

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' NEW DELHI**

**BEFORE, SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1176/Del/2021**

(Assessment Year : 2017-18)

<b>Amit Modi</b> F-28, Preet Vihar, Delhi-110 092 <b>PAN : AAFPM 6531 K</b>	Vs.	<b>Dy. CIT,</b> Central Circle-I, Noida
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1352/Del/2021**

(Assessment Year : 2017-18)

<b>DCIT,</b> Central Circle-1, Noida	Vs.	<b>Amit Modi</b> F-28, Preet Vihar, Delhi-110 092 <b>PAN : AAFPM 6531 K</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1170/Del/2021**

(Assessment Year : 2017-18)

<b>Mr. Puspahas Agarwal,</b> H.No.51, Sector-15A, Gautam Budh Nagar, Noida, Uttar Pradesh-201 301 <b>PAN : AA EPA 9221 H</b>	Vs.	<b>Dy. CIT,</b> Central Circle-1, Noida.
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1353/Del/2021**

(Assessment Year : 2017-18)

<b>Jt. CIT(OSD),</b> Central Circle-I Noida	Vs.	<b>Mr. Puspahas Agarwal,</b> H.No.51, Sector-15A, Gautam Budh Nagar, Noida, Uttar Pradesh-201 301
		<b>PAN : AAEP A9221H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1175/Del/2021**

(Assessment Year : 2017-18)

<b>Mr. Jai Kishore</b> <b>Totlani,</b> 384, Kohat Enclave, Pitampura, Delhi-110 034.	Vs.	<b>Dy. CIT,</b> Central Circle-1, Noida.
<b>PAN : ADLPT 8133 H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1355/Del/2021**

(Assessment Year : 2017-18)

<b>Jt. CIT(OSD),</b> Central Circle-I Noida	Vs.	<b>Mr. Jai Kishore</b> <b>Totlani,</b> 384, Kohat Enclave, Pitampura, Delhi-110 034.
		<b>PAN : ADLPT 8133 H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

And

**ITA No.1354/Del/2021**  
(Assessment Year : 2017-18)

<b>Jt. CIT(OSD),</b> Central Circle-1, Noida	Vs.	<b>Ram Avtar Ramsisaria</b> CF-336, Sector-1, Salt Lake City, Kolkata.  <b>PAN : ADNPR 0679 N</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Rajiv Khandelwal, CA, Shri Gagan Khandelwal, CA and Shri Jaind Kumar, Adv.
Respondent by	Shri Mukesh Kumar Jha, CIT-DR

Date of Hearing	12.09.2024
Date of Pronouncement	04.12.2024

**ORDER**

**PER VIMAL KUMAR, JM:**

1. Above captioned three appeals of the Assessee and four cross appeals by the Department are against separate orders order dated 15.07.2021 of the Learned Commissioner of Income Tax (Appeals), Kanpur [hereinafter referred to as 'Ld. CIT(A)'] arising out of separate Assessment Orders dated 31.12.2018 of Learned Commissioner of Income Tax, Noida (hereinafter referred as 'Ld. AO') for the Assessment Year 2017-18.

2. All appeals involve similar facts and issues. For facility of convenience, all were heard together and are being decided by a common order. ITA No.1176/Del/2021 is taken as lead case.

3. Brief facts of ITA No.1176/Del/2021 titled as Amit Modi vs. DCIT are that on 09/11/2016 a search and seizure operation u/s 132(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') carried out in the case of ABA Group of companies. Various residential and business premises of the directors and group companies were covered under the search and survey operations. Search warrant u/s u/s 132(1) of the Act was issued and executed at the residential premises of Amit Modi at F-28, Preet Vihar, Delhi. ABP Group is one of the renowned names in the field of real estate and is involved in construction of residential group housing/commercial spaces in Noida and Greater Noida. This group is headed by Shri Ram Avatar Ramsarsaria, Jai Kishore Totlani. The projects of the Group are Orange County, Indirapuram (Delivered), Olive County, Vashundhra Ghaziabad (Delivered), Cherry (Possession started), Cleo County, Sector-121, Noida (Possession started in 2017) and upcoming project Blue Casa, Noida. The main allegations against the Group is (1) The Group entities are involved in inflation of expenses by claiming bogus expenses to reduce the taxable profit (2) The Group entities are involved in taking unaccounted on money in cash to suppress the actual price of sale inventory. Incriminating documents were found and seized from the Corporate office of M/s County Infrastructure

Pvt. Ltd M/s ABA Builders Pvt. Ltd and M/s IV County Pvt. Ltd, A-39 Sector 63 Noida on the basis of which Amit Modi director has admitted an undisclosed income of Rs.32,00,00,000/- for the FY 2016-17 relevant to AY 2017-18 in the hands of directors and companies.

4. In view of search operation, the group cases were centralized to Central Circle, Noida. The jurisdiction order u/s 127 of the Income Tax Act, 1961, in this case, was passed by the Ld. Pr. Commissioner of Income Tax, Central, Kanpur communicated vide F. No. Pr. CIT- (C)/KNP/Decentralization/2017-18/1260 dated: 10/08/2018.

5. Consequently, for the purpose of assessment, a notice u/s 142(1) of the Act was issued dated 16/08/2018 & duly served upon the assessee. In response to the notice, the assessee has e-filed return of income on 26/11/2018 declaring total income of Rs. 2,07,74,494/-. Subsequently, notice u/s 143(2) of the Act was issued on 25/09/2018 and duly served upon the assessee. A notice u/s 142(1) of the Act along with detailed questionnaire was issued dated 14/09/2018 and the date of compliance was fixed on 28/09/2018. Again, a notice u/s 142(1) along with questionnaire was issued on 08/10/2018 and the assessee was asked to furnish the details/information ask called for.

6. In response to the said notices, Amit Bansal CA and Authorized Representative (AR) of the assessee appeared from time to time and during the course of hearing filed detailed submissions.

On completion of proceedings, assessment proceedings addition of Rs.4,55,00,000/- on account of undisclosed income. During the search Rs.15.90 and addition of 15 lac on account of unexplained cash seized vide order dated 31/12/2018 were made by the Ld. AO.

7. Appellant/assessee preferred appeal before Learned CIT(A) which was partly allowed and addition of Rs.15,16,000 instead of 13,50,000/- confirmed.

8. Being aggrieved appellant/assessee has challenged the confirmation of Rs.13,50,000/-. The Department of Revenue through separate cross appeal has challenged deletion of Rs.4,55,00,000/-, Rs.15,90,00,000/- and 1,50,000/-.

9. Learned Authorized Representative for assessee submitted that Ld. CIT(A) erred in giving partial relief of Rs.1,66,000/- and confirming the addition of Rs.13,50,000/- made by the AO on account of cash found during the search. The Hon'ble Supreme Court of India in case of Pullangade Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC) has held as under:

*“An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.”*

10. Learned Department Representative of Department of Revenue submitted that Learned CIT(A) erred in deleting the addition of Rs. 4,55,00,000/- made by A.O. by relying on the statement of the assessee, recorded on oath during search and page no. 2 & 3 of

annexure A-1 seized during search being the "cash to be received back against purchase bill to be discussed and reconcile with management", in view of the ratio of decision in case of B. Kishore Kumar Vs. Deputy Commissioner of Income Tax, Central Circle-IV(1), Chennai (2014) 52 taxmann.com 449 (Madras), Sterling Machine Tools V. CIT 122 ITR 926 and Bhagirath Aggarwal V. CIT 122 ITR 926. Learned CIT(A) erred in deleting the addition of Rs. 4,55,00,000/- made by A.O. Relying on page no. 2 & 3 of annexure A-1 seized during search and part of unaccounted cash of Rs. 1,45,00,000/- has been received by the assessee and deposited in its bank account. Learned CIT(A) also erred in holding that the retraction letter filed by the assessee after 110 days of search in view of the ratio of decision in the case of Bannalal Jat Constructions (P.) Ltd. v. ACIT (2019) 106 taxmann.com127/264 taxman 6 (Raj) (HC). Learned CIT(A) erred in holding that the page no. 1, 4 & 6 of annexure A-1 seized during search alongwith the retraction letter has not been examined by the AO whereas in page no. 35 to 40 of the assessment order for AY 2017-18, the same has been examined in details and natural justice has been done in the case. Learned CIT(A) erred in holding that unaccounted cash of Rs. 1,50,000/- related to the assessee and his spouse whereas assessee was not able to produce any documentary evidence in support of his claim. Learned CIT(A) erred in holding that the protective addition of Rs. 15,90,00,000/- in the case of the assessee is not real income of the assessee whereas assessee, being the director has given statement on behalf of the other directors and companies,

wherein the same has been added on substantive basis and retraction have been filed by all the directors and companies including the assessee.

11. From examination of record in light of aforesaid rival contention, it is crystal clear that on 09/11/2016 from premises of assessee cash of Rs.15,16,000/- was recovered during the search proceedings. The appellant/assessee submitted that the cash found was belong to entire family and not to the assessee alone. Assessee and his spouse are regular income tax payer and assessee falls under the highest tax slab gross total income for Asst. Year 2017-18 ( of assessee was Rs.62.74 lacs and of spouse of assessee was Rs.11.65 lacs. The spouse of assessee earned income of Rs.3.60 lac of rental income and 5.61 Lac of other income in Cash during the year under consideration. As per general practice, the assessee family were having habit of withdrawing cash and keep the same in physically for liquidity purpose. Considering the above facts, the Learned CIT(A) allowed Rs.50,000/- in hands of assessee and Rs.1,16,000/- in hands of spouse which are not just, fair and reasonable. The Learned CIT(A) ought to have taken the entire amounts as explained. As such the addition of Rs.15,16,000/- deserves to be deleted.

12. Learned AO on basis of statement on oath u/s 132(4) of the Act explaining the entries made in seized document Annexure-A(1) referred to 6,00,00,000/- and deposited of Rs.1.45 lack in bank account No.1010010060000007 of Ratnakar Bank Ltd claiming to

have been shown by the surrender amount shown in ITR made addition of Rs.6.55 lac.

13. Learned CIT(A) relied on submissions of assessee that surrender of Rs.32,00,00,000/- in hands Director of companies made by the assessee regarding seven pages of diary Annexure-1 was due to wrong impression and under coercion, assessee had made surrender on 10/11/2016 at 11.30 A.M. The assessee was not given enough time to consulting Sh. Sandeep Kumar Pandit (only five minutes time was allowed for the same) and statement of Sandeep Pandit who had written pages of Annexure-1 was not recorded. Entries made in seven pages of Annexure-1 were explained as mere projections and not the income. The detail in Annexure-A (1) were sought to be explained.

14. From perusal of record it is evident that Learned CIT(A) in para 6.12 had analyzed pages of spiral note book Annexure-A1 and in para 6.13 to 6.17 analyzed that the Explanation offered by the assessee was allowable. The act of assessee from his statement during search based on evidence found during the search was justified and upheld. Therefore, the arguments of Learned Authorized Representative for Department being devoid of merit are untenable and deserve dismissal. The grounds of appeal of department are dismissed.

15. In the result, the appeal of assessee i.e., ITA No.1176/De/2021 is allowed and appeal of Department of Revenue i.e., ITA No.1352/Del/2021 is dismissed.

**ITA No.1170/Del/2021 : Puspahas Agrawal vs. DCIT**

**ITA No.1353/Del/2021 : JCIT vs. Puspahas Agrawal**

**ITA No.1175/Del/2021 : Jai Kishore Totlani vs. DCIT**

**ITA No.1355/Del/2021 : JCIT(OSD) vs. Jai Kishore Totlani**

16. As the facts and circumstances of the above mentioned appeal are admittedly *mutatis mutandis* similar to those discussed and disposed of in ITA Nos.1176 & 1352/Del/2021 hereinabove, we hold accordingly and allow the appeals of the assessee and dismissed the appeals of the department.

**ITA No.1354/Del/2021 : JCIT (OSD) vs. Shri Ram Avtar Ramsisaria**

17. Learned Department Representative of Department of Revenue submitted that the Learned CIT(A) while deleting the addition of Rs. 6,00,00,000/- made by A.O. by relying on the statement of the assessee, recorded on oath during search and page no. 2 & 3 of annexure A-1 seized during search being the "cash to be received back against purchase bill to be discussed and reconcile with management", in view of the ratio of decision in case of B. Kishore Kumar Vs. Deputy Commissioner of Income Tax, Central Circle-IV(1), Chennai (2014) 52 taxmann.com 449 (Madras), Sterling Machine Tools V. CIT 122 ITR 926 and Bhagirath Aggarwal V. CIT 122 ITR 926. Learned CIT(A) also erred in holding that the

retraction letter filed by the assessee after 110 days of search in view of the ratio of decision in the case of Bannalal Jat Constructions (P.) Ltd. vs. ACIT (2019) 106 taxmann.com127/264 taxman 6 (Raj) (HC). Learned CIT(A) erred in holding that the page no. 1, 4 & 6 of annexure A-1 seized during search alongwith the retraction letter has not been examined by the AO whereas in page no. 35 to 40 of the assessment order for AY 2017-18 in the of Amit Modi, one of the director who has accepted the unaccounted income in this statement recorded on oath during search. The same has been examined in details and natural justice has been done in the case.

18. From perusal of record it is evident that Learned CIT(A) in para 6.12 had analyzed pages of spiral note book Annexure-A1 and in para 6.13 to 6.17 analyzed that the Explanation offered by the assessee was allowable. The act of assessee from his statement during search based on evidence found during the search was justified and upheld. Therefore, the arguments of Learned Authorized Representative for Department being devoid of merit are untenable and deserve dismissal. The grounds of appeal of department are dismissed.

19. In the result, the appeal of Department of Revenue i.e., ITA No.1354/Del/2021 is dismissed.

20. In the combined result, all the appeals filed by the assessee are allowed and all the appeals filed by the Revenue are dismissed.

**Order pronounced on this day 4<sup>th</sup> December, 2024.**

Sd/-  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

Dated: 04.12.2024

*Priti Yadav, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI