

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.830/Del/2022
(ASSESSMENT YEAR 2011-12)**

Dy. CIT Circle-20 New Delhi	Vs.	Preeti Mittal A-23/01, Lawrance Road, Industrial Area North West New Delhi-110035 PAN-AEVPA9580J
(Appellant)		(Respondent)

Cross Objection No.07/Del/2023

(Arising out of ITA No.830/Del/2022)

(ASSESSMENT YEAR 2011-12)

Preeti Mittal A-23/01, Lawrance Road, Industrial Area North West New Delhi-110035 PAN-AEVPA9580J	Vs.	Dy. CIT Circle-20 New Delhi
(Cross Objector)		(Respondent)

ITA No.832/Del/2022

(ASSESSMENT YEAR 2011-12)

Dy. CIT Circle-20 New Delhi	Vs.	Puneet Mittal A-23/01, Lawrance Road, Industrial Area North West New Delhi-110035 PAN-AGZPM7697Q
(Appellant)		(Respondent)

Cross Objection No.08/Del/2023
(Arising out of ITA No.832/Del/2022)
(ASSESSMENT YEAR 2011-12)

Puneet Mittal A-23/01, Lawrance Road, Industrial Area North West New Delhi-110035 PAN-AGZPM7697Q	Vs.	Dy. CIT Circle-20 New Delhi
(Cross Objector)		(Respondent)

Assessee by	Sh. Amol Sinha, Adv.
Respondent by	Sh. P.N. Barnwal, CIT- DR
Date of Hearing	18/04/2024
Date of Pronouncement	26/04/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

Both appeals have been filed by the Revenue against the orders of Learned Commissioner of Income Tax (Appeals)-27, New Delhi ["Ld. CIT(A", for short], dated 28/01/2022 for Assessment Year 2011-12, whereas the assessee has also filed Cross Objections in both appeals.

2. The grounds raised by the Revenue as well as Cross Objections raised by the assessee are as under:

ITA No.830/Del/20232

“1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs.2,67,32,350/-made by AO on account of unexplained money u/s 69A of the IT Act.

2. The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee and stating that, additions made by AO on account of unexplained investment/money u/s 69A of the IT Act, 1961 is not sustainable and deserve to be deleted as the addition had been made during the regular course of assessment proceedings and not on the basis of incriminating material/evidence found during the search proceedings.

3. The Ld. CIT(A) has erred in law and on facts in deleting the addition made by the AO in view of the judgment in the case of CIT Vs Kabul Chawla (2016) 380 ITR 0573 as the said decision does not deal with the fact situation that arises in the present case.

3.2 The Ld. CIT(A) has erred by not considering the fact that the Valuation Report was duly called u/s 142A which clearly proved that the value of property is higher than the value shown by the assessee.

3.3 The Ld. CIT(A) has erred in ignoring the fact that the assessee could not file any explanation to the said Valuation report.

4. (a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

C.O. No.07/Del/2023

“1. That the Ld. AO grossly erred in invoking provisions of Sec. 153A(1)(a) of the Act to the case of the assessee despite the fact that there existed no books of account or document or evidence in his possession on the basis of which it could have been alleged that the assessee had made unaccounted investment.

2. That the Ld. AO grossly erred in law and in facts of the case in relying upon an erroneous and incorrect valuation report prepared by valuer only on the basis of estimations without taking proper cognizance of facts and producing reliable comparable for valuation of land.

3. That the valuation report obtained u/s 142A of the Act in the case of assessee is void-ab- initio because of being obtained without any authority of law and in defiance of settled procedures of law.
4. That the valuation report obtained u/s 142A of the Act in the case of the assessee is void- ab-initio because of being obtained in violation of provisions of Sec. 56(2)(vii)(b) of the Act.
5. That the Ld. AO grossly erred in law and in facts of the case in relying upon a valuation report which was not prepared during the course of assessment proceedings.
6. That the assessee craves leave to add/alter/modify/delete any grounds of appeal during the course of appeal proceedings.”

ITA No.832/Del/2022

- “1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs.2,67,32,350/- made by AO on account of unexplained money u/s 69A of the IT Act.
- 2 The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee and stating that, additions made by AO on account of unexplained investment/money u/s 69A of the IT Act, 1961 is not sustainable and deserve to be deleted as the addition had been made during the regular course of assessment proceedings and not on the basis of incriminating material/evidence found during the search proceedings.
3. The Ld. CIT(A) has erred in law and on facts in deleting the addition made by the AO in view of the judgment in the case of CIT Vs Kabul Chawla (2016) 380 ITR 0573 as the said decision does not deal with the fact situation that arises in the present case.
- 3.2 The Ld. CIT(A) has erred by not considering the fact that the Valuation Report was duly called u/s 142A which clearly proved that the value of property is higher than the value shown by the assessee.
- 3.3 The Ld. CIT(A) has erred in ignoring the fact that the assessee could not file any explanation to the said Valuation report.
4. (a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.
- (b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

C.O. No.08/Del/2023

“1. That the Ld. AO grossly erred in invoking provisions of Sec. 153A(1)(a) of the Act to the case of the assessee despite the fact that there existed no books of account or document or evidence in his possession on the basis of which it could have been alleged that the assessee had made unaccounted investment.

2. That the Ld. AO grossly erred in law and in facts of the case in relying upon an erroneous and incorrect valuation report prepared by valuer only on the basis of estimations without taking proper cognizance of facts and producing reliable comparable for valuation of land.

3. That the valuation report obtained u/s 142A of the Act in the case of assessee is void-ab- initio because of being obtained without any authority of law and in defiance of settled procedures of law.

4. That the valuation report obtained u/s 142A of the Act in the case of the assessee is void-ab-initio because of being obtained in violation of provisions of Sec. 56(2)(vii)(b) of the Act.

5. That the Ld. AO grossly erred in law and in facts of the case in relying upon a valuation report which was not prepared during the course of assessment proceedings.

6. That the assessee craves leave to add/alter/modify/delete any grounds of appeal during the course of appeal proceedings.”

3. These two appeals and COs are interconnected having common issues. All these appeals are heard together and disposed off by this common order. We are taking ITA No.830/Del/2022 as a lead case.

4. Brief facts relating to grounds of appeal are, the assessee has filed its original return of income for A.Y.2011-12 declaring total income of Rs.8,28,280/-. Subsequently, a search and seizure

survey operation u/s 132/133A of the Income Tax Act, 1961 ('the Act' for short) was conducted by the Investigation Wing of the Department on 19/12/2017 in the case of M/s. PAN Group of case. The assessee's residential premises at 151-152, Deppali Enclave Pitampur, New Delhi was also covered u/s 132(1) of the Income Act. The case is centralized with this Central Circle u/s 127 of the Act. Accordingly, notice u/s 153A of the Act was issued to the assessee and served on the assessee. In response, return of income declaring an income of Rs.8,28,280/- was filed on 18/12/2019. Subsequently, notices u/s 143(2) issued and served on the assessee. In response, Ld. AR of the assessee attended and submitted the relevant information as called for. The Assessing Officer observed that Investigation Wing provided the Valuation Report obtained u/s 142A of the property No.151 & 152, Deppali Enclave, Pitampura, Delhi along with seized material. He observed that the assessee has accepted ownership of respective property in its preliminary statement and in statement u/s 132(4) of the Act. The Valuation Report was also provided to assessee on 29/08/2019. However, during the course of assessment

proceedings, AO observed that the assessee had acquired properties namely Plot No.151-152, Deepali Enclave, Pitampura, Delhi during the financial year. The cost/value ascertained by the Government approved valuer vide its report dated 19/07/2018, was much higher than the cost shown by the assessee with respect to the properties purchased that description of the plots and their values in the year of the purchase by the assessee i.e. F.Y. 2010-11 are given below:

Description Property	Area of Plot	Date of Sale Deed	Value as per Sale Deed (in Rs.)	Stamp Valuation for land mentioned in the sale Deed (in Rs.)	Stamp value as per Government Approved Valuer's report (in Rs.)	Rate as per reserve price of DDA for auction with time adjustment (in Rs.)
Plot No.151, Deepali Encalve, Pitampura, Delhi	366 Sq. yards (306.13 Sqm)	04.02.2011	90,33,000	66,71,018	1,33,47,268	8,72,47,050
Plot No.152, Deepali Enclave, Pitampura, Delhi	366 Sq. yards (306.13 Sqm)	04.02.2011	70,50,000	66,71,018	1,33,47,268	8,72,47,050

5. Further, he observed that the reserve price fixed by Delhi Development Authority for auction of such plots as indicative of the lower side of their fair market value, the assessee would incurred an amount of at least Rs.15,84,11,100/- {(Rs.8,72,47,050 –

Rs.90,33,000) + (Rs.8,72,47,050 – Rs.70,50,000)} out of its books for the purchase of these plots on which she has constructed her residential house and the source of the excess amount of Rs.15,84,11,100/- incurred by the assessee on this account remains unexplained.

6. In response to notice u/s 153A of the Act, the assessee filed reply dated 18/12/2019, which was reproduced by the AO in page No.3 & 4 of his order.

7. After considering the reply of the assessee, the Assessing Officer rejected the same and observed that assessee has not filed any cross objection with respect to the valuation adopted by the registered valuer in the Valuation Report and has not made any submission in this regard to show cause notice dated 19/12/2019. Accordingly, he proposed an amount of Rs.2,67,32,350/- as unexplained amount in the hands of the assessee and he apportioned 1/3rd of the unexplained amount of Rs.8,72,47,050/- being share of the assessee as the owner of the 1/3rd portion of the property.

