

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 1351/Del/2021
(Assessment Year: 2014-15)**

DCIT, Vs. **M/s. ABA Builders Ltd,**
Central Circle-1, Noida A-39, Sector-63, Noida
(Appellant) (Respondent)
PAN:AACCA1410H

**ITA No. 1357/Del/2021
(Assessment Year: 2017-18)**

JCIT (OSD), Vs. **IV County Pvt. Ltd,**
Central Circle-I, A-39, Sector-63, Noida,
Noida Gautam Budh Nagar, UP
(Appellant) (Respondent)
PAN:AACCI9503M

**ITA Nos. 1171& 1172/Del/2021
(Assessment Years: 2016-17 & 2017-18)**

IV County Pvt. Ltd, Vs. **DCIT,**
A-39, Sector-63, Noida, Central Circle-I, Noida
Gautam Budh Nagar, UP
(Appellant) (Respondent)
PAN: AACCI9503M

**ITA Nos. 1165, 1166, 1167& 1168/Del/2021
(AYs: 2014-15, 2015-16, 2016-17 & 2017-18)**

Country Vs. **DCIT,**
Infrastructures Pvt Central Circle-I, Noida
Ltd,
A-39, Sector-63, Noida
(Appellant) (Respondent)
PAN: AA ECC1087G

**ITA No. 1356/Del/2021
(Assessment Year: 2013-14)**

JCIT (OSD), Vs. **Country Infrastructures**
Central Circle-I, **Pvt Ltd,**
Noida A-39, Sector-63, Noida
(Appellant) (Respondent)
PAN: AA ECC1087G

CO No. 01/Del/2022
(In ITA No. 1356/Del/2021)
(Assessment Year: 2013-14)

Country	Vs. JCIT (OSD),
Infrastructures Pvt	Central Circle-I,
Ltd,	Noida
A-39, Sector-63, Noida	
(Appellant)	(Respondent)
PAN: AA ECC1087G	

Assessee by : Shri Rajiv Khandelwal, CA
Shri Gagan Khandelwal, CA
Shri Jaund Kumar, Adv

Revenue by: Shri Mukesh Kumar Jhan, CIT DR

Date of Hearing 10/09/2024
Date of pronouncement 04/12/2024

ORDER

PER M. BALAGANESH, A. M.:

1. These appeals and Cross objection are filed by the different assessees and the revenue against the separate orders of the Id CIT(A).
2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.
3. With the consent of the both the parties, the appeal of the assessee for AY 2014-15 is taken up first.

ABA Builders Ltd in ITA No. 1351/Del/2021 for AY 2014-15

4. The appeal in ITA No.1351/Del/2021 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10781/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/ 143(3) of the Income-tax Act, 1961 (hereinafter referred

to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

4.1 At the outset, we find that the assessee had filed a petition under Rule 27 of the Income Tax Appellate Tribunal (ITAT) Rules, 1963 raising the following grounds:-

"1. The CIT(A) erred in upholding the action of the Assessing Officer in framing the assessment order for the year under consideration under section 153A of the Act, being a non-abated assessment, in the absence of any incriminating material found during the course of search action.

2. The CIT(A) erred in upholding the validity of the order of the Assessing Officer notwithstanding the fact that the appropriate authority under section 153D has not properly complied with the provisions of section 153D of the Act, and having not so complied, the impugned assessment order is bad in law and ought to be quashed."

4.2 We find that these grounds were also raised by the assessee before the Id CIT(A) with regard to non-existence of incriminating material for making an addition by the Id AO. The Id CIT(A) observed that though various Hon'ble High Courts had rendered decision qua this issue in favour of the assessee, the Hon'ble Allahabad High Court in the case of **CIT Vs. Raj Kumar Arora reported in 367 ITR 517** (All) had held the issue in favour of the revenue. Accordingly, by following the decision of the Hon'ble Allahabad High Court, the Id CIT(A) dismissed the ground of the assessee by stating that there is no need of any existence of incriminating material to make any addition in respect of unabated assessment as on the date of search. This being a legal issue that goes to the root of the matter, we deem it fit and appropriate to admit Rule 27 petition of the assessee and take up the same first for adjudication. This issue has been recently decided by the Hon'ble Supreme Court in the case of **PCIT v. Abhisar Buildwell (P.) Ltd. reported in 454 ITR 212 (SC)** wherein, it was categorically held that the if an AO wants to make any addition in an unabated

assessment as on the date of search, he could do so only if there is any incriminating material found during the course of search qua the issue on which addition is sought to be made qua the relevant assessment year. In the instant case, a search and seizure action u/s 132 of the Act was carried out on ABA Group of companies on 09.11.2016, wherein, the assessee company was one of the main company of the group. Consequently, cases of all group company were opened for AYs 2011-12 to 2016-17 u/s 153A and u/s 143(3) for AY 2017-18 as the case may be, including the case of the assessee company for AY 2014-15. The assessee had originally filed its return of income on 29.09.2014. The due date for issuance of notice u/s 143(2) of the Act had expired by 30.09.2015. No notice u/s 143(2) of the Act was issued on the original return filed for AY 2014-15. Search u/s 132(1) of the Act happened on 09.11.2016. Hence, as on the date of search, AY 2014-15 falls under the category of unabated assessment/ completed assessment.

4.3 Notice u/s 153A of the Act was issued to the assessee company for AY 2014-15 on 20.08.2018. The assessee filed its return of income on 17.09.2018 declaring total income of Rs. 4,09,71,342/- in response to notice issued u/s 153A of the Act.

4.4 The ABA Group is engaged 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 Pushpahas Agarwal and other persons controlling the affairs of the group are Shri Amit Modi, Shri Ram Avatar Ramsisiaria and Shri Jaikishore Totlani. The project of the group are Orange County, Indirapuram, Ghaziabad (delivered) ; Olive County, Vasundhara, Ghaziabad (delivered); Cherry County (possession started) ; Cleo County, Sector-121, Noida (possession started in 2017) and upcoming project Blue Casa, Noida.

4.5 In the search assessment proceedings for AY 2014-15, the following additions were made by the Id AO:-

a.	unsecured loan received by the assessee from two parties treating as accommodation entries u/s 68 of the Act	Rs. 2,30,00,000/-
b.	Estimated commission expenditure on the aforesaid accommodation entries	Rs. 23,000/-
c.	Unsecured loan added u/s 68 of the Act	Rs. 2,17,00,000/-
d.	Addition on account of bogus purchases	Rs. 37,68,447/-

4.6 We have perused the entire assessment order and we find not a single seized material has been referred to by the Id AO in respect of any of the addition made by him in the assessment. Hence, it could be safely concluded that there is absolutely no incriminating material found during the course of assessment for making the aforesaid 4 additions. Hence, in the absence of any incriminating material during the course of search, no addition could be made in a completed assessment as per the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd referred supra. Accordingly, ground No. 1 of Rule 27 petition is hereby allowed. Since, the entire search assessment is hereby quashed on this ground, the adjudication of ground of ground No. 2 in the Rule 27 petition and other regular grounds raised by the revenue becomes academic and they are left open.

4.7 In the result, the appeal of the revenue in ITA No. 1351/Del/2021 for AY 2014-15 is dismissed and Rule 27 petition of the assessee is allowed.

County Infrastructure Pvt. Ltd in ITA No. 1356/Del/2021 for AY 2013-14(Revenue Appeal) and CO-01/Del/2022 (Assessee CO)

5. The appeal in ITA No.1356/Del/2021 and CO No. 01/Del/2022 for AY 2013-14, arises out of the order of the Commissioner of Income Tax

(Appeals)-4, Kanpur [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10807/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'ld. AO').

5.1 One of the main ground raised by the assessee in its cross objection is non-existence of incriminating material found during the search for making the addition by the ld AO. Since, this issue goes to the root of the matter, we deem it fit to address the cross objection of the assessee first.

5.2 We have heard the rival submissions and perused the material available on record. Pursuant to the search operation carried out u/s 132(1) of the Act on 09.11.2016 based on the search warrant issued and executed in the name of the assessee company, notice u/s 153A of the Act stood issued to the assessee on 05.10.2018. In response to the same, the assessee filed its return on 26.10.2018 declaring loss of Rs. 15,61,754/-. We find that the assessee had originally filed its return of income for AY 2013-14 on 25.09.2013 and due date of issuance of notice u/s 143(2) of the Act had expired on 30.09.2014. Admittedly no notice u/s 143(2) of the Act was issued to the assessee on the original return of income filed. Hence, AY 2013-14 falls under the category of unabated/ completed assessment as on the date of search i.e. 09.11.2016. The ld AO in the search assessment had made the following additions:-

a. Addition towards receipt of share capital and share premium audited u/s 68 of the Act	Rs. 90 lakhs
b. issued commission expenditure on the aforesaid sum	Rs. 45,000/-
c. addition on account of bogus purchase	Rs. 5,99,24,469/-

5.3 We have gone through the assessment order and we find that there is absolutely no whisper about the existence/ usage of any incriminating material or search material qua the aforesaid three additions. Hence, it could be safely concluded that there is absolutely no search material at all in respect of the aforesaid additions. The Id CIT(A) conceded the fact that there is no incriminating material in respect of the aforesaid additions by placing reliance on the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Raj Kumar Aggarwal(supra) holding that there is no need for incriminating material for making any addition in an unabated assessment. This issue has been recently decided by the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P.) Ltd. reported in 454 ITR 212 (SC) wherein, it was categorically held that the if an AO wants to make any addition in an unabated assessment on the date of search, he could do so only if there is any incriminating material found during the course of search qua the issue on which addition is sought to be made qua the relevant assessment year.

5.4 Respectfully following the said decision of the Hon'ble Supreme Court we are inclined to allow the grounds raised by the assessee in its cross objection by holding that the additions have been made without the existence of any incriminating material found during the course of search. Accordingly, the search assessment framed for AY 2013-14 stands hereby quashed.

5.5 In the result, the cross objection of the assessee is allowed and appeal of the revenue is dismissed as infructuous.

County Infrastructure Pvt. Ltd in ITA No. 1165/Del/2021 for AY 2014-15 (Assessee's appeal)

6. The appeal in ITA No.1165/Del/2021 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10733/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

6.1 In the instant case, the only addition made by the Id AO in the search assessment completed for AY 2014-15 is towards bogus purchase amounting to Rs. 69,34,640/-. The original return of income was filed by the assessee for AY 2014-15 on 30.09.2014 and the due date for issuance of notice u/s 143(2) of the Act expired on 30.09.2015. No notice u/s 143(2) of the Act was issued to the assessee. Hence, as on the date of search i.e. on 09.11.2016 for AY 2014-15 becomes completed assessment. The addition made on account of bogus purchases is not based on any search material found during the course of search which is evident from the perusal of the assessment order as no seized material has been referred to by the Id AO for making the said addition. Hence, the decision rendered by us herein above for AY 2013-14 in CO 01/Del/2022 (supra) shall apply mutatis mutandis for this assessment year also. Accordingly, ground No. 3 raised by the assessee is allowed by quashing search assessment. In view of this, the other grounds raised by the assessee need not be adjudicated and they are left open.

6.2 In the result, the appeal of the assessee in ITA No. 1165/Del/2021 for AY 2014-15 is allowed.

County Infrastructure Pvt. Ltd in ITA No. 1166/Del/2021 for AY 2015-16 (Assessee's appeal)

7. The appeal in ITA No.1166/Del/2021 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10743/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

7.1 This is exactly identical to ITA No. 1165/Del/2021 for AY 2014-15 (supra) and hence, the decision rendered thereon shall apply mutatis mutandis for AY 2015-16 also except with variance in figures and dates.

7.2 In the result, the appeal of the assessee for AY 2015-16 in ITA No. 1166/Del/2021 is allowed.

County Infrastructure Pvt. Ltd in ITA No. 1167/Del/2021 for AY 2016-17 (Assessee's appeal)

8. The appeal in ITA No.1167/Del/2021 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10751/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

8.1 Ground No. 3 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly, ground No. 3 is hereby dismissed as not pressed.

8.2 Ground Nos. 1, 6 and 7 raised by the assessee are general in nature and does not require any specific adjudication.

8.3. The assessee has also raised additional ground of appeal before us stating that the Learned Additional Commissioner of Income Tax, Central Circle, Meerut had accorded mechanical approval u/s 153D of the Act to the draft assessment order in the instant case. No papers were filed in support of this additional ground by the Id AR before us. Since, this additional ground goes to the root of the matter, the same is hereby admitted but since no papers were filed in support of the said additional ground, the same is hereby dismissed.

8.4. Ground Nos. 2, 4 and 5 raised by the assessee are challenging the addition made on account of bogus purchase of Rs. 1,14,72,216/-.

8.5. We have heard the rival submissions and perused the material available on record. In response to the notice issued u/s 153A of the Act dated 05.10.2018, the assessee filed its return of income on 26.10.2018 declaring total income of Rs. 7,02,33,391/-. The Id AO observed that the assessee had made purchases from the following parties:-

a.	M/s. Bahubali Iron & Steel Company	Rs. 53,94,190/-
b.	M/s. Hariom Steel	Rs. 16,20,519/-
c.	M/s. V. N. Enterprises	Rs. 44,57,507/-
	Total	Rs. 1,14,72,216/-

8.6 The Id AO based on discreet investigation made on this suppliers observed as under :-

Name of the concern	Address	Findings of the investigation
M/s. Bahubali Iron & Steel Co.	Shop No. 113, Loha Mandi, Ghaziabad	Its small Shop found to be closed. Further, enquiries have been made from local people and found that before 4-5 years there was small shop in the premises but it

		was categorically denied by person of nearby shops that iron bar trading was ever made from this shop. Therefore, it is clear that the premises were used by the group to take accommodation entry of bogus purchases iron bar.
M/s. V. N. enterprises	39/C, Jain nagar, meerut	No such Concern in the name of V.N. Enterprises could be located there. From the Local enquiry, no trace of V.N. Enterprises could be found at the given address.
Hari Om Steel	1021, Behind Ind. Area, Bijoli, Jhansi	No such concern in the name of Hari Om Steel could be located there. From the local enquiry, no trace of Hari Om Steel Could be found at the given address.

8.7 The Id AO observed that in response to the various documents called for by him from the assessee, only ledger account of the suppliers and some bill copies were enclosed for verification by the Id AO. Further, notice u/s 133(6) of the Act dated 10.12.2018 was issued to the concerned suppliers seeking to examine the identity of the parties and genuineness of the transactions. Out of this, part replies were received from Hari Om Steel. Remaining parties did not respond before the Id AO by furnishing the requisite details. The assessee was also asked to produce the Principal Officer of these suppliers together with the requisite documents for which summons were also issued to them. None of these parties responded to the summons. Accordingly, the Id AO proceeded to treat the concerned suppliers as non-existent suppliers and the purchase made from them by the assessee to be bogus and made addition to the extent of 100% of the value of purchases made from them in the sum of Rs. 1,14,72,216/- and completed the assessment. The Id CIT(A) upheld the action of the Id AO. However, the Id CIT(A) had confirmed the addition by clearly stating that the said addition is made u/s 69C of the Act.

8.8. Without going into the merits of the addition, let us see whether an addition on account of bogus purchase per se could be made by applying the provisions of section 69C of the Act. For this purpose, it would be relevant to reproduce the provisions of section 69C of the Act which reads as under:-

"69C. [Unexplained expenditure, etc. [Inserted by Act 41 of 1975, Section 14 (w.e.f. 1.4.1976).]

- Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the][Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year;

Provided that notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

8.9. Admittedly, purchases made by the assessee from the aforesaid 3 parties have already been accounted by the assessee in its regular books of account. This books of account were not rejected by the Id AO or by the Id CIT(A). Payments for this purchase have already been made by the assessee out of the monies available in the disclosed bank account. Hence, the source of incurrence of such expenditure together with the payments made thereon are duly explained from the books of account of the assessee itself. It is not the case of the revenue that the purchase made from aforesaid 3 parties were made out of books and for which assessee is not able to explain the source of making payment. Hence, the provisions of section 69C of the Act per se cannot be applied to the facts of the instant case. In our considered opinion, when the provisions of section 69C of the Act are sought to be invoked, the revenue does not doubt the genuineness

of incurrance of such expenditure. Only the source of such expenditure is being doubted by the revenue. Here the source is drawn from the regular books of accounts of the assessee which were not rejected by the lower authorities. Hence on this ground itself, the addition deserves to be deleted. Reliance in this regard has been rightly placed by the Id AR before us on the decision of the Hon'ble Bombay High Court in the case of PCIT Vs. Sanjay Dhokad in Income Tax Appeal No. 795/2018 dated 09.11.2023, wherein, the Hon'ble Bombay High Court adjudicated the identical issue of addition made on account of in genuine purchases u/s 69C of the Act on the ground that the suppliers did not supply any material and had merely provided accommodation entry bills. The Hon'ble High Court held as under:-

"15. Section 69C of the Income Tax Act, reads as under:

"69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year."

The provisions would be attracted to a case where the assessee offers no explanation on the source of such expenditure or part of thereof, or by the explanation that is offered is not, in the opinion of the Assessing Officer satisfactory. The Assessment Officer, is therefore, called upon by the provisions of Section 69C to record his satisfaction based upon the material produced by the assessee and cannot advert to material such as unproved statements recorded by some other Authority such as the Sales Tax Department, which in any event were not put to assessee during the course of the assessment proceedings.

16. Principal Commissioner of Income-Tax (Central)- 1..V/s.. NRA Iron and Steel (P.) Ltd., (supra), was the case in which, the Hon'ble Supreme Court considered a situation, where Share Capital/Premium was credited in the books of accounts of the assessee company, and such Share Capital/Premium was considered as transaction, which was not genuine, and therefore, treated as income of the assessee under Section 69C. It is in that context, that the Assessing Officer in that case, conducted an extensive investigation by holding an independent field enquiry to ascertain the genuineness of the investors in the assessee company. On the assessee being given an opportunity for meeting of the evidence collected by the

Assessing Officer to demonstrate the non-existence such investors, that the Assessing Officer concluded that the assessee had not discharged the initial onus of establishing by cogent evidence with the genuineness of the transactions and creditworthiness of the investors under Section 68 of the Act.

It is in this context that the Hon'ble Supreme Court concluded that the Lower Appellate Authorities had ignored the detailed findings of the Assessing Officer from the field enquiry and investigations carried out by him and the assessee had not discharged his legal obligation to prove the receipt of the Share Capital/Premium to the satisfaction of the Assessing Officer. The ratio laid down in Principal Commissioner of Income-Tax (Central)-1 ..V/s.. NRA Iron and Steel (P.) Ltd., (supra), was in the facts of that case and would have no application to the present case.

17. The Bombay High Court in case of The Commissioner of Income Tax-1, Mumbai ..V/s.. M/s. Nikunj Eximp Enterprises Pvt. Ltd., (supra), has in a similar case, where the assessee produced his books of accounts, copies of invoices for purchases, and copies of bank statements indicating that purchases were made, has held as under:

"We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30.04.2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30.04.2010 of the Tribunal."

18. The Appellate Tribunal was right in applying the ratio of the judgment in The Commissioner of Income Tax-1, Mumbai ..V/s.. M/s. Nikunj Eximp Enterprises Pvt. Ltd. (supra), to the facts of the present case.

There are concurrent findings arrived at by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, on the fact that the Respondent had satisfactorily discharged the initial burden of proving the genuineness of the transactions.

19. In that view, we are of the considered opinion that this is not a fit case for consideration in appeal as the substantial questions of law proposed by the revenue would not arise. Therefore, the appeal is dismissed with no order as to costs."

8.10. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation to delete the addition made on account of bogus purchase u/s 69C of the Act in the sum of Rs. 1,14,72,216/- on this preliminary ground. Since, relief is granted on this preliminary ground, the various arguments advanced by the assessee and by the revenue on merits by referring to various documentary evidences from the paper book need not be gone into as it would be academic in nature. Accordingly, ground Nos. 2, 4 and 5 raised by the assessee are allowed.

8.11 In the result, the appeal of the assessee in ITA No. 1167/Del/2021 is partly allowed.

County Infrastructure Pvt. Ltd in ITA No. 1168/Del/2021 for AY 2017-18 (Assessee's appeal)

9. The appeal in ITA No.1168/Del/2021 for AY 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10840/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

9.1 Grounds raised by the assessee for AY 2017-18 are exactly identical to the original grounds raised by the assessee for AY 2016-17 and hence, decision rendered for AY 2016-17 (supra) shall apply mutatis mutandis for this assessment year also except with variance in figures. In AY 2017-18, no additional ground was raised by the assessee. Hence, decision for additional ground for AY 2016-17 shall not be applicable for AY 2017-18.

9.2 In the result, the appeal of the assessee for AY 2017-18 in ITA No. 1168/Del/2021 is partly allowed.

IV County Infrastructure Pvt. Ltd in ITA No. 1171/Del/2021 for AY 2016-17 (Assessee's appeal)

10. The appeal in ITA No.1171/Del/2021 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10756/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'Id. AO').

10.1 The original grounds raised by the assessee for AY 2017-18 are exactly identical with those raised for AY 2016-17 in the case of County Infrastructure Pvt. Ltd in ITA No.1167/Del/2021. Hence, the decision rendered by us hereinabove, in ITA No. 1167/Del/2021 in original grounds shall apply mutatis mutandis for this assessee and for this assessment year also except with variance in figures. No additional ground was raised by the assessee for this year. Hence, the decision rendered by us for additional ground in ITA No. 1167/Del/2021 shall not be applicable herein.

10.2 In the result, the appeal of the assessee for AY 1171/Del/2021 is partly allowed.

IV County Infrastructure Pvt. Ltd in ITA No. 1172/Del/2021 for AY 2017-18 (Assessee's appeal)

11. The appeal in ITA No.1172/Del/2021 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10842/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'ld. AO').

11.1 The original grounds raised for AY 2017-18 by the assessee are exactly identical with those raised for AY 2016-17 in the case of County Infrastructure Pvt. Ltd in ITA No. 1171/Del/2021. Hence, the decision rendered by us hereinabove, in ITA No. 1171/Del/2021 in original ground shall apply mutatis mutandis for this assessment year also except with variance in figures. No additional ground was raised by the assessee for this year.

11.2 In the result, the appeal of the assessee for AY 1172/Del/2021 is partly allowed.

IV County Infrastructure Pvt. Ltd in ITA No. 1357/Del/2021 for AY 2017-18 (Revenue's Appeal)

12. The appeal in ITA No.1357/Del/2021 for AY 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A)-IV/KNP/10842/2018-19 dated 15.07.2021 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, DCIT, Central Circle-I, Noida (hereinafter referred to as 'ld. AO').

12.1 The only issue to be decided in this appeal of the revenue is as to whether the Id CIT(A) was justified in deleting the addition of Rs. 1,80,00,000/- in the facts and circumstances of the instant case.

12.2 We have heard the rival submissions and perused the material available on record. Shri Amit Modi, the key person of the assessee group gave a statement u/s 132(4) of the Act at the time of search and offered certain amount to tax. This statement was later retracted by him vide retraction letter dated 21.02.2017 submitted before DDIT, Investigation Unit-2, Noida. The Id AO rejected the said retraction statement stating that the said retraction was made after a delay of 110 days by the assessee. Further, the Id AO observed that there is no material on record which suggests that disclosure made at the time of search was under pressure or coercion or threat or undue influence. The Id AO observed that cash was deposited in the bank account of the assessee out of surrendered income as declared during the course of search in the statement. The Id AO observed that in the seized document along with other directors, name of the assessee company has also been mentioned with an amount of Rs. 450 lakhs against the name of the assessee company. The assessee had deposited Rs. 270 lakhs in the bank account subsequent to the search and included the same in the return of income filed for AY 2017-18. Therefore, the Id AO added the balance amount of Rs. 180 lakhs (450-270) u/s 69A read with Section 115BBE of the Act being the amount disclosed in the statement u/s 132(4) of the Act but not offered by the assessee in the return of income.

12.3 The assessee submitted that all the persons who had given statement u/s 132(4) of the Act had ultimately retracted their statement. This retraction made by 9 persons is supported by conclusive evidences attached during the course of assessment proceedings. This retraction was

communicated to the department more than 5 times during the post search proceedings and actual amount of undisclosed income was duly offered and due tax thereon was paid suo moto by the assessee. The assessee also placed reliance on CBDT Circular No. 286/2/2003-IT, Investigation dated 10.03.2003, wherein, it had been stated that confession of additional income of the assessee needs to be based on corroborative evidence. The assessee submitted that initial surrender u/s 132(4) of the Act was made on 10.11.2016 at 1.30 AM by Mr. Amit Modi under duress. Further, it was submitted that all the pages of the annexures of the seized documents were not taken into consideration while making the disclosure. It was submitted that the seized documents on which surrender was made was not written by Shri Amit Modi and that the seized note book relates to Shri Sandeep Pandit , CFO of the company. Only 7 pages of the diary were allowed to be confronted with the CFO of the company to the assessee at the time of search. Accordingly, total disclosure of Rs. 32 crores which included Rs. 4.5 crores belonging to the assessee company herein was made in the hands of the company respectively. Further, statement of Shri Sandeep Pandit was also not recorded by the search team even though he was available at the time of search. It was submitted that the retraction made by the assessee and other 8 assesseees was based on conclusive evidence and actual figure of undisclosed figure was mentioned in the seized documents itself. It was submitted that the disclosure made by the assessee was an estimated figure which is also mentioned in the seized documents and the actual amount of undisclosed income also were mentioned in the very same seized documents with specific reference to estimated income, which stood ultimately offered to tax by the assessee and remaining persons in their respective returns. To the extent of actual amount of undisclosed income, cash was subsequently deposited by the assessee and other parties , post search, in their bank accounts pursuant to the announcement of

demonetization by the Govt. of India. Ultimately a sum of Rs. 11.55 crores was deposited in the bank account by 9 persons of the group which includes Rs. 2.70 crores belonging to assessee herein. This clearly goes to prove that actual income received by the assessee was only Rs. 2.70 crores and not Rs. 4.50 crores. Accordingly, the assessee along with 8 others had to file a retraction statement before the Investigation Wing itself stating the actual figure of undisclosed income. Further, the very same seized documents vide page 1 of the summary of receipts contain the account of account of Cleo County project developed by assessee together with the amounts received by the assessee every month which reads as under:-

<u>Month</u>	<u>Amount</u>
June 2016	32.80 lakhs
July 2016	85.30 lakhs
August 2016	70.90 lakhs
September 2016	65.20 lakhs
<u>October 2016</u>	<u>15.80 lakhs</u>
Total	270 lakhs

12.4 For the same, rounds of trucks was also mentioned as 328 rounds, 853 rounds, 709 rounds, 652 rounds, 158 rounds, thus totaling to 2700 rounds. The seized documents also mentioned that this amount of Rs. 270 lakhs has been handed over to the management as against the estimated income of Rs. 450 lakhs. Thus, it was submitted that the actual amount of undisclosed income is only Rs. 270 lakhs which was duly offered to tax and the sum of Rs. 450 lakhs was merely an estimation based on which statement u/s 132(4) of the Act was given. It was submitted that the admission of undisclosed income offered by the assessee in the return of income is backed by credible evidence. Reliance was placed on the presumption provided in section 132(4A) of the Act and section 292C of the Act wherein, the contents of the seized documents are to be considered as

true. Since, the seized documents itself contains the actual undisclosed income figure, as against the estimated figure, the actual figure retracted thereon should be considered as true, when more so, this actual figure stood specifically deposited in the bank account by all the assessees. We find that the Id. CIT(A) had duly appreciated the aforesaid contentions and deleted the addition made in the sum of Rs 1.80 crores on which we do not find any infirmity. Accordingly, the grounds raised by the revenue are dismissed.

12.5 In the result, the appeal of the revenue is dismissed.

13. To sum up ,

ITA No.	AY	Assessee	Result	Appeal by
1357/Del/2021	2017-18	IV County Pvt Ltd	Dismissed	Revenue
1351/Del/2021	2014-15	M/s. ABA Builders Ltd	Dismissed	Revenue
1171& 1172/Del/2021	2016-17 2017-18	IV County Pvt. Ltd	Partly allowed	Assessee
1165 & 1166/Del/2021	2014-15 to 2015-16	County Infrastructures Pvt Ltd	Allowed	Assessee
1167& 1168/Del/2021	2016-17 to 2017-18	County Infrastructures Pvt Ltd	Partly Allowed	Assessee
1356/Del/2021	2013-14	County Infrastructures Pvt Ltd	Dismissed	Revenue
CO- 01/Del/2022	2013-14	County Infrastructures Pvt Ltd	Allowed	Assessee

Order pronounced in the open court on 04/12/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:04/12/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi