

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DEHRADUN BENCH “DB”, DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA Nos.3944 & 3945/Del/2016  
Assessment Years. 2011-12 & 2012-13

**With**

ITA Nos. 115 & 116/DDN/2016  
Assessment Years. 2010-11 & 2012-13

Sh. Akshat Bansal, 132-Doon Palm City, Pathri Bagh, Dehradun	<b>Vs.</b>	DCIT, Central Circle, Dehradun
<b>PAN :AIFPB5542H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Department by	Sh. S.K. Chaterjee, CIT(DR)

Date of hearing	08.01.2025
Date of pronouncement	29.01.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

These assessee's four appeals i.e. ITA Nos. 3944 & 3945/Del/2016 (for AYs: 2011-12 & 2012-13) arise against the Commissioner of Income Tax (Appeals) [in short, the "CIT(A)"], Muzaffarnagar's common order dated 30.03.2016 in case nos. 340 & 345/CIT(A)-1/DDN/14-15 in volving proceedings under section 153A(1)(b) r.w.s. 143(3); and, ITA No.115 & 116/DDN/2019 (for

AYs: 2010-11 & 2012-13) are directed against the CIT(A)-IV, Kanpur's orders, both dated 22.05.2019 in case nos. CIT(A)-IV/KNP/10043/DCIT-CC/DDN/2018-19/111 and CIT(A)-IV/KNP/10050/DCIT-CC/DDN/2018-19/112 involving proceedings under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'); respectively.

2. Cases called twice. None appears at the assessee's behest. He is accordingly proceeded ex-parte.

3. We come to the "lead" assessment year 2010-11 herein involving the assessee's penalty appeal ITA No. 115/DDN/2019 wherein both the learned lower authorities have held him to have concealed and furnished inaccurate particulars of income representing on-money amounting to Rs.16.40 lakhs, in land transactions thereby levying "minimum penalty" of Rs.5,06,760/-, in question.

4. The Revenue vehemently contends in light of the Assessing Officer's section 153A r.w.s. 143(3) assessment dated 01.09.2014 that the learned lower authorities had carried out a search at the assessee's business and residential premises on 26.04.2012 followed by their detailed post search inquiries thereby unearthing

the impugned on-money payment made at the assessee's behest, and, therefore, the consequential penalty herein deserves to be upheld.

5. We have given our thoughtful consideration to the assessee's pleadings and Revenue's foregoing vehement contentions. We make it clear first of all that the assessment year before us is AY 2010-11 and the "search" in question had taken place on 26.04.2012. Meaning thereby, that we are dealing with an "unabated" assessment as on the date of search, and, therefore, no addition could be made, except that based on the corresponding specific seized material in light of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212. We find in this backdrop that apart from post search enquiries, there is no seized material quoted in the assessment order indicating on-money payment involved in the assessee's land transactions. We accordingly are of the considered view that once the corresponding question additions of on-money itself become a debatable issue as per subsequent legal developments, the consequential penalty couldn't be upheld. We order accordingly. The assessee succeeds in his sole substantive ground in the instant penalty appeal ITA No. 115/DDN/2019.

6. The assessee's next twin quantum appeals ITA No. 3944 & 3945/Del/2016 challenge both the learned lower authorities' action invoking section 50C of the Act for the purpose of computing his capital gains based on the circle/stamp rates of his lands/capital asset which were sold/transferred in financial year 2011-12 and 2012-13; involving varying sums, respectively.

7. Learned departmental representative could hardly dispute that no reference to the DVO had been made in either of the twin lower proceedings under section 50C(2) of the Act before recomputing the assessee's capital gains herein.

8. Mr. Chaterjee vehemently argues that the assessee had not raised any such objection either before the Assessing Officer or in the lower appellate proceedings. We find no merit in the Revenue's instant technical objections in light of Sunil Kumar Agarwal Vs. CIT (2015) 372 ITR 85 (Kol) wherein their lordships have settled the issue in assessee's favour and against the department that such a reference is indeed mandatory, even if there is no objection raised from the former's side. We, accordingly, accept the assessee's instant twin appeals raising this identical sole substantive grievance in principle and restore the matter back to the learned

Assessing Officer for his afresh appropriate adjudication as per law. These assessee's twin quantum appeals ITA Nos. 3944 & 3945/Del/2016 are accepted for statistical purposes. Same order to follow in his section 271(1)(c) penalty appeal ITA No. 116/DDN/2019 pertaining to AY 2012-13 being consequential in nature. Ordered accordingly.

9. To sum up, the assessee's first and foremost appeal ITA No. 115/DDN/2019 is allowed and his latter three appeals ITA No. 3944 & 3945/Del/2016 and 116/DDN/2019 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

*Order pronounced in the open court on 29<sup>th</sup> January, 2025*

**Sd/-**  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 29<sup>th</sup> January, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi