

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. Nos. 627 to 629/Asr/2019
Assessment Years: 2012-13 to 2014-15

Smt. Suman Sabharwal,
435, New Jawahar Nagar,
Jalandhar

[PAN: ABQPS 4191K]

(Appellant)

V. A.C.I.T.,
Central Circle-2,
Jalandhar

(Respondent)

Appellant by : Sh. Ashray Sarna, CA

Respondent by : Sh. Rohit Mehra, CIT-D.R.

Date of Hearing : 07.02.2023
Date of Pronouncement : 20.02.2023

ORDER

Per Bench:

The captioned appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana even dated 29.07.2019 in respect of Assessment Years 2012-13 to 2014-15.

2. The assessee has raised the following grounds of appeal in ITA No. 627/Asr/2019:

- “1. That the order passed by the Hon'ble CIT(A) u/s 143(3) r.w.s 153A of the Act dated 29.07.2019 is against the law and facts of the case.
2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in framing the impugned assessment order u/s 153A/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.
3. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 4,50,000/-, on account of unexplained expenditure in cash u/s 69C of the Act, on the renovation of her house no. 435, New Jawahar Nagar on the basis of rough page.
 - (a) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition without considering the submission of assessee that the total of cash expenses of Rs. 36,000/- was incurred against renovation and not Rs. 36 Lakhs as alleged by the Ld. Assessing officer and had not used any codes i.e Rupee =Paise to mention the cash expenses.
4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. **Ground of appeal in ITA No. 628/Asr/2019**

- “1. That the order passed by the Hon'ble CIT(A) u/s 143(3) r.w.s 153A of the Act dated 29.07.2019 is against the law and facts of the case.
2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in framing the impugned assessment order u/s 153A/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.

3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 31,50,000/-, on account of unexplained expenditure in cash u/s 69C of the Act, on the renovation of her house no. 435, New Jawahar Nagar on the basis of rough page.*

(a) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition without considering the submission of assessee that the total of cash expenses of Rs. 36,000/- was incurred against renovation and not Rs. 36 Lakhs as alleged by the Ld. Assessing officer and had not used any codes i.e Rupee =Paise to mention the cash expenses.

4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

4. **Ground of appeal in ITA No. 629/Asr/2019**

"1. *That the order passed by the Hon'ble CIT(A) u/s 143(3) r.w.s 153A of the Act dated 29.07.2019 is against the law and facts of the case.*

2. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in framing the impugned assessment order u/s 153A/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.*

3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 21,85,000/-, on account of unexplained expenditure in cash u/s 69C of the Act, on the renovation of her house no. 435, New Jawahar Nagar on the basis of rough page.*

(a) That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in

making addition without considering the submission of assessee that the total of cash expenses of Rs. 21,850/- was incurred against renovation and not Rs. 21,85,000/- Lakhs as alleged by the Ld. Assessing officer and had not used any codes i.e Rupee =Paise to mention the cash expenses.

4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*
5. There are identical grounds involving common issue except variation of figures in these three appeals challenging the impugned orders of the Ld CIT (A) in confirming the addition on account of unexplained expenditure in cash on the renovation of her house no. 435, New Jawahar Nagar. Therefore, we decided to hear these three appeals together and disposed of by this common order for brevity. We have chosen to take ITA No. 627/Asr/2019, Assessment Year: 2012-13 as a lead case for facts and discussion.
6. Briefly the facts as per record are that the assessee is an individual, who filed his original return declaring an income of Rs.4,44,040/- on 31.07.2012 that a Search and seizure was conducted u/s 132 at the premises of the assessee on 08.09.2016 and notice u/s 153A of the Income Tax Act was issued. In compliance to which assessee filed return of income declaring same amount of income as that of original return i.e. Rs.4,44,040/- on 29.04.2018 and filed all the documents called for during

the assessment proceedings. The AO being not satisfied with the submission of assessee made disputed addition on account of unexplained expenditure on renovation of in cash u/s 69C of the Act, on the renovation of her house no. 435, New Jawahar Nagar.

7. In appeal, the Ld. CIT(A) has confirmed the addition by observing as under:

“From the above, it is clear that the AO duly confronted the seized documents on the basis of which the addition was made and it cannot be said that enquiry was not made by the AO about the nature of the transactions since by her own admission, the assessee explained that these are summary of construction material and other expenses/payments made by the assessee on the renovation/construction of the House No. 435, New Jawahar Nagar, Jalandhar belonging to Smt. Suman Sabharwal. The entries in the diary relates to both cash transactions and transactions through cheque. The cheques amounts have been validated from the bank account statement. Confirmation of cheque payments supports the fact that these relates to renovation/construction of the house. Hence, the argument of the AR that 'neither independent or corroborative meaning of the noting for entries therein is supported', is also not found tenable. The fact about the use of coding in the diary and the prevalent practice adopted in this regard are discussed below:-

Facts to show that coding was involved. To examine the fact that whether any coding was involved in writing the figures in the diary as mentioned by the AO but denied by the AR, the AO was requested to bring the seized record which was perused in the presence of the AR. It was observed that apart from the page referred by the AO, there are entries on other pages also of this seized diary 'Annexure A-2' and page no. 8 (backside) and page no.

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Smt. Suman Sabharwal, New Jawahar Nagar, Jalandhar
A. No. 171, 172 & 174/IT/CIT (A)-5/LDH/2018-19
A. Y. 2012-13, 2013-14 & 2014-15, u/s 153A/143(3)

Style No. 2

30/7/12	31,850
2/8/12	1,64,819
	196669

From the above, it is apparent that the noting in style no. 1 are written in coded form whereas the figures in style no. 2 are in plain/whole figures. In the figures, referred in style no. 1, comma is put after two places from the left side indicating that there is coding involved because the amount of 'one thousand six hundred fifty' should normally be written as 1,650 and not as 16,50. Similarly, the amount of 'three thousand one hundred fifty' should be written as 3,150 and not as 31,50. In style No. 2 above, against the date 30/07/12 a figure of 31,850 is written and against the date 2/8/12 the figure written is 1,64,819 putting the comma after three digit from left side and then after two digits which is normal Indian style of placing comma in the large numerical. (Note: - Commas are placed in the large numbers to help us read and write them easily. In Indian and international systems, the commas are placed at different positions. As per Indian numeral system, the first comma is placed after the hundreds place, post which they are placed after every two digits. E.g., 1,23,45,67,890. As per international numeral system, the first comma is placed after the hundreds place, post which they are placed after every three digits. E.g., 1,234,567,890. However, in both the system, the first comma is always placed after three digits from the left i.e. after hundreds place.) Therefore, the figures in Style No. 2 represent the normal whole numbers written without any coding. These two styles mentioned above are on the same page and if no coding was involved in the figures referred in style no. 1 then these should have also been written by placing 'comma' after three digits from the left side. In fact, the figure written as 31,50 is in coded form of actual figure of 31,50,000. From the above discussion, it is clear that coding was used in writing the figures in the diary seized as 'Annexure A-2' referred by the AO in making the additions. The fact of use of coding in writing the figures in the diary seized as Annexure A-2 is further corroborated by the following writings on page no. 8 (backside):-

Week 44

CH CH OCTOBER 2000

1	$1/2 + 25 + 15 + 45 + 30 =$	115 = 50 SK
50		115 - 50 = 65
35	Nitin - 5	
86	- 5	10.00 Nitin
95		241 = 0
181	10	
60		
241		



This is the record of payments in which the amount to SK (i.e. Sh. Sushil Sabharwal), to RK (i.e. Sh. Rakesh Sabharwal) and Sh. Nitin Sabharwal have been mentioned as 115=50, 115=50 and 10=00 respectively out of total 241=00. On the right side, the figures represent payments on different occasions. 1 represents 34 each to SK & RK. 50 represent 25 each to SK & RK. 35 represent 15 each to SK & RK and 5 to Nitin. 95 represents, 45 each to SK & RK and 5 to Nitin. 60 represents, 30 each to SK & RK. These payments are partly through cheque for which 'CH' is written above the figures. In fact, the figures of 25 & 30 above which 'CH' is written, represents the amount of Rupees twenty five lacs (Rs. 25,00,000/-) and Rupees thirty lacs (Rs. 30,00,000/-) each received by Sh. Sushil Sabharwal & Sh. Rakesh Sabharwal through cheques as detailed below:-

Cheque No.	Amount	Name
093989 dt. 03.05.2012	Rs. 25,00,000/-	Sh. Sushil Sabharwal
093990 dt. 03.05.2012	Rs. 25,00,000/-	Sh. Rakesh Sabharwal
093995 dt. 31.07.2012	Rs. 30,00,000/-	Sh. Rakesh Sabharwal
093999 dt. 31.07.2012	Rs. 30,00,000/-	Sh. Sushil Sabharwal

Since, the payments made through cheque are verifiable from the records, it cannot be denied that the writings of above figures are in coded form. On the verification of these amounts from the bank accounts of Sh. Sushil Sabharwal and Sh. Rakesh Sabharwal, it cannot be said that these figures of 25 represents only 25 rupee and 00 paise as claimed by the AR in his written submission to argue that the figure of 3600000=00 represents an amount of 'rupees thirty six thousand only' (i.e. Rs. 36000/-) and not an amount of 'Rs. 36 lacs'. From the discussion, it is clear that coding was used in writing the figures in the diary seized as Annexure A-2 referred by the AO in making the additions.

Duration of expense: - *From the entries in the seized documents, it is found that the diaries contains entries/payments from financial year 2011 upto financial year 2014, thus stretching for more than three years. This indicate that the expense does not relate to minor alterations or repairs*

but are indicative of a major construction/renovation work being carried out by the assessee over a long period of time. For engaging the labour for work for such a long time, the amount of Rs. 36,000/-, as claimed by the AR, will be too meager and rather insufficient to account for daily wages payments to labour for Electric work, Plumbing, Marble, Flouring work etc. for renovation work carried out at Flouse No. 435, New Jawahar Nagar, Jalandhar. Given the size of the property, the financial and social status of the family of the assessee, and the duration for which the renovation work continued, does not support the contention of the AR that the figure of '36000=00' represents only Rs.36,000/- and rather these facts supports the conclusion of the AO that the figure 36000=00 is in fact a coded figure for Rs. 36,00,000/- and has to be read as such.

Importance of surrounding circumstance and the prevalent practice: *For analyzing the entries in the seized documents the surrounding circumstances, probability and reality of life are to be considered. For deciphering the figures, one has to look into all the surrounding circumstances and consider the very crucial test as to what happens in real life regarding such entries. It is a normal practice in the business circle in this part of the country to record such type of unaccounted cash transactions by putting a '=' sign and omitting the last to zeros i.e. omitting '00' from the actual figure e.g. the figure of Rs. 100,000 (one lacs) will be written as 1000=00 and the figure of Rs. 10,000 (ten thousand) will be written as 100=00 similarly figure of Rs. 36,00,000/- (thirty six lacs) will be written as 36000=00.*

Thus, it is concluded that the AO was right in his inference that the amounts recorded in seized annexure A-2 are written in coded form and the code to be applied to read the figures and to arrive the actual amount is to be inferred, as per the other noting, by putting '00' after the figure written in coded form. Hence, the figures written as '36000=00' is to be read as Rs. 36,00,000/-. The argument of the AR that the amount represents only Rs. 36000=00 relating to daily wages payments to Labour for renovation of house is not found

acceptable because the pattern of payments also does not support the above contention since the labour is to be paid either on weekly or monthly basis which is not so in this case. Had it been the case of labour payment, then the figure for each month/week should have appeared on regular basis that also without the abnormal variations from month to month basis as is noted in the present case. In view of the discussion above, it is held that the figure mentioned in the diary which are accepted by the AR also as relating to the 'summary of construction material and other expenses/payments made by the assessee, are in coded form and the figure of 36000=00 in fact, represents Rs. 36,00,000/-. Under the facts and in the circumstances of the case, the additions of Rs. 4,50,000/-, Rs. 31,50,000/- and Rs. 21,85,000/- for the assessment year 2012-13, 2013-14 and 2014-15 respectively made by the AO are found acceptable and upheld.

Accordingly, this ground of appeal is dismissed.

Before concluding it is relevant to mention that in the reply filed during the appellate proceedings, the AR has tabulated various contentions of the AO against which the remarks of the assessee have been given. One such point in as under:-

<i>Contention of Ld. AO</i>	<i>Remarks of assessee</i>
<i>The assessee has failed to submit the complete details of expenses incurred in the construction of house located in the posh area of Jalandhar with its source.</i>	<i>If details of expense has not been submitted by the assessee, that does not justifies the claim of Ld. AO that he used code language and the amount of Rs.36,000/- should be interpreted as Rs. 36,00,000/-. The present case is that as per Ld. AO assessee used code language and amount of Rs.36,000/- should be read as Rs.36,00,000/-. Ld. AO is going off the track and trying to link the addition made to every possible aspect he could relate.</i>

It is thus clear that the details of expenses incurred in the construction of the house were not submitted by the assessee

before the AO. This observation of the AO has not been contradicted by the AR and no such details have been filed even during the appellate proceedings also. To know the cost of construction/renovation of the house a reference was required to be made to the Valuation Officer since the details of the expenses in this regard was not submitted by the assessee during the assessment proceedings. The AO is therefore advised to make a reference in the matter to the Valuation Officer and take necessary action as per law, if required, after the report of the Valuation Officer.”

8. At the time of hearing, the Ld. Counsel for the appellant submitted that the addition has been made on the basis of rough paper without considering the submission of the assessee; and that the noting on the diary found and seized during the search relates to some petty expenses incurred by the assessee for renovation of House No. 435, New Jawahar Nagar, Jalandhar, during the period October, 2009. The AR repeatedly contended that these do not pertain to the year under consideration. The Ld. AR further argued that nothing has been brought on record to show that the amount was not actual but coded as alleged with corroborative evidence to multiply figure with 00. Thus the Ld. AR contended that the jotting in the diary by no stretch of imagination can be treated as conclusive proof of alleged unexplained expenditure by the assessee and hence presumption u/s 292C cannot be taken against the assessee. The AR argued that the expense cannot be restricted to an extent incurred by some

other persons, on the basis of presumptions, conjectures & surmises only.

In support, he filed a written brief note which reads as under:

1. *That the addition made by Ld. AO is not based on corroborative evidence which could substantiate the claim of Ld. AO that assessee used any coding.*
2. *That Ld. AO on his own has deciphered the figures on the paper by adding '00' at his whim and caprice based on presumption and conjectures without bringing any corroborative material evidence in support for adding the zeros.*
3. *That Ld. AO did not carry any enquiry whatsoever to find the nature of transactions.*
4. *That jottings on loose paper found during search operation was mere estimation of petty expenses incurred and no corroborative evidence is on records that the amounts were actually in lakhs.*
5. *That neither independent nor collective meaning of notings or entries written therein is supported by conclusion of Ld. AO.*
6. *The contents thereof are not capable of describing the transactions the way A.O. has deciphered them and the diary jottings have not been corroborated from any other findings. **The jottings in the diary by no stretch of imagination can be treated as conclusive proof of expenditure transaction by the assessee as concluded by the Ld. AO.** Hence, in the background, presumption u/s 292C of the Act cannot be taken against the assessee.*

Reliance is placed on the following decisions:

1. ***CIT v/s Atam Valves Pvt Ltd. , Hon'ble Punjab Haryana High Court (2009) 184 TAXMAN 0006*** in which it was held as under:

Income from undisclosed sources—Addition under s. 69—Unexplained payment of wages—During survey under s. 133A in the premises of the

assessee certain incriminating documents were found including a 'slip pad' containing payment of wages to various persons—Stand of the assessee was that the same did not represent payment of wages during the year in question but were for the earlier year—CIT(A) as well as the Tribunal partly set aside the addition holding that even though explanation of the assessee that the loose papers did not relate to payment of wages during the year in question may not be accepted, in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the AO—It depends upon facts and circumstances of each case as to what is to be fair estimate of undisclosed income and therefore no interference was called for—Kachwala Gems vs. Jt. CIT (2006) 206 CTR (SC) 585 : (2007) 288 ITR 10 (SC) applied

2. Hon'ble Delhi High Court in the case of Girish Chaudhary 163 Taxman 608 in which it was held as under:

Search and seizure—Block assessment—Undisclosed income—Before an addition of an undisclosed income can be made, the AO has to bring on record the material found as a result of search of show that there is an undisclosed income—AO treated Rs. 48 lakhs as assessee's undisclosed income on the basis of seizure of a document which showed certain unexplained entries totalling '48'—Not justified—There is no material on record to show as to an what basis the AO has reached the conclusion that the figure '48' is to be read as Rs. 48 lacs—Said document is a dumb document and leads to now here—Addition rightly deleted by the Tribunal—There is no error in the order of the Tribunal and it does not give rise to a question of law, much less a substantial question of law

3. Atul Kumar Jain V/s DCIT, Hon'ble Delhi ITAT, (1999) 64 TTJ 0786 in which it was held as under:

Search and seizure—Block assessment—Computation of undisclosed income—Addition on the basis of uncorroborated chit of paper—AO has deciphered the figures on the paper by adding '00', '000' or '0000' at his whim and caprice based on presumption and conjectures without bringing any corroborative material evidence in support for adding the zeros—Not justified—He has not examined the assessee or the author of the said paper—AO has not brought any material on record to show that the figures related to sale or purchase of property—He made no enquiry from the purchaser—Said paper

does not fall within the definition 'books of account' or document—Paper seized had no evidentiary value and it does not prove that consideration was understated—Same cannot form the basis for assessing the undisclosed income

4. ACIT V/s Satyapal Wassan, Hon'ble Jabalpur ITAT, (2008) 5 DTR 0202 in which it was held as under:

Income from undisclosed sources—Addition under s. 69—Addition on the basis of dumb document found during search—Document found during search containing the figure '22.30'—AO simply presuming that the figure '22.30' stands for Rs. 22.30 lakhs and these were advances given by assessee during the financial year relevant to asst. yr. 1989-90 and making addition as undisclosed income—Not justified—The document was a dumb document containing no signature, no date, no unit like rupee, ton, kilogram, centimeter etc., full names of the parties were also not given, not showing whether it was position of assets or liabilities, receipts or payments, sale or purchase or advances made or loans received—AO did not carry out any enquiry whatsoever to find out the nature and period of transactions—The assessee had explained by way of affidavit that the document belonged to his brother 'D'—There was also an affidavit filed by widow of 'D' according to which the document belonged to her husband—Even if the affidavits are ignored as fresh evidence wrongly admitted by CIT(A), what is left behind is the dumb document bereft of any details without there being any enquiry by the AO to correlate the same with other documents seized, regular books of accounts, records kept by outside agencies or statements of concerned parties—The four essential components of s. 4, viz., the taxable event, the person chargeable, the assessment year in which charge is leviable and the total income are absent in the case—Presumption under s. 132(4A) is not available for purposes of assessment—Further, it being a rebuttable and shifting presumption, in the face of affidavits filed by the assessee and wife of 'D' that impugned document belonged to 'D', it could not be inferred, without rebutting the said affidavits, that the document and transactions recorded therein belonged to assessee—There being no material on record to indicate in certain terms the period of transactions, it was not possible to infer that they belonged to assessment year in question—It is also not possible to infer the quantum of income from the face of the document without there being any investigation—There is no evidence on record to show that the assessee or his LRs took any steps to recover the amounts or the AO has taxed the amounts as wealth of the assessee—Addition could not be sustained under s. 68 also because on the one hand, the AO had

made addition under s. 69 and on the other, the document being only a loose paper could not be construed as 'book' within the meaning of s. 68—For the same reasons, additions of Rs. 20,000 and Rs. 90,000 on the basis of yet another dumb document were also uncalled for—Consequently, there is no question of charging of tax on notional interest on such amounts—However, in respect of document showing name of assessee, 50 items in different quantities at different rates purchased also showing expenditure quantified at Rs. 1,31,736 bearing date, lower authorities were justified in treating the amount as expenditure/investment and making addition in the absence of any evidence brought by the assessee to show that it was not purchase but only a quotation

5. Hon'ble Cuttak Tribunal in the case of ADD. CIT VS. Prashant Ahluwalia 92 TTJ 464 (CTK) in which it was held as under:

Income from undisclosed sources—Addition—Jottings on loose paper found during search operation—Explanation of the assessee that the amount written on said paper was mere estimation of expenditure for forthcoming period was probable—Only round figures were found indicating that the estimated figures were noted for planning purposes—No corroborative evidence on records that the amounts were actually expended—Hence, addition was rightly deleted

6. ACIT V/s Sharad Chaudhary, Hon'ble Delhi ITAT, (2014) 165 TTJ 0145 (Del) in which it was held as under:

Income from undisclosed sources—Unexplained income—Deletion of Addition—Search and seizure operation u/s. 132 was carried out at residential premises of Assessee—Consequent upon search and seizure operation, notice u/s 153A was issued to file return—Assessee filed return declaring income—AO completed assessment u/s. 153A and s. 143(3) and made addition on account of undisclosed income u/s. 69 on basis of certain written pages containing rough noting found during course of search and seizure from residence of Assessee—CIT(A) deleted addition made by AO on account of undisclosed income by holding that seized documents were dumb in nature—Held, High Court in case of CIT Jalandhar vs. Atam Valves (P) Ltd. held that when loose papers does not relate to certain payment during relevant period in question, then in absence of any other supportive material or evidence those loose sheets by itself would not be enough to make addition—Impugned document was dumb document as on logical analysis, neither independent nor collective

meaning of notings or entries written therein supported conclusion of AO—Assessee made no investment in purchase of land out of income earned out of books of accounts from undisclosed sources—AO made addition on basis of documents in question on his own whims, surmises and conjectures—AO also converted and moulded contents of impounded document to gather support for his baseless findings—Document in question alone could not be used as a basis of making impugned addition without the company of any other supportive material and evidence—AO made addition without any basis and justified reason—No ambiguity, perversity or any other valid reason to interfere with conclusion and findings of CIT(A)—Revenue's Appeal dismissed

7. CIT V/s S.M. Agagwal, Hon'ble Delhi High Court (2007) 293 ITR 0043 in which it was held as under:

Appeal (High Court)—Substantial question of law—Block assessment—Both CIT(A) and Tribunal having deleted addition in block assessment by concurrent findings that document relied on by Revenue was dumb document, such findings were essentially of fact not giving rise to any substantial question of law—Appeal dismissed

Sir, it is submitted that Ld. AO made similar addition on the basis of alleged coding in the case of husband of assessee Sh. Susheel Sabharwal and that case has been decided in favour of assessee by the Hon'ble ITAT Amritsar vide order dated 16.09.2022 in ITA no.68//ASR/2019, copy of order is enclosed herewith in which it was held as under:

17. In the present case, the addition was being made on the basis of uncorroborated rough noting of paper/diary. The Ld. CIT(A) has deciphered the figures on the paper by decoding in the form of Indian style and international style at his whim and caprice based on presumption and conjectures without bringing any corroborative material evidence in support for such assumption of the decoded figures is not justified. Further, the AO had made no enquiry from the purchaser on the said rough noting of the paper of diary which does not fall within the definition of 'books of account' or document. Even if, a rough diary paper seized without being corroborated with relevant documentary evidence to

the effect of understatement of the sale consideration had no evidentiary value and it would not prove that consideration was understated, According, same cannot form the basis for presumption u/s 292C of the act for the purpose of assessing the undisclosed income of the appellant assessee. The Ld. CIT (DR) has not filed any judgement in rebuttal to the contentions raised by the Ld. Counsel for the assessee.

18. Considering the factual matrix of the case and the judicial pronouncements, we hold that the impugned order passed by the Ld. CIT(A) at his whim and caprice based on presumption and conjectures which suffered from legal infirmity and perversity on facts of the case. Accordingly, the addition of Rs 74,57,194/- on account of on money receipt for computation of long term capital gain is deleted.

Sir, since the addition made by the Ld. Assessing Officer is only on the basis of conjecture and surmises and that too on the basis of non convincing diary notings found during search without putting forward any corroborative evidence, so it is requested that addition made by the Ld. Assessing Officer may kindly be deleted.”

9. The Ld. CIT(DR) stands by the impugned orders. However, he has not filed any documentary evidence or citation in rebuttal to the contentions of the Ld. AR.

10. We have heard the rival contentions, perused the material available on record and the case laws cited at bar. Admittedly, in the present case there was rough diary containing scattered jotting of expenses, seized from the premises of the appellant, during the course of search u/s 132(4) of the act. The AO being not satisfied with the submission of the assessee made an addition of Rs. 4,50,000/-, Rs. 31,50,000/- and Rs. 21,85,000/- for the

assessment year 2012-13, 2013-14 and 2014-15 respectively on account of renovation of house. The Ld. CIT (A) has confirmed the said addition in the hands of assessee by observing and interpreting coding and decoding of rough jotting numeral to be multiplied by 00 by doubting and suspicious the real transaction without support of any corroborative evidence on record to in rebuttal to the claim of the appellant assessee.

11. It is seen that the rough noting/jotting in the diary, found during search, appears to be pertains to estimation of expenses regarding house renovation. It is not deciphered that the figures/jotting in the alleged Diary were in multiple of 100 as presumed by the authorities below by way of multiplying with 00 (Double Zero) without support of corroborative evidence on records that the amounts were actually in lakhs as against thousands claimed by the appellant.

12. The Ld. AR argued that neither of the authorities below had drawn independent nor collective meaning of noting/entries written in the rough diary to supported the conclusion/findings. He contended that the contents of the diary thereof are not capable of describing the transactions the way A.O. and the Ld. CIT(A) have deciphered them. He further contended that since the diary jottings have not been corroborated with the any supporting

material evidence on record from any other findings on alleged renovation of house, hence, the jottings in the diary by no stretch of imagination can be treated as conclusive proof of expenditure transaction by the assessee as observed by the Ld. AO. and endorsed by the Ld. CIT(A). He contended that, in the circumstances, presumption u/s 292C of the Act cannot be taken against the assessee.

13. On similar facts, the coordinate Bench vide order dated 16.09.2022 in ITA no.68//ASR/2019, has deleted the addition by observing as under:

“17. In the present case, the addition was being made on the basis of uncorroborated rough noting of paper/diary. The Ld. CIT(A) has deciphered the figures on the paper by decoding in the form of Indian style and international style at his whim and caprice based on presumption and conjectures without bringing any corroborative material evidence in support for such assumption of the decoded figures is not justified. Further, the AO had made no enquiry from the purchaser on the said rough noting of the paper of diary which does not fall within the definition of ‘books of account’ or document. Even if, a rough diary paper seized without being corroborated with relevant documentary evidence to the effect of understatement of the sale consideration had no evidentiary value and it would not prove that consideration was understated, According, same cannot form the basis for presumption u/s 292C of the act for the purpose of assessing the undisclosed income of the appellant assessee. The Ld. CIT (DR)

has not filed any judgement in rebuttal to the contentions raised by the Ld. Counsel for the assessee.

18. Considering the factual matrix of the case and the judicial pronouncements, we hold that the impugned order passed by the Ld. CIT(A) at his whim and caprice based on presumption and conjectures which suffered from legal infirmity and perversity on facts of the case. Accordingly, the addition of Rs 74,57,194/- on account of on money receipt for computation of long term capital gain is deleted.”

14. In the present case, the cheques amounts written in the alleged diary have been validated from the bank account statement and such Confirmation of cheque payments supports the fact that these relates to renovation/construction of the house. In our view, the Ld. CIT(A) ought to have brought on record corroborative documentary evidence on record to interpret or decode the alleged notings/jotting as multiple of 100. Meaning thereby, the interpretation of the noting of entries/jotting in the diary by multiple of 100 has no basis therein and such an interpretation made on the basis of assumption, presumption and conjectures in absence of supporting corroborative evidence such application of money for alleged expenditure, renovation/construction material bills, payment of labor or even Department

Valuation Officer report in order to estimate the expenditure is not tenable and cannot be approved.

15. From the above, it is evident that the addition was being made on the basis of uncorroborated rough noting in a diary. The Ld. CIT(A) has deciphered the figures by decoding in the form of Indian style and international style at his whim and caprice based on presumption and conjectures without bringing any corroborative material evidence in support for such assumption of the decoded figures to multiple of 00 (stands 100) is not justified. Further, the AO had made no enquiry regarding the alleged disputed expenditure based on rough blank figure/jotting in a diary that what are the renovation/construction material bills, payment of labor or even not referred Department Valuation Officer's report in order to estimate the expenditure on the said rough noting of the paper of diary which does not fall within the definition of 'books of account' or document. If, a rough diary paper seized without being corroborated with relevant documentary evidence to the effect to understatement the alleged renovation expenditure on the house, then it had no evidentiary value and it would not disprove the claim of the appellant that the jottings in the diary were actual figure of renovation expenditure on her house, According, same cannot

form the basis for presumption u/s 292C of the act for the purpose of assessing the undisclosed income of the appellant assessee.

16. Thus, without substantiating the content of the noting in the diary, the value adopted by way of decoding by the authorities below based on assumption, presumption and guess work is illegal and against the law. Since, the diary jottings have not been corroborated from any relevant material documentary evidence and hence, the jottings in the diary by no stretch of imagination can be accepted as an evidence or conclusive proof of 'renovation expenditure in multiple of 00/100 by the assessee for the purpose of presumption u/s 292C of the Act against the assessee.

17. Considering the factual matrix and following the Coordinate Bench decision on similar fact we hold that the impugned order passed by the Ld. CIT(A) at his whims and caprice based on presumption and conjectures which suffered from legal infirmity and perversity to facts on record. Accordingly, the additions of Rs. 4,50,000/-, for the assessment year 2012-13, on account of renovation is deleted.

18. The facts in I.T.A. No. 628/Asr/2019 and I.T.A. No. 629/Asr/2019 in respect of the Assessment Year 2013-14 and 2014-15 respectively are identical to the facts in I.T.A. No. 627/Asr/2019, in respect of the

Assessment Year: 2012-13. Therefore, our observation and finding given in I.T.A. No. 627/Asr/2019, in respect of the Assessment Year: 2012-13 shall be applicable in mutatis mutandis to the matters in I.T.A. No. 628/Asr/2019 and I.T.A. No. 629/Asr/2019 in respect of the Assessment Year 2013-14 and 2014-15 respectively. Accordingly, the additions made of Rs. 31,50,000/- and Rs. 21,85,000/- for the assessment year 2012-13, 2013-14 and 2014-15 respectively on account of renovation are deleted.

19. In the result, all the captioned three appeals of the assessee are allowed.

Order pronounced in the open court on 20.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order