

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.767/Del/2022  
(Assessment Year : 2012-13)

Prem Lata Gupta C-5/2A, Opp. CC Colony Rana Pratap Bagh Delhi – 110 007  <b>PAN No. AADPL 3023 F</b> <b>(APPELLANT)</b>	Vs.	ACIT Central Circle Karnal  <b>(RESPONDENT)</b>
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Assessee by	Shri Ved Jain, Adv. Shri Aman Garg, C.A.
Revenue by	Shri Mukesh Kumar Jha, CIT-D.R.

Date of hearing:	04.09.2023
Date of Pronouncement:	06.09.2023

**PER CHANDRA MOHAN GARG, JM :**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Gurgaon dated 28.02.2022 for Assessment Year 2012-13.

2. Although, assessee has raised as many as 8 grounds in appeal but the Learned Counsel admitted that except ground nos. 5 & 6, the assessee does not want to press other grounds of appeal. Ground Nos.5 & 6 of assessee read as follows:

“5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred in making the addition in order passed u/s 153A r.w.s 143(3) of the Act,*

*without any incriminating material having been found during the course of search.*

6. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.33,19,010/- by restricting the cost of construction of Rs.72,63,010/- claimed by the assessee to Rs.39,44,000/- while computing the income under the head capital gains.*

*(ii). That the above addition has been confirmed arbitrarily estimating the cost of construction of Rs.800/- per square foot without there being any basis for the same.*

*(iii) That the above said addition has been confirmed ignoring the detailed submissions and explanations along with the evidences brought on record by the assessee in this regard.”*

3. Learned Counsel submitted that the search was carried out on Mr. Padam Sain Gupta and others on 22.01.2018. The Learned Counsel further contended that during the course of search and seizure operation, no incriminating document was found and seized against the assessee. Learned Counsel further contended that on the date of search i.e. 22.01.2018, the assessment of assessee for A.Y. 2012-13 was completed and the same was not pending, therefore, as per judgment of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell P. Ltd., 2023 (4) TMI 1056 – Supreme Court wherein, it was held that the completed assessments can be interfered with by the AO while making the assessment order under Section 153A of the Act only on the basis of some incriminating material unearthed during the course of search.

4. Learned CIT-DR relied on the order of authorities below particularly the CIT(A) and submitted that the Assessing Officer has made addition in the hands of assessee on the basis of facts and circumstances of the case which can't be interfered.

5. On careful consideration of the submissions, we note that the AO during the course of enquiry raised question about purchase and sale of immovable properties and to submit all the details of immovable properties and copies of wealth tax returns. Thereafter, on the basis of such documentary evidences, AO disallow cost of indexation on the property sold by assessee during the A.Y. 2012-13. Hence, it is clearly disallowable that the Assessing Officer made disallowance on the basis of documentary evidences received by him during the course of search enquiry and he has not referred any incriminating material found and seized during the course of search and seizure operation.

6. From first appellate order, we note that Learned CIT(A) restricted and reduced the addition to Rs.33,19,010/- and there is no appeal by the Department against ground of relief by the Learned CIT(A) to the assessee perhaps due to low tax effect. From the relevant part, para 6 of first appellate order, we note that the Learned CIT(A) did not controvert that the present A.Y. 2012-13 is the year where on the date of search, assessments were completed but he denied relief to the assessee by referring to the judgment of Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Arora [2014] 367 ITR 517 and Hon'ble Kerala High Court in the case of E.N. Gopakumar vs. CIT (Central), [2016] 75 Taxman.com 215 (Kerala). However, now the issue has been settled by Hon'ble Supreme Court by rendering judgment in the case of PCIT vs. Abhisar Buildwell P. Ltd. (supra) approving the proposition of jurisdictional High Court in the case of CIT vs. Kabul Chawla, 2015 (9) TMI 80. In said judgments, it was categorically held by Hon'ble Supreme Court and Hon'ble Jurisdictional High Court that completed assessments can be

interfered with by the AO while making assessment order under Section 153A of the Act only on the basis of some incriminating material unearthed during the course of search. As we have found, as noted above that there is no incriminating material in the hands of Assessing Officer, which was found and seized during the course of a search operation held on 22.01.2018, therefore, the completed assessment for A.Y. 2012-13 cannot be interfered in absence of any incriminating material found and seized during the course of search and seizure operation. Accordingly, ground nos.5 and 6 of assessee are allowed and AO is directed to delete the addition.

7. In the result, appeal is partly allowed.

**Order pronounced in the open court on 06.09.2023**

**Sd/-**

**(M BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/**

**(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER**

Date:- 06.09.2023

*Priiti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI