

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'A', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 43/Del/2020 : Asstt. Year : 2012-13**

**ITA No. 44/Del/2020 : Asstt. Year : 2013-14**

**ITA No. 45/Del/2020 : Asstt. Year : 2014-15**

DCIT, Central Circle-27, New Delhi-110055	Vs	AGC Reality Pvt. Ltd., 403, 4 <sup>th</sup> Floor, Sachdeva Corporate Tower, 17, DDA Community Centre, Karkardooma, New Delhi-110092
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAHCA9157E</b>		

**CO No. 106/Del/2022 : Asstt. Year : 2012-13**

**CO No. 107/Del/2022 : Asstt. Year : 2013-14**

**CO No. 108/Del/2022 : Asstt. Year : 2014-15**

AGC Reality Pvt. Ltd., 403, 4 <sup>th</sup> Floor, Sachdeva Corporate Tower, 17, DDA Community Centre, Karkardooma, New Delhi-110092	Vs	DCIT, Central Circle-27, New Delhi-110055
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAHCA9157E</b>		

**Assessee by : Sh. P. C. Yadav, Adv. &**

**Ms. Manju Bala Yadav, Adv.**

**Revenue by : Sh. P. Praveen Sidharth, CIT DR**

**Date of Hearing: 20.10.2022**

**Date of Pronouncement: 15.11.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

These appeals have been filed by the Revenue and the Cross Objections filed by the assessee against the orders of Id. CIT(A)-31, New Delhi dated 15.10.2019.

2. Since, the issue involved in these appeals and Cross Objections are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 43/Del/2020 for A.Y. 2012-13, following grounds have been raised by the Revenue:

*"1. Whether on the facts and in the circumstances of the case, the Id. CIT(A) has erred in law by deleting the additions of Rs.6,39,04,000/- made by the Assessing Officer u/s 69A of the Income Tax Act, 1961 wherein the addition was made on the basis of the incriminating material relied upon by the Assessing Officer were found during the search & seizure action conducted by the Director General of Central Excise followed by the search by the Revenue."*

3. In CO No. 106/Del/2022 for A.Y. 2012-13, following grounds have been raised by the assessee:

*"1. On the facts and under the circumstances of the case, the Id. CIT(A) has erred in not appreciating that there was no search on the assessee and hence the assumption of jurisdiction under the provisions of section 153A is bad in law.*

*2. Without prejudice to the above on the facts and under the circumstances of the case, the Id. CIT(A) has failed to appreciate that statement of third party recorded by Central Excise department cannot be termed as material found during the course of search under the provisions of section 132 of the Income Tax Act, 1961 particularly when such statement was retracted in due course before Central Excise authorities."*

4. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out in Gulshan Homz Group of cases on

04.05.2016. The case of the assessee was also covered u/s 132(1) of the Act.

5. In this case, the addition has been made based on the information received from the DGCEI conducted search in the office of M/s AGC Realty Pvt. Ltd. (AGC-RPL), Room No. 403, 4<sup>th</sup> Floor, Sachdeva Corporate Tower, Plot No. 17, Karkardooma Community Centre, Vikas Marg, Delhi-92 on 21.01.2014. The search by the DGCEI was based on the information received which indicated that M/s AGC-RPL was collecting a part of the amount in cash from their customers against booking of residential flats in their project "Homes-121", Noida (U.P.), but were not accounting for the same in their records and were not paying Service Tax on such unaccounted cash receipts. Based on the enquiries conducted by DGCEI, a report dated 24.03.2017 F.No. 574/CE/04/2014/Inv./2349 has been sent to the Income Tax Department and based on the report of the DGCEI, additions have been made for the F.Y. 2012-13, F.Y. 2013-14 and F.Y. 2014-15 u/s 69A of the Income Tax Act, 1961 of the amounts purportedly received in cash in the Assessment Order passed u/s 153A.

6. A fact to be considered in this case is that a search has been conducted on 11.03.2011 on the assessee and as per record again on 04.05.2016 in connection with Gulshan Home Group of cases. The search has been concluded on 06.05.2016. The information has been received by the AO on 24.03.2017 regarding the search proceedings conducted by the DGCEI on 01.04.2014. Thus, the information available with the AO is not a part of the incriminating material found and seized during the course of search proceedings u/s 132(1). Undisputedly, neither

any incriminating material nor cash was found during the course of search u/s 132(1) in the case of assessee. The AO has also not made any independent inquiry about the facts mentioned in the report of DGCEI. The AO has not recorded any statement of the persons concerned in order to establish receipt of unaccounted cash. Thus, the addition made in all the Assessment Years is based solely on the basis of findings reported by DGCEI in their letter dated 24.03.2017. Even, in the show cause notice, the AO has reproduced the findings of DGCEI only.

7. The Id. CIT(A) has duly called the report of the AO who vide letter dated 20.09.2019 has reiterated that the additions have been made based on the report of the DGCEI. After obtaining the remand report and reply of the assessee on the remand report, the Id. CIT(A) held that the information received from DGCEI was not the incriminating material found during the course of search u/s 132(1) of the Act and hence the same cannot be considered to interfere with the "completed assessments". In view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Kabul Chawla (288 ITR 573), the Id. CIT(A) held that the addition made cannot be sustained. The similar view has been taken in the case of PCIT Vs. Meeta Gutgutia (395 ITR 526), PCIT Vs. Ms. Lata Jain (384 ITR 543) and CIT Vs. RRJ Securities Ltd. (380 ITR 612). Further, we also find that the Central Excise authorities have decided the appeal of the assessee vide order dated 12.03.2013 in appeal No. 76-ST/2018 in favour of the assessee holding that there was no basis for assuming the receipt of unaccounted cash and in fact, the figures mentioned

in the seized material represented the discount offered by the assessee. Accordingly, the entire demand of service tax raised on unaccounted receipts was deleted and appeal of the assessee was allowed vide order No. 193/ST/DLH/2018 dated 12.03.2019 of CIT(A)-1-Central Excise, Delhi. Thus, the fate of the addition made in the Income Tax proceedings on the basis of the findings of Central Excise Department which stand nullified in appellate proceedings of Central Excise gets obliterated. Reliance is being placed on the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Vimal Moulders (India) Ltd. (12 taxmann.com 119) wherein it was held that, where CESTAT has returned a finding that there was no discrepancy in the stock, the addition made by the Income Tax Department on such stocks stands deleted. Further, the Hon'ble Apex Court in the case of PCIT Vs. Zirconia Cera Tech Glazes (103 taxmann.com 358) while dismissing the SLP, affirmed the order of the Division Bench of Hon'ble High Court wherein it was held that the Tribunal ultimately deleted the addition primarily on the grounds that by virtue of the judgment of CESTAT, the excise show cause notice was adjudicated in favour of the assessee and the CESTAT deleted the addition on excise side and therefore the Tribunal was justified in deleting the additions made by the Assessing Officer.

8. Ergo, we find that the adjudication of the Id. CIT(A) is both on merits and on technicalities and is apt and hence, we decline to interfere with the order of the Id. CIT(A).

9. In the result, the appeals of the Revenue are dismissed and Ground No. 2 of the CO is allowed. In view of the detailed

order as above, any adjudication in the issue raised at ground No. 1 of the CO would not bear any fruit and hence un-resorted.

Order Pronounced in the Open Court on 15/11/2022.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 15/11/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**