8. Aggrieved, the assessee preferred an appeal before Ld. CIT(A) and filed a detailed submissions before him.

9. In the above said appeal, the assessee has also filed ground and submissions with regard to no incriminating material found during the search before Ld. CIT(A). After considering the detailed submissions of the assessee, the Ld. CIT(A) adjudicated the issue in favour of the assessee by relying on the various decisions including CIT vs. Kabul Chawala case (380 ITR 573) on the basis that on the date of search on 19/12/2017, the assessment for assessment year 2011-12 was completed assessment as the time period to issue notices u/s 143(2) had already expired. This was also not an abated assessment as appears from the assessment order and confirmed in the submissions of the assessee. Therefore, in the current assessment year, additions on account of unexplained investment in the property could have been made by AO only on the basis of incriminating material/evidence found during the search proceedings. The Ld. CIT(A) observed that as it can be seen from the present assessment order, the additions have been made on the basis on Valuation Report which was obtained by the Investigation

Wing, Delhi from the Govt. approved DVO without referring to any incriminating material for doing so. The Ld. CIT(A) has decided the jurisdictional issue and has not adjudicated other grounds of appeal raised by the assessee as well as additional grounds.

10. Aggrieved with the above order, the Revenue is in appeal before us.

11. At the time of hearing, Ld. DR brought to our notice brief facts of the case from the assessment order and also brought to our notice findings of the Ld. CIT(A). He vehemently argued that the Ld. CIT(A) has allowed the appeal without going into the merits of the case. He heavily relied on the findings of the Assessing Officer.

12. On the other hand, the Ld. AR submitted that the issue involved is the addition made merely relying on the Valuation Report obtained by the Investigation Wing, Delhi after the search proceedings and Ld. AO has not brought on record any incriminating material found during the search in the case of the assessee. Further, he brought to our notice that assessee is the owner of the 1/3rd portion of the property and in the case of the father-in-law of the assessee Mr. Mahabir Singh Mittal who is owner

of the 1/3rd share of the property. In the case of Mr. Mahabir Singh Mittal, similar issue was considered by the Hon'ble ITAT and decided the issue in favour of the assessee in ITA No.829/Del/2022 dated 23/11/2023. He filed a copy of the order and submitted that the issue under consideration is squarely covered in favour of the assessee and he submitted that similar issue in which Revenue is in appeal in the case of Preeti Singh Mittal is also exactly similar to the facts in the case of Mr. Mahabir Singh Mittal and he prayed that the issue may be decided accordingly.

13. Considered the rival submissions and material placed on record. After careful consideration of the facts on record, we observed that the issue involved in the case of Mr. Mahavir Singh Mittal in which facts in the case of Preeti Mittal, ITA No.830/Del/2022 are exactly similar and Accordingly in the case of Mahibir Singh Mittal had already considered the similar issue and decided the issue in favour of the assessee against the Revenue.

The findings of the same are reproduced as under:

“6. We have carefully perused the orders of the authorities below. The impugned quarrel is no more res-integra as the same has been settled by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. 454

ITR 212 wherein the Hon'ble Supreme Court, on first principles has endorsed the interpretation of Section 153A of the Act in the lead judgment rendered by the Hon'ble Delhi High Court in the case of Kabul Chawla (supra), that in case where the assessment of an assessment year stood concluded at the time of search and remains unabated, the additions and disallowances are permissible in Section 153A proceedings only qua incriminating material found in the course of search. In the instant case, no incriminating material was found during the search and referred in the assessment order and hence the AO is not entitled to make additions in such completed/unabated assessments. We declined to interfere with the findings of the CIT(A). The appeal by the Revenue is dismissed and the Cross Objection of the assessee being infructuous is also dismissed."

Respectfully following the above decisions, we are inclined to dismiss the appeals filed by the Revenue.

14. The appeal filed by the Revenue in the case of Puneet Mittal, in which the issues involved are exactly similar to the facts in the case of Preeti Mittal, the findings in ITA No.830/Del/2022 are applicable *mutatis mutandis*. Accordingly, the appeals filed by the Revenue are dismissed.

15. With regard to Cross Objections filed by the respective assesees that Cross Objections No.07 and 08, the grounds raised by the assessee in the respective Cross Objections are in consonance with the findings of the Ld. CIT(A), therefore, grounds raised by the assessee in Cross Objections are also allowed.

16. In the result, the appeals filed by the Revenue are dismissed and C.Os filed by the assessee are allowed.

Order pronounced in open Court on 26th April, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 26/04/2024

Pk/sps

Copy forwarded to:

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

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI