

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.873/Del/2018
(ASSESSMENT YEAR 2009-10)

ITA No.874/Del/2018
(ASSESSMENT YEAR 2010-11)

ITA No.875/Del/2018
(ASSESSMENT YEAR 2011-12)

ITA No.876/Del/2018
(ASSESSMENT YEAR 2012-13)

ITA No.877/Del/2018
(ASSESSMENT YEAR 2013-14)

Smt. Kusum Lata A-38, Sector-27 Noida, U.P.-201301 PAN-AAQPL2829Q (Appellant)	Vs.	Dy. CIT Central Circle Noida (Respondent)
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Assessee by	Dr. Rakesh Gupta, Adv. Sh. Somil Agarwal, Adv Sh. Deepesh Garg, Adv.
Respondent by	Sh. P.N. Barnwal, CIT-DR

Date of Hearing	22/04/2024
Date of Pronouncement	30/04/2024

ORDER

PER BENCH:

All these five appeals have been filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)-IV,

Kanpur [“Ld. CIT(A)”, for short], dated 30/11/2017 for Assessment Years 2009-10 to 2013-14 respectively.

2. All these five appeals are interconnected having common issues. All appeals are heard together and disposed off by this common order. We are taking ITA No.873/Del/2028 for Assessment Year 2009-10 as a lead case.

3. The following grounds raised by the Revenue are as under:

ITA No.873/Del/2018

“1) That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and issue of notice u/s 153A r/w section 143(3) of the Income Tax Act, 1961 by Ld. Assessing Officer and the consequent assessment proceedings in the case are bad in law and against the facts and circumstances of the case and void-abinitio and basic jurisdictional conditions and pre-requisites under section 153A were not met.

2) That in any case and in any view of the matter, the assessment framed under section 153A of the Act, is bad in law and against the facts and circumstances of the case.

3) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making an addition of Rs.56,65,500/- u/s 69 of the Act, as unexplained investment in land vide para 6 of the assessment order and more so when there was no incriminating material found as a result of search.

4) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in denying the claim deduction u/s 54F of Rs. 4,07,906/- vide para-7 of the assessment order and has thus erred in computing long term capital gain accordingly and that too without any basis, material or evidence and merely on the basis of surmises and conjectures and more so when there was no incriminating material found as a result of search.

5) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making an addition of a sum Rs.6,16,000/- allegedly on account unexplained investment for the purchase of shares vide para 8 of the assessment order, and that merely on the basis of surmises and conjectures, more so when such treatment could not be made in the impugned proceedings u/s 153A of the Act and more so when there was no incriminating material found as a result of search.

6) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. and that too by giving the direction to A.O. in making an addition of Rs.20,39,810/-, as unexplained investment in immovable property vide para 10 of the assessment order and more so when there was no incriminating material found as a result of search.

7) That in any case and in any view of the matter, action of Ld. CIT(A) in upholding the action of Ld. AO in making addition of Rs. 20,39,810/- is bad in law and against the facts and circumstances of the case.

8) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order and that too without giving adequate opportunity of hearing and without observing the principle of natural justice.

9) That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.

4. Brief facts of the case are, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ("the Act", for short) was conducted on 21/11/2014 in the case of Maconn's, Meenu and Yadav Singh Group, Noida covering their premises and residences of Directors and their family members and other business associates concern and other key persons. During the course of

search, other residence of Yadav Singh and Smt. Kusum Lata, A-38, Sector-27, Noida, various incriminating documents/loose sheets were found and seized. In view of above search operation, the group cases were centralized to Central Circle, Noida. Subsequently, notice u/s 153A of the act was issued and served on the assessee. In response, assessee has filed return of income on 31/07/2009 declaring total income of Rs.6,06,690/-. Further, notices u/s 143(2) and 142(1) were issued and served on the assessee along with questionnaire. In response, AR of the assessee attended from time to time and submitted the relevant information as called for.

5. The Assessing Officer observed that the assessee is wife of Shri Yadav Singh CME, Noida Authority. The assessee is a housewife with no expertise in any field and having no professional degree. Further, Assessing Officer observed from the Media Reports above the accumulation of income of properties by the husband of the assessee. The Assessing Officer observed that during the course of search and seizure operation u/s 132 of the Act at residential premises of the assessee and her husband various incriminating documents were found and seized. He also observed that

unaccounted cash and jewellery was found and seized from the resident. The Assessing Officer also observed that certain clinching evidences in the form of slips are establish the functioning of the assessee's husband and his contact in avoiding the contracts for his persons benefit.

6. The Assessing Officer also observed that certain evidences in the form of registered deed of PGP Charitable Trust in which the assessee is a trustee were found and seized from the residential premises of Sh. Sudhanshu Rathi on 27/11/2014, which were marked as Annexure LP-1. The contents of the above said seized Annexures establish the fact that assessee's husband through his family members had had invested a huge amount of unaccounted money in acquisition of immovable properties.

7. The Assessing Officer observed that on perusal of the details submitted, it was found that assessee has acquired several agricultural lands in the villages Jhangirpur Tehsil Jewar, Dist. Gautam Buddha Nagar and urban cities such as Agra, Noida, Delhi etc. On perusal of the registered deeds of the properties held by the

assessee, it is found that most of the properties were purchased at below Fair Market Value (FMV), it is suspected that difference of fair market value and actual consideration have been paid in cash. All the details of the properties are reproduced in the assessment order at page 3 to 7.

8. Further, the Assessing Officer observed that during the post search enquiry, it was found those sellers are farmers and not filing the return of income. Most of the farmers refused to take the summons, however, few farmers have cooperated and attended the office and their statements were recorded on oath from the statements recorded from the farmers, the Assessing Officer observed that farmers admitted that they have received the entire consideration in cash, though the consideration amount differs of what they said in their statement and what the assessee has shown in his submissions. The Assessing Officer observed that on perusal of the chart and registered deeds of the properties held by the assessee, it is found that most of the property were purchases at below FMV. Further, Assessing Officer on verification of the bank statements of the assessee observed that assessee has withdrawn

cash from the bank against cheques and no cheques what so ever have been issued to the farmers. With the above observation, the Assessing Officer came to the conclusion that assessee has acquired agricultural lands through undisclosed manner by paying part consideration in cash are below FMV. Accordingly, he came to the conclusion that assessee has acquired with the above said properties from the farmers by using the unaccounted/undisclosed money of her husband. After observing the position of agricultural lands by the assessee through undisclosed manner by paying part consideration in cash are below FMV, the Assessing Officer treated the differential value of FMV and sale consideration aggregating to Rs.34,51,000/- as paid in cash to the farmers. Further, he observed that assessee as well as sellers of the land had failed to provide any information and felt explain the source of investment in such property by the assessee, accordingly, purchased consideration amounting to Rs.22,14,500/- (cost of acquisition, stamp duty and other charges as per chart) is treated as unexplained investment u/s 69 of the Act. Accordingly, the Assessing Officer treated the

above undisclosed/unexplained investment to the income of the assessee u/s 69 of the Act.

9. Further, the Assessing Officer collected information post search relating to claim of allowance u/s 54F of the Act after verification of the capital gains declared by the assessee and observed that in the absence of details and adherence to the provisions of the section 54F cannot be ascertained. Further, he proceeded to disallow the claim made u/s 54F of the Act to the extent of Rs.4,07,906/-. Further, the Assessing Officer observed that certain investments made by the assessee in the following companies:

- (i) Chhahat Technology -Rs.33,000/-
- (ii) Quick Infotech P. Ltd. -Rs.33,000/-
- (iii) K.S. Ultratech P. Ltd. -5,50,000/-

10. On verification, assessee has made investments through banking channel and she has sufficient funds available in the account, the Assessing Officer rejected the same and provided to make the additions Rs.6,60,000/- by observing that the assessee

has made the above investment out of undisclosed income of her husband.

11. Further, the assessee was asked to provide details of immovable properties own and acquired by her and other family members and also asked to explain source of investments. The Assessing Officer observed from the submissions made by the assessee that assessee has a house at A-1, Sector-51, Noida and consideration of Rs.5,00,000/- claimed to be invested in construction of house. The same was referred to valuation cell to determine the true value of investment. The DVO estimated the costs of investment from Financial Year 2007-08 to 2012-12 to the extent of Rs.4,87,10,592/-. However, the assessee has declared the cost of investment during the same period to the extent of Rs.1,90,39,981/-. The Assessing Officer made the addition of Rs.20,39,810/- as the undisclosed income in the hands of the assessee.

12. Aggrieved with the above order, the assessee preferred the appeal before the Ld. CIT(A)-4, Kanpur and filed various grounds of appeal including jurisdictional issue challenging the issue of no

incriminating material found during the search and considering the fact that in the case of unabated assessment no addition can be made by relying on the decision of *CIT vs. Kabul Chawla, 380 ITR 573 (Delhi)* and various other case laws. The Ld. CIT(A) dismissed the grounds raised by the assessee by relying on various case laws including Hon'ble Allahabad High Court in the case of *CIT Vs. Raj Kumar Arora, 367 ITR 517 (Allahabad)*.

13. With regard to merits of additions made by the Assessing Officer, he sustained the additions by relying on the findings of the Assessing Officer.

14. Aggrieved with the above order, the assessee is in appeal before us with grounds of appeal mentioned in para no 3 above.

15. At the time of hearing, the Ld. AR submitted that a chart ground wise and submitted that the assessment year under consideration i.e., A.Y.2009-10 and other A.Ys.2010-11 to 2013-14 are undisputedly unabated assessment years. In this regard, he submitted that the search was conducted on 27/11/2014 and the return of income for A.Y.2009-10 was filed on 31/07/2009 and time

of issuance of notice u/s 143(2) was expired on 30/09/2010. Therefore, the assessment under consideration is unabated without any doubt by relying on the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (2023) 454 ITR 0212*. The Ld. AR submitted that the Assessing Officer proceeded to make the additions relating to unexplained investment in house property, unexplained investment (is submitted to be fair Ld. AO has not made the additions of Rs.6,16,000/- even though he has discussed in this order) and disallowance of claim u/s 54F and unexplained investment in land were made based on the information collected post search. In this regard, he brought to our notice the various discussions from the assessment order and he submitted that all the above said information were collected by the Assessing officer only during post search operations and collected from the return of income filed by the assessee in response to notice u/s 153A of the Act. Therefore, he prayed that the additions made by the Assessing Officer are only from information collected from post search, therefore, no addition can be made in the unabated year of assessment, therefore, he prayed that no incriminating material

found during the search relating to additions made by the Assessing Officer. Accordingly, by relying on his written submissions and case laws which were already submitted before Ld. CIT(A) which is a part of paper book filed by the assessee.

16. With regard to merits of additions made to the Assessing Officer, he filed a chart indicating the relevant paper books which were already filed before the Ld. CIT(A) along with written submissions. He prayed that the additions made by the Assessing Officer may be deleted.

17. On the other hand, the Ld. DR objected to the submissions of the Ld. AR and he brought to our notice page-2 to 7 of the assessment order and he read out the details finding of the Assessing Officer which clearly demonstrate that the assessee has no source of income her own and the income declared by the assessee is not sufficient to make the various investment made by the assessee. He further submitted that the information of purchase of land and other properties owned by the assessee are only found during the search, therefore, the claimed of the assessee that no

incriminating material found during the search is not proper and justified. He heavily relied on the findings of the lower authorities.

18. In the rejoinder, the Ld. AR of the assessee brought to our notice page-6 of the assessment order relating to assessment year 2010-11 and he submitted that all the information were supplied by to the Assessing Officer post search proceedings and he objected to the additions made by the AO for differential amount between circle rate and cost of acquisition. Further, he brought to our notice page 5 of assessment order in which Assessing Officer clearly discussed that information were collected from the assessee and he prayed that no incriminating material consideration was found during the post search.

19. Considered the rival submissions and material placed on record. We observed from the record that a search action was initiated in the case of assessee and her husband and accordingly, in the resident of the assessee were also part of the search operation. In the above said search operation, we observe that separate punchnama was raised in the name of the assessee,

certain materials were found relating to several payments made to various parties and particularly relating to farmers in relation to investments made by the assessee and her husband along with other family members. No doubt, post search notice u/s 153A was issued to the assessee to file the return of income and other information, assessee has also complied by filing a return of income and the other information as called for by the Assessing Officer. We observed from the records submitted before us that the details of investments made by the assessee in particular agri-lands purchased from farmers were found by the assessing officer during assessment proceedings only. The issue submitted before us is whether the information submitted by the assessee during the assessment proceedings are not to be treated as incriminating material. After considering the facts on record, we observed that the assessee is also one of the searched person and several payments made to several parties in particular farmers were found. This findings and subsequent disclosure by the assessee before department lead to the findings that the assessee has made several investments in the immovable properties. The same was proceeded

to investigate in the subsequent proceedings. This lead to the disclosure by the assessee in post search proceedings, which includes assessment proceedings initiated u/s 153A of the Act. In our considered view, there is direct link to the findings in the search to the material supplied by the assessee during the assessment proceedings initiated u/s 153A of the Act.

20. After considering the facts on record, we are aware that the issue under consideration is relating to unabated assessment and as per the judicial precedence ie., as held in the case of *Abhisar Buildwell P Ltd (supra)*, no addition can be made in the case of unabated assessment which are not part of incriminating materials found during the search. In the present case, it is clearly established that assessee has made several payments to the farmers which lead to the finding that the assessee has purchased several immovable properties. Therefore, we are not inclined to accept the submissions of the assessee on the issue of purchase of agri-land by the assessee that there is no incriminating material found during the search. Accordingly, the ground nos.1 and 2 are partly allowed because in the other additions, there are no

incriminating material, the same was discussed somewhere in this order.

21. On the issue of payment to farmers and purchase of agri-land, the AO has observed in his order at page 8 that the assessee has no expertise in any field or has no professional degree, therefore the assessee has actually utilized the unaccounted money of her husband to invest in the agri-land. However, we observe from the return of income filed by the assessee that she had declared incomes under the heads, income from house properties, income from business and from other sources. The same was accepted by the revenue. We failed to understand the stand of the AO, one hand he says the assessee has no capacity to earn any income and other hand he accepts the income declared by the assessee. In our view, the assessee has demonstrated that she has separate source of income and demonstrated she has capacity to invest by submitting the bank account through which the assessee has made the payments to various farmers. Assessee herself could have generated undeclared source of income. Further, we observed from the assessment order that when the details of payment to farmers were

called for from the Oriental Bank of Commerce held by the assessee. The Assessing Officer observed that assessee has withdrawn cash from the bank against such cheque payment declared as paid to farmers in the registered documents and he has observed that no cheques were issued, however, cash payments were made to the farmers after withdrawal from the bank. We observed from the record that Assessing Officer acknowledged that assessee has paid cash payment to the farmers to the extent of money withdrawn from the bank. These findings clearly shows that there is a direct link with the information collected from the assessee and substantiates that the assessee has capacity to make payments to farmers. We also observed from the record that the AO has made addition based on the presumption that the assessee has no source and also the difference between the investment made as per registered documents and circle rates as per the respective lands. In our considered view, as discussed above, the assessee has demonstrated that she has sources to make the investment and she is eligible to get the investment made in the agricultural land to the extent of declared sources. It is fact on record that the assessee has

withdrawn the cash and made the payment to the farmers, to the extent of cash withdrawn by her from the bank for which she has sufficient fund available in the bank. Therefore, we are directing the AO to adjust the payments made from withdrawing from the bank account. The other part of the addition after making the addition may be sustained. In this regard, we are inclined to partly allow the ground no 3 raised by the assessee.

22. Coming to the other additions made by the Assessing Officer, we observed that all these information collected in post search proceedings and there is no evidence to show that the additions made by the assessing officer has bearing from the material found during the search. As held in the case of *Abhisar Buildwell P. Ltd (supra)*, the Hon'ble Supreme Court held as under:

"11.....

Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of

Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.”

23. With the above observation, we are inclined to direct the Assessing Officer to delete above mentioned additions made by him in the assessment order. Accordingly, ground Nos 4 to 7 raised by the assessee are allowed.

24. With regard to Ground no 8 is dismissed as not pressed as no submissions were made during the hearing. Similarly, the ground no 9 also dismissed as general.

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

26. With regard to other appeals filed by the assessee relating to Asst. Years. 2010-11, 2011-12, 2012-13 and 2013-14. The facts in the above said appeals are exactly similar to the facts in the Asst. Year 2009-10, the findings in Asst. Year 2009-10 (ITA No.873/Del/2018) applicable *mutatis mutandis* to the appeal in the above said Assessment Years. Accordingly, the appeals filed by the assessee are partly allowed as indicated in Asst. Year 2009-10.

27. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced in open Court on 30th April, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 30/04/2024

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