/- made by the AO on account of unexplained investment.”*

2. Before adverting into the grounds of appeal the basic fact is that search and seizure under Section 132 of the Income Tax Act, 1961 (the Act) was

carried out on M/s Satya Parkash & Brothers Pvt. Ltd. on 28.10.2010. Assessee was also covered under that search. Therefore, notice u/s 153A of the Act was issued on 2.02.2012. Assessee submitted as per letter dated 13.02.2012 its objection against the said notice but also stated that return filed on 31.07.2008 of Rs.2,39,370/- may be treated as return of income. Such intimation was given by letter dated 13.02.2012. During the course of assessment proceedings it was found that assessee has sold immovable properties at Karol Bagh, New Delhi and has shown short term capital gain thereon. The value of the properties sold was Rs.25,00,000/- as well as Rs.26,00,000/- whereas the market value of each of the property was found at Rs.97,63,943/-. During the course of assessment proceedings the assessee did not co-operate and, therefore, Assessing Officer proceeded to compute the capital gain. The AO noted that assessee has 1/4th share in a residential property at 17-A/61, Karol Bagh, New Delhi, sold on 3.04.2007 for a sale consideration of Rs.26,00,000/- admeasuring 52.65 sq. mts. which has the market value of Rs.97,63,943/- and further assessee has 1/4th share in another property at 17-A/60 at Karol Bagh, New Delhi, which was sold for Rs.25,00,000/- admeasuring 52.65 sq. mts. on 3.07.2007 also as market rate of Rs.97,63,943/- and, therefore, he made an addition of Rs.1,95,27,886/- to the total income of the assessee as unexplained investment u/s 69 of the Act.

3. Further the learned Assessing Officer made an addition of Rs.21,50,000/- on account of seized document Annexure A-72 page 116 wherein assessee allegedly gave Rs.21,50,000/- in cash to M/s Satya Parkash & Brothers Pvt. Ltd., in assessment year 2008-09. This amount was also added.

4. Assessment under Section 153A r.w.s. 143(3) of the Act was passed at Rs.2,19,17,260/- on 28.03.2013. Assessee contested both the additions before the learned CIT (Appeals) who deleted the same. Therefore, the Revenue is in appeal before us.

5. The first ground of appeal is against the deletion of addition of Rs.1,95,27,886/- on account of re-computation of capital gain by substituting the sale value with the market value.

6. Learned [CIT]-DR vehemently relied upon the order of the learned Assessing Officer. Despite notice, none appeared on behalf of the assessee and, therefore, the issue is decided on the merits of the case as per information available on record.

7. We have carefully considered the rival contention. On perusal of the order of the learned CIT (Appeals) it is apparent that there is no incriminating evidence found during the course of search with respect to the addition made by the learned Assessing Officer. Therefore, following the decision of the Hon'ble Delhi High Court in CIT Vs. Kabul Chawla (2015) 61 taxmann.com 412 (Del.) the addition was deleted. Even otherwise he held that even if there is an incriminating material in case of somebody else, it cannot be used in the hands of the assessee without proving nexus between the transactions of sale of properties by the assessee. Even on the merits he held that the capital gain cannot be computed by substituting full value of consideration subject to acceptance of Section 50C of the Act was not invoked. Further, the learned CIT (Appeals) also relied upon the decision of the Group concern for deleting the above addition. On all these three counts, we are of the view that the learned CIT (Appeals) has reached at correct conclusion. Hence, ground No. 1 of the appeal is dismissed.

8. The second ground of appeal is with respect to deletion of addition of Rs.21,50,000/-. The learned [CIT]-DR supported the order of the Assessing Officer.

9. We have carefully considered rival contentions. In the present case the addition had been made by the learned Assessing Officer relying on a seized ledger account containing amounts recorded against the appellant's name of Rs.21.50 lakhs. Assessing Officer held that the assessee paid the above sum to M/s Satya Parkash & Brothers Pvt. Ltd. in assessment year 2008-09. Before the learned CIT (Appeals) appellant produced the bank statement stating that the above sum is actual withdrawal from the bank account with HDFC Bank and Indian Bank. Thus, it is not invested. Further the learned CIT (Appeals) noted

that entry by entry of the bank statement is recorded in the seized document and there is no evidence that same were undisclosed income. In view of this we do not find any infirmity in the order of the learned CIT (Appeals) in deleting the above addition. Accordingly, ground No. 2 of the appeal is dismissed.

10. In the result, appeal filed by the AO is dismissed.

Order pronounced in the open court on : 30/01/2020.

**Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 30/01/2020.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	29.01.2020.
Date on which the typed draft is placed before the dictating member	30.01.2020.
Date on which the typed draft is placed before the other member	30.01.2020.
Date on which the approved draft comes to the Sr. PS / PS	30.01.2020.
Date on which the fair order is placed before the dictating member for pronouncement.	30.01.2020.
Date on which the fair order comes back to the Sr. PS / PS	30.01.2020.
Date on which the final order is uploaded on the website of ITAT	31.01.2020.
Date on which the file goes to the Bench Clerk	31.01.2020.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	