

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

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.189/Del/2021  
(ASSESSMENT YEAR 2012-13)**

Shri Vipul Gupta <u>New Address:</u> MH-504, Mahagun Modern, Plot #GH-02 Sector-78, Noida UP-201301  <u>Old Address:</u> D-703, Royal Residency, Sector-44 Noida, UP-201301 PAN-ADBPG2445D	Vs.	DCIT/ACIT Central Circle-II Noida
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Vibhu Gupta, Adv.
Department by	Ms. Sapna Bhattia, CIT-DR
Date of Hearing	17/01/2024
Date of Pronouncement	16/04/2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A)-

IV/KNP/10041/DCIT-CC/Noida/2016-17/567 dated 31/10/2018 against the order passed by Learned Deputy Commissioner of Income Tax, Central Circle, Noida (hereinafter referred to as the 'Ld. AO') u/s 143(3)/153C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 18/03/2016.

2. The assessee is an individual deriving income from salary, commission and also income from other sources and for the previous year relevant to the assessment year 2012-13, the assessee filed his return declaring income of Rs.33.64.810. Search and seizure operation under section 132 of the Act was carried out in the case of M/s. Shubhkamna Buildtech Pvt. Ltd. on 09.10.2013. Proceedings under section 153C of the Act were initiated vide notice dated 07.12.2015 after recording the satisfaction for initiation of proceedings.

2.1 The case of Revenue is that during the course of search and seizure operation in the case of M/s. Shubhkamna Buildtech Pvt. Ltd. at 102, Star House, Sector-4. Noida, incriminating documents were found and seized. Annexure LP-2, was relied by AO as there is

an alleged agreement between Sh. Vipul Gupta So Sh. Harsh Deep Gupta R/o D-703. Royal Residency, Sector-44, Noida and Sh. Buti S/o Sh. Arjun Rio Village Momna Thal Pargana Dankaur Tehsil and District Gautam Budh Nagar on 20.03.2012. The agreement pertains to sale of land area of 300 sq. metres and the total consideration mentioned in the agreement is Rs.27,00,000/-, Shri Vipul Gupta made payment of advance of Rs.24,00,000/- through cheque nos. 893987 and 893086 on 20.03.2012. Further, on page 36 of Annexure LP-2 paper/document was seized as per which Sh. Vipul Gupta purchased the said property for Rs.90 lacs and made payment of Rs.24.30 lacs through cheque and the remaining amount through cash to Shri Buti for purchase of the said land. Similarly on page 36 of Annexure LP-2, there are details of purchase of another plot measuring 300 sq meters by Shri Vipul Gupta from Shri Jay Chand and Jai Singh. Shri Vipul Gupta admitted the payment of cash and offered Rs.87,00,000 for taxation.

2.2 In the impugned assessment completed vide order dated 18.03.2016 passed under section 143(3)/ 153C of the Act, income

of the appellant has been assessed at Rs.1,59,64,810 as against income of Rs.33,64,810 declared by the appellant. While assessing the income, the assessing officer made addition of Rs. 1,26,00,000 under section 69 of the Act on the alleged ground that the said amount represents unexplained investment made by the appellant.

2.3 On appeal, the CIT(A), vide impugned order dated 31.10.2018, confirmed the addition made by the assessing officer. Against the aforesaid order of the CIT(A), the Assessee is now in appeal before the Tribunal raising following grounds;

*“1. That the ld. CIT(A) erred in upholding the addition of Rs.1,26,00,000/- made by AO u/s 69 of Income Tax Act, 1961 merely on surmises and conjecture and without considering and appreciating the evidence and arguments submitted before him and the AO.*

*2. That the ld. CIT(A) erred in law in not appreciating the law against before him.*

*3. That the ld. CIT(A) erred in law in rejecting the appeal arbitrarily and in utter disregard of the submission made before him.*

*4. That the grounds of appeal as pleaded before the ld. CIT(A) are relied upon the appeal before the Hon’ble ITAT.*

*5. That the appellant seeks permission to add, develop of grounds of appeal during the hearing of the appeal.”*

3. Heard and perused the record. Ld. AR has questioned the addition on basis of loose papers and has further submitted that Issue is covered in favour of the appellant by the decision of Co-ordinate Bench in the case of **Sh. Rishi Aggarwal vs. DCIT: ITA No.1643 of 2019** wherein pursuant to the search in the case of Shubhkamna Buildtech Pvt. Ltd., similar addition was made by the AO on the basis of same loose paper, Annexure LP-2, Page 36. Ld. AR has relied the findings which we consider relevant to reproduce here in below as under:

*"12. We have heard the parties and perused the materials available on record. During the search and seizure operation on M/s Shubkamna Buildtech Pvt. Ltd. two documents were found from the premises of the searched person which are (1) 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.....

15. In the case of CIT vs. Jaipal Aggarwal (2013) 212 Tazman 1 (Delhi) wherein it was held that Dumb documents seized, Le.. 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 (Del 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."*

3.1 Ld. DR has however, relied the order of Ld. Tax authorities below.

4. Now having taken into consideration the facts of present case and the case before us, it comes up that the AO has primarily relied two alleged incriminating documents Annexure LP-2, Page 1-15, which is an agreement to sell dated 20.03.2012 between Sh. Vipul Gupta and Sh. Buti (page 5-34 of the PB) and Annexure LP-2, Page 36, which is a loose sheet on which name of the appellant was mentioned along with some other parties, including that of Sh. Rishi Aggarwal, whose order of Co-ordinate bench is relied by the Ld. AR (page 4 of the PB).

5. Further, as we consider the Annexure LP-2, Page 1-15, it comes up that it allegedly shows that the appellant agreed to purchase plot having size of 300 sq. meters for a total consideration of Rs.27,00,000/-. Out of the total consideration of Rs.27,00,000, a payment of Rs.24,30,000 was already made by the appellant vide two. The Annexure LP-2, Page 36, is a sheet which mentioned name of those farmers who have sold the land/plots to certain individuals (including the appellant) along with the plot size purchased. This page also has information of amount but there is no evidence to show what is the context for mentioning these amounts. In the impugned assessment order, the addition of Rs. 1,26,00,000/- is made by the assessing officer solely based on this loose sheet. The AO had inferred that amount of Rs.9,00,000 mentioned against the name of Sh. Vipul Gupta actually represents 10% of the total consideration i.e. Rs.90,00,000/-. Against the said alleged value, the assessing officer held that amount of Rs.27 lacs has been paid by the appellant through banking channel and the balance amount was alleged to have been paid in cash merely on the basis of

surmises and conjectures and but same is mere work of speculation.

6. As observed in the case of Sh. Rishi Aggarwal, there is no corroborative evidence. 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. Since the document relied as incriminating material to make addition in assessment u/s 153C of the Act, is not one which is kept in ordinary course of business, and the author of the document is not identified and disclosed to the assessee and the transaction is not verified by any enquiry, then only on the content of the documents the addition is not justified. Thus after taking into consideration, the decision of Co-ordinate Bench in the case of **Sh. Rishi Aggarwal (supra)** as such nothing is required to be determined on first principle basis. Thus, the

grounds raised by the assessee are sustained. The appeal of the assessee is allowed.

Order pronounced in the Open Court on 16/04/2024.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 16/04/2024

*PK/Ps*

Copy forwarded to:

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

Sd/-

**(ANUBHV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI