

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.634/Del/2020  
(ASSESSMENT YEAR 2012-13)

Sunil Gupta, 4/1733, Bhola Nath Nagar, Mahavir Block, Shahadara Delhi-110032.  PAN-AAOPG6063B	Vs.	ACIT, Circle-55(1), New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Thakur Repudhman, CA & Shri Anurag Gupta, CA
Department by	Ms. Jaya Chaoudhary, CIT-DR
Date of Hearing	13/02/2025
Date of Pronouncement	21/02/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This is the appeal filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-37, New Delhi dated 09.12.2019, for the Assessment Year 2012-13 in appeal No. CIT(A), Delhi 37/10095/2016-17.

2. Brief facts of the case are that assessee is an individual and filed his return of income on 02.02.2013 declaring total income at Rs.3,41,980/-which stood processed. A search and seizure action u/s132 of the Income Tax Act, 1961 ("the Act", in short) was carried

out in the case of Orbit group of cases on 13.05.2014 and the proprietary firm of the assessee was also search. Thereafter the notice u/s 153A of the Act was issued on 29.06.2016, in response to which the assessee filed return of income on 17.10.2016 declaring same income as was declared in the return filed u/s 139(1). Thereafter the assessment was completed u/s 153C r.w.s. 143(3) of the Act dt. 31.12.2016 at a total income of Rs. 86,93,090/- by making various additions. Against the said order assessee preferred appeal which is dismissed by the ld. CIT(A) vide impugned order dt. 09.12.2019, thus the present appeal is filed by the assessee before us.

3. The assessee has taken as many as 9 grounds of appeal and the ground of appeal No. 1 is in relation to the completion of assessment u/s 153A of the Act after making additions when no incriminating material was found as a result of search. Since this is a purely legal ground thus the same is taken up first for consideration.

4. Before us, the Ld. AR argued that in this case the search u/s 132 of the Act was carried out on 13.05.2014 which was finally concluded on 1.07.2014. Ld.AR submits that when the search was conducted no proceedings were pending with respect to the assessment year under consideration as the return of income was filed on 02.02.2013 and the time limit for issue of notice u/s 143(2) was upto 30.09.2013 and no notice was issued u/s 143(2) in the case of assessee. Ld. AR further argued that from the perusal of the assessment order it is evident that not a single paper found as result

of search was referred by the AO for making any additions and entire additions are solely based on the details filed by the assessee during the course of assessment proceedings. Ld.AR submits that the assessee since inception of the proceedings u/s 153A has objected the completion of assessment u/s 153A as there was no incriminating material found and seized during the course of search but neither the AO nor the ld. CIT(A) has accepted the contention of the assessee and the additions were made / uphold without referring to any single incriminating paper found as result of search. He, therefore submitted that in the scheme of search assessment u/s 153A no addition could be made in absence of incriminating material and for this he placed reliance in the case of PCIT Vs. Abhisar Buildwell (P) Ltd. reported in [2023] 149 taxman.com 399 (SC). Ld. AR also filed a written submission on this issue which reads as under

*“2). No incriminating Material-No addition*

*Where in course of proceedings u/s. 153A/153C, Assessing Officer made various additions / disallowance, in view of fact that said additions /disallowances had been made without reference to any specific incriminating material / document found as a result of search and were based on re-appreciation of facts unconnected to search, same deserved to be set aside.*

*For the above proposition, reliance has been placed on:*

*a) Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd. (24.04.2023 SC): MANU/SC/0434/2023 [Annexure C-6] [Para 14, Page 54-55]*

*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 fulfilment of the conditions as envisaged/mentioned Under Sections 147/ 148 of the Act and those powers are saved.*

*b) ACIT, Central Circle-1 vs. Enpro Telecom Pvt. Ltd. (08.02.2024 -ITAT Delhi): MANU/ID/0130/2024 [Annexure C-7] [Para 9, Page 61].*

*9. Since, we have held that the Assessing Officer could not have made any addition in the absence of any incriminating material seized in the course of search the appeal filed by the Revenue challenging the order of the Ld. CIT(A) in deleting addition/disallowance on merits becomes infructuous.*

*c) Meera Gupta vs. DCIT, Circle-20(1) (13.03.2024 ITAT Delhi): MANU/ID/0311/2024 [Annexure C-19] [Para 10].*

*10. Guided by the principles laid down in the case of Abhisar Buildwell (P.) Ltd. (SC) (supra), and view expressed by Co-ordinate Bench in cases cited, we find force in the legal plea raised on behalf of the assessee. Hence, in the absence of any incriminating material in an unabated assessment, additions/disallowances made by the AO is unsustainable within the remit of s. 153A of the Act and consequently the additions under challenge in the captioned appeal requires to be quashed. In this view of the matter, we do not consider it necessary to adjudicate other legal and factual aspects concerning additions/disallowances.”*

5. Per contra ld. CIT-DR vehemently supported the order of the lower authorities and argued that in the case of the assessee, during the course of assessment proceedings assessee himself has accepted unaccounted sales on which GP rate was applied by the AO. Such additional sales were accepted by the assessee in his statement of affairs filed before the AO and the return was filed declaring income u/s 44AD of the Act. Ld. CIT-DR thus prayed that the assessment

has rightly been completed u/s 153A r.w.s. 143(3) of the Act by making various additions including trading addition on additional sales admitted by the assessee and such order deserves to be upheld. She prayed accordingly.

6. We have considered the rival submissions. A perusal of the assessment order for the year under consideration clearly shows that the AO has not referred to any material found in the course of search, incriminating or otherwise. The AO has only made the addition by invoking the provisions of [Section 68](#) of the Act on account of unexplained cash credits, receipts from the sale of house u/s 57 and trading addition on additional sales. The observations made by the AO in para 10 of the assessment that the additional sales was shown by the assessee is based on the statement of affairs filed by the assessee during the course of assessment proceedings on 27.12.2016 and neither any incriminating material found as a result of search indicating additional sales is referred nor brought on record. The Hon'ble Supreme Court in the case of *Abhisar Buildwell (P) Ltd.* (supra) has categorically and specifically used the term 'incriminating material' and has never used the term 'incriminating documents'. Therefore, the claim that no incriminating materials were found in the course of search or that no incriminating materials were used in the course of assessment found support from the aforesaid order. This is a case where assessment has been done exclusively on the basis of return and further details filed by the assessee during the course of assessment proceedings without making reference to any

information / evidence / document found in the course of search. As no incriminating material has been found in the course of search in the case of the assessee, no addition could be made in the assessment framed u/s.153A of the Act. The ld. CIT(A) in para 5.2.1 of the appellate order has also accepted the fact that no proceedings were pending as on the date of search with respect to the year under consideration however, solely for the reason that certain stock was found in excess at the time of search confirmed the action of AO, for which addition, if any, could only be made in the year of search. Further for the reason that assessee has shown additional sales in the statement of affairs, CIT(A) has confirmed the action of the AO of making additions, which cannot be considered as incriminating material to frame the assessment u/s.153A of the Act.

7. The Revenue is unable to controvert the argument of the assessee that there is no incriminating document referred to in the assessment order by the AO nor any such document was produced either before the ld. CIT(A) or before the Tribunal. Therefore, by respectfully following the judgement of Hon'ble Apex Court in the case of *Abhisar Buildwell (supra)*, we are of the opinion that no addition could be made in the hands of the assessee in the order passed u/s 153A in absence of any incriminating material. Accordingly, we direct to delete the additions made without referring to any incriminating material. However, in view of the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (supra)*, liberty is granted to the AO to initiate reassessment proceedings

u/s.147/148 of the Act as per law in case of completed/unabated assessment, if no incriminating material found during the course of search. Accordingly, the ground of appeal no. 1 of the assessee is allowed.

8. Since we have already decided the legal ground taken by the assessee in his favour, the other grounds of appeal become academic and thus are not adjudicated.

9. In the result, appeals of the assessee is allowed.

Order pronounced on 21/02/2025.

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Dated: 21/02/2025

PK/Ps

Copy forwarded to:

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

Sd/-

**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI