

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं./ ITA No.1218/Chny/2024**  
**(निर्धारणवर्ष / Assessment Year: 2017-18)**

<b>Smt. Chithiradevi Ganeshwar</b> 20, Pollachi Road, Palladam, Tirupur-641 664.	<b>बनाम/</b> Vs.	<b>DCIT</b> Central Circle-3 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>ADKPC-3352-Q</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	10-09-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	19-11-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 29-02-2024 in the matter of an assessment framed by the Ld. AO u/s.143(3) r.w.s 153A of the Act on 14-06-2021. The sole grievance of the assessee is confirmation of addition u/s 56(2)(vii)(b) for Rs.105.75 Lacs.
2. The Ld. AR, drawing attention to the documents as placed on record, assailed the assessment proceedings on the legal grounds and

submitted that that in the absence of any incriminating material found during the course of search, no addition could be made in the hands of the assessee as per the ratio of decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment in the absence of any incriminating material found during the course of search. The Ld. AR also advanced arguments on merits. The Ld. CIT-DR advanced arguments and supported the findings of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Proceedings before lower authorities**

3.1 The assessee being resident individual is stated to be engaged in Textile business. The assessee filed return of income on 23-02-2018 which was accepted by revenue. The due date of issuance of notice u/s 143(2) had already expired on 30-09-2018. However, the assessment was framed consequent to search action on the assessee group on 06-03-2019. Notice u/s 153A was issued on 06-02-2020.

3.2 The impugned addition stem from the fact that during search at office premises of Shri Ganesha Textile (a proprietorship concern of spouse of the assessee), loose sheets were found which was seized vide ANN/VP/LS/S-1/13-23 and ANN/GT/LS/S-1. The same contained details of sale deeds wherein the assessee purchased two properties from Shri Ram Shankar. The purchase made vide document no.637/2017 was for Rs.12.50 Lacs as against stamp duty value of Rs.64.50 Lacs. Similarly, another purchase made vide document no.638/2017 was for Rs.2.50 Lacs as against stamp duty value of Rs.56.25 Lacs. There was difference of Rs.52 Lacs and Rs.53.75 Lacs

respectively. The Ld. AO proceeded to add back the same u/s 56(2)(vii)(b). The assessee refuted the same on the ground that the aforesaid provisions were not applicable since the properties were rural agricultural lands and were treated as stock-in-trade by the assessee. However, Ld. AO rejected the same and added the amount of Rs.105.75 Lacs to the income of the assessee.

3.3 During appellate proceedings, the assessee assailed impugned addition on legal grounds as well as on merits. On legal grounds, reliance was placed on the decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** for the argument that in the absence of any incriminating material as found during search on assessee, no addition could be made for unabated assessment year. The assessee also submitted that notice issued u/s 153A was not legally sustainable and consequential assessment was to be reckoned as nullity in law. On the given facts, Ld. AO ought to have issued notice u/s 153C by reckoning the assessee as "other person" by following separate procedure as laid down in the statute including the recording of satisfaction by both the AO of the searched person as well as that of the assessee. The failure to do so would be fatal to assessment. The assessee also assailed impugned addition on merits, inter-alia, on the ground that the land so procured by the assessee would not fall under the head 'capital asset' and therefore, the provisions of Sec.56(2)(vii)(b) would not apply. However, Ld. CIT(A) rejected the legal grounds and also confirmed the quantum addition on merits on the ground that the said provisions would apply to rural agricultural land also. Aggrieved, the assessee is in further appeal by us.

### **Our findings and Adjudication**

4. From the facts, the undisputed position that emerges is that the impugned addition is based on loose sheet as found during search on another entity viz. Shri Ganesha Textile. Nothing has been seized from the premises of the assessee. The loose sheets also do not indicate that the assessee has paid more consideration over and above the registered value. The addition is based merely on the fact that the stamp duty value of land was much more than the registered value. Therefore, even the loose sheet is also not incriminating in nature which suggest that the assessee has paid any amount over and above the registered sale consideration. The addition has been made merely by invoking deeming fiction of Sec. 56(2)(vii)(b). It could also be noted that this is an unabated year since no assessment proceedings were pending for this year against the assessee. In such a case, the additions are to be strictly based on incriminating material which is found during search on assessee as held by Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)**. It was concluded by Hon'ble Court as under: -

14. In view of the above and for the reasons stated above, it is concluded as under:
  - (i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
  - (ii) all pending assessments/reassessments shall stand abated;
  - (iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
  - (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections

147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

On this score only, the impugned addition is liable to be deleted.

5. For the sake of completeness, even if the document during search on another person is assumed to be incriminating in nature, in such a case, the proceedings have to be initiated u/s 153C and not u/s 153A which has not been done by Ld. AO. To initiate proceedings u/s 153C, it is mandatory requirement of law that satisfaction should have been recorded by Ld. AO of the searched person as well as the AO of the other person before proceedings u/s 153C. The recording of satisfaction is sine qua non to assume jurisdiction u/s 153C. Without recording of this satisfaction, no addition could have been made in the hands of the assessee. In the present case, no such satisfaction has been shown to us and in fact, the assessment has been framed u/s 153A which could not be sustained in law considering the mandatory provisions of Sec.153C. This view is duly supported by the decision of Hon'ble Delhi High Court in the case of **PCIT vs. Anand Kumar Jain HUF (ITA Nos.23/2021 & ors. dated 12.02.2021)**. The Hon'ble Court held that additions on the basis of statement recorded in a separate search action in the case of a third-person are not permissible in Section 153A proceedings. The Hon'ble High Court observed that the statement of third person cannot be construed as an incriminating material belonging to or pertaining to the person other than the person searched.

6. Viewed from any angle, the impugned addition is liable to be deleted. We order so.

7. The appeal stand allowed.

*Order pronounced on 19<sup>th</sup> November, 2024*

**Sd/-**  
**(MANU KUMAR GIRI)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 19-11-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Coimbatore
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF