

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA No. 362/Agr/2017
Assessment Year: 2004-05

ACIT, Circle-2, Gwalior.	Vs.	ShriSaurabhGarg, Tilak Road, JiwajiGanj, Morena
PAN : ACOPG5549C		
(Appellant)		(Respondent)

With
C.O. No. 34/Agr/2018
(inITA No. 362/Agr/2017)
Assessment Year: 2004-05

ShriSaurabhGarg, Tilak Road, JiwajiGanj, Morena	Vs.	ACIT, Circle-2, Gwalior.
(Appellant)		(Respondent)

ITA Nos. 26 & 28/Agr/2014
Assessment Years: 2005-06 & 2008-09

ACIT, Circle-2, Gwalior.	Vs.	Smt. Sheela Devi Garg, Tilak Road, JiwajiGanj, Morena
PAN : ACOPG5417B		
(Appellant)		(Respondent)

With
C.O. Nos. 03 & 04/Agr/2016
(inITA Nos. 26 & 28/Agr/2014)
Assessment Years: 2005-06 & 2008-09

Smt. Sheela Devi Garg, Tilak Road, JiwajiGanj, Morena	Vs.	ACIT, Circle-2, Gwalior.
(Appellant)		(Respondent)

ITA No. 52/Agr/2014
Assessment Year: 2008-09

ACIT, Circle-2, Gwalior.	Vs.	M/s. K.S. Real Estate Pvt. Ltd., 301, Silver Arc Plaza, 20/1, New Palasia Indore.
PAN : AACCK8216D		
(Appellant)		(Respondent)

With
C.O. No. 05/Agr/2016
(inITA No. 52/Agr/2014)
Assessment Years: 2008-09

M/s. K.S. Real Estate Pvt. Ltd., 301, Silver Arc Plaza, 20/1, New Palasia Indore.	Vs.	ACIT, Circle-2, Gwalior.
(Appellant)		(Respondent)

Assessee by	Sh. Sanjay Kumar, CA
Department by	Sh. Sukesh Kumar Jain, CIT(DR)

Date of hearing	11.02.2025
Date of pronouncement	11.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

The instant batch of eight cases pertains