

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

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1643/Del/2019  
(ASSESSMENT YEAR-2012-13)**

Sh. Rishi Aggarwal C-64, Sector-47 Noida-201 301  PAN-ACKPS 4796P	Vs.	Dy.CIT Central Circle ARTO Complex Sector-33, Noida Uttar Pradesh- 201 301
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Pulkit Saini, Advocate
Respondent by	Sh. P.N. Barnwal, CIT- DR

Date of Hearing	12/10/2023
Date of Pronouncement	13/12/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur ["Ld. CIT(A)", for short], dated 30/01/2019 for Assessment Year 2012-13. Grounds taken in this appeal are as under:

*"1. That the orders passed by the Ld. CIT(Appeal-IV), Kanpur and the assessment order passed by the Ld. Assessing Officer, DCIT, Central Circle, Noida are bad in law and against the facts of the case.*

*2. That the Assessing Officer was wrong to make an addition of Rs.76,75,000/- and the CIT(A) was wrong to have confirmed the*

*addition of Rs.76,75,000/- on account of alleged payment made in cash for purchase of property.*

*3. That after the original assessment proceedings were over and the proceedings u/s.153C were pending, the Assessing Officer proceeded to rectify the assessment order based on the information received from the audit party and made addition of Rs.24,04,399/-. The information received from Audit party does not warrant rectification, but only a fresh assessment proceeding can be initiated, if required. The scope of rectification proceedings are limited to correction of mistakes apparent from records only.*

*4. That the addition of Rs.76,75,000/- is based on the basis of seized material found during the course of search proceedings in another case, to which the appellant is in no way connected. All the transactions with the said party are fully disclosed and recorded in the books of accounts of the appellant.*

*5. That both the assessment and appellate proceedings have been disposed off in a summary manner, without any discussion and assigning any reason which formed the basis of such addition.*

*6. That detailed statement of facts shall be furnished at the time of hearing of the appeal.”*

2. The brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was conducted on 09/10/2013 on the premises of the assessee comprising Shubhkamna Buildteck Pvt. Ltd group of cases wherein certain incriminating documents were found & seized relating to the assessee. Further, in response to notice u/s 153C of the Act, assessee filed his return declaring income of Rs.45,60,020/-. Later on, notices u/s 143(2) & 142(1) were also issued and A.O. completed on 18/03/2016 the assessment by making additions of Rs.76,75,000/- on account of unexplained investment u/s 68 of the Act.

3. Aggrieved by the assessment order dated 18/03/2016, assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 30/01/2019 dismissed the appeal filed by the assessee. As against the order of the Ld. CIT(A) dated 30/01/2019, the assessee preferred the present appeal on the grounds mentioned above.

4. Ground No.1 is general in nature, which requires no adjudication.

5. In ground No. 4, the assessee challenged the initiation of assessment proceedings u/s 153C of the Act as without jurisdiction and bad in law on account of absence of a valid satisfaction note prior to initiation.

6. The Ld. Counsel for the assessee submitted that no satisfaction note has been prepared by the AO in the capacity of AO of the searched party that the assets/documents seized pertaining to the (assessee) remained with the AO of the searched person and were not transferred to the AO of the assessee i.e. the other person. However, the jurisdiction of the assessee was transferred to the Central Circle-Noida, i.e. the AO of the searched person on 23/10/2015. Therefore, the satisfaction note which was required to be recorded before the transfer of jurisdiction of the AO of searched person has not been done which goes against the provisions of the section 153C of the Act, thus, the entire assessment proceedings becomes void ab initio.

7. Per contra, the Ld. DR submitted that the jurisdictional High Court in the case of PCIT Vs. Sheetal International Pvt. Ltd. that the Assessing Officer need to make only one satisfaction note, if, Assessing Officer is same for the “searched person” and “other person” u/s 153C of the Act, therefore, submitted that the ground No.4 deserves to be dismissed.

8. We have heard both the parties and perused the materials available on record. The Ld. CIT(A) while dismissing the very same ground of non recording of valid satisfaction note prior to initiation of the assessment proceedings held as under:

*“6.3 Perusal of the case record reveal that the contention of the appellant that no satisfaction is recorded stands incorrect. Satisfaction recorded by the Assessing Officer is reproduced here-in-under:*

- *Satisfaction Note for initiation of proceedings u/s 153C of I.T. Act-Rishi Agarwal-PAN:ACKPA4796P*
- *During the course of search and seizure operation in the case of M/s Subhkamana Buildtech Pvt. Ltd. at 102 Star House, Sector-4, Noida. Incriminating documents were found and seized. On pages 37 to 49 of Annexure LP-2 there is an agreement between Shri Rishi Agarwal, S/o Shri Rajendra Agarwal R/o C-64, Sector-47, Noida and Shri Buti S/o Shri ....R/o Village Momna Thal Pargana Dankaur Tehsil and District Gautam Budh Nagar on 01.03.2012. The agreement pertains to sale of land area of 343 sq. meters and the total consideration mentioned in the agreement is Rs.30,87,000/-. Shri Rishi Agarwal made the payment of advance of Rs.27,80,000/- through cheque no.148488 on 20.03.2012. Further on page 36 of Annexure LP-2 paper/document was seized as per which Shri Rishi Agarwal made cash payment of Rs.76,75,000/- for purchase of the said land. These seized documents pertain to Shri Rishi Agarwal and the information contained therein....Shri Rishi Agarwal.*
- *The cases of this group are interconnected and required deep investigation to arrive at a logical conclusion. As such for taking a logical conclusion in this group of cases, every single seized document and entry appearing in the seized documents requires deep scrutiny and has its impact on the other cases of the group.*

- *Considering the above facts, I am satisfied that it is a fit case for initiation of proceedings u/s 153C of the I.T. Act for proper deep investigation and to plug the leaked revenue.*

*(R.K. Agarwal)*  
*Deputy Commissioner of Income Tax*  
*(Central Circle), Noida*

*From the above satisfaction note, drawn by the AO, it is ample clear that, satisfaction note u/s. 153C has been recorded by the AO. Further, in the case of PCIT-Central-3 Vs. Sheetal International Pvt. Ltd.. Hon'ble High Court (Del.) in its order dated 10.07.2017 has held that Assessing Officer need to make only one satisfaction note if. Assessing Officer is same for the "person searched" and "other person" u/s 153C of the Act. This judgment of Delhi High Court is squarely applicable in the present facts of the case. Therefore, this ground of appeal of the appellant is dismissed."*

9. There is no dispute the satisfaction note u/s 153C has been recorded by the AO. It is well settled law that the Assessing Officer need to make only one satisfaction note, if the Assessing Officer is same for the 'person searched' and 'other person' u/s 153C of the Act. Thus, we find no merit in ground No.4 of the assessee, accordingly, the ground No.4 is dismissed.

10. Ground No. 2, 5 to 10 are against the confirmation of addition of Rs.76,75,000/- made u/s 69 of the Act. The Ld. Counsel for the assessee submitted that the addition has been made based on the dumb document and the said document does not bear date or signature, there is no head note and the authorities have wrongly read and interpreted the handwriting jottings, therefore, submitted that the additions made by the AO, which has been confirmed by the Ld. CIT(A) deserves to be deleted.

11. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

12. We have heard the parties and perused the materials available on record. During the search and seizure operation on M/s Shubkamna Buildteck Pvt. Ltd. two documents were found from the premises of the searched person which are (i) a copy of the agreement between Late Sh. Buti Singh and the assessee for transfer of right on future plot of land of 343 sq. meter to be allotted by NOIDA authority for Rs.30,87,000/- to the assessee. In the said agreement the assessee is stated to have paid a cheque of Rs.27.80 lakhs (ii) an unsigned and undated loose paper/ a computer generated sheet which contained a list of different properties with the name of farmer (owner) and the purchaser. As per AO one of the entries pertaining to the copy of the agreement is between late Buti Singh and the assessee for transfer of rights on future allotment of 343 sq. mtr. but with distorted sales consideration. In the computer-generated sheet, the total sale consideration was stated to be Rs.10,29,000/-, whereas as per agreement the total sale consideration was Rs.30,87,000/-. Further, certain handwritten jottings were made on the margins of the paper "Ch.27.80 and cash 76.75(74.15 +2.60)". The loose paper found during search which is reproduced as under:



13. It can be seen from the above paper found during the search placed at page 30 of the Paper Book that: It is neither dated nor signed/stamped, there is no head note on the paper which could suggest the purpose for which it was created, the loose paper contained list of many other property transaction which were related neither to the assessee nor to Sh. Buti Singh (seller) which demonstrates that neither the assessee nor the seller was the author of the document. The loose paper did not belong to the assessee or to the seller, there is no description or comment explaining the hand written jottings-whether it represented a proposal for purchase or construction by the builder or payment between assessee and right seller, there is no date of receipt or payment mentioned against any figure, the content of the paper was incorrect as the total sales consideration did not match to the sales consideration as per the agreement. Further, the sales consideration as per the loose paper did not even match to the handwritten jottings which raise serious doubts on its validity and accuracy.

14. Thus, the above said loose paper was not speaking document and it is a dumb document which can be used as a basis for making the addition u/s 69 of the Act in the absence of any substantive enquiry to validate the content of the paper with any supportive and corroborative material and evidence. The evidentiary value of loose paper which is unsigned, undated and unverified has been held to be highly questionable and has not been accepted by the Hon'ble Supreme Court and various High Courts in following judgments.

- Common Cause [A Registered Society] vs. UOI 394 ITR 220 (SC),
- CBI vs. VC Shukla 3 SCC 410 (SC)
- CIT vs. Girish Chaudhary (2008) 296 ITR 619 (Delhi)
- CIT vs. Anil Bhalla (2010) 322 ITR 191 (Delhi)
- CIT vs. Atam Valves (P.) Ltd. 184 Taxman 6 (P&H)
- Atul Kumar Jain vs. DCIT (1999) 64 TTJ (Delhi) 786

15. In the case of CIT vs. Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi)- wherein it was held that Dumb documents seized, i.e., from which nothing could be clearly understood, cannot form a justified base for making additions to income of the assessee. Decision of the hon'ble Delhi ITAT in the case of ACIT vs. Sharad Choudhary [2014] 165 TTJ 145 (Delhi-Trib.) wherein it has been held that *“a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all four components of charge of tax. If it is not so, the document is only a dumb document and no charge of tax can be levied on the assessee on the basis of a dumb document.”* Further it has been held that in absence of any supportive and corroborative material and evidence, a loose paper found during search containing rough notings of proposals/offers could not be a basis for making addition u/s 69 of the Act.

16. It is further observed that the Ld. AO did not consider the need to summon the seller or the person searched, or to record the statement of the author/searched person/seller by giving an opportunity to assessee to cross examine the said person. The AO has not even made any enquiry about the value of the property purchased by the assessee. Considering the above facts and circumstances, we find merit in the Ground Nos. 2, 5 to 10 and, accordingly, we delete the addition of Rs.76,75,000/- made u/s 69 of the Act.

17. Ground No.3 is regarding by addition by Rs.24,04,394/- on account of audit objection and passing the order u/s 154 of the Act, before the proceedings u/s 153C of the Act were completed. The Ld. Counsel for the assessee submitted that the Ld. AO was wrong to make addition on account of audit objection and passing order u/s 154 of the Act, before the proceedings u/s 153C were completed and the rectification proceedings are limited to correction of mistake apparent from record only.

18. The issue raised by the assessee in Ground No. 3 is not emanating from the impugned order of the Ld. CIT(A) dated 30/01/2019 which is under challenge before us, therefore, the Ground No. 3 is dismissed as devoid of merit.

19. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in open Court on 13<sup>th</sup> December, 2023.

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
Dated: 13/12/2023  
*Pk/R.N, Sr.ps*

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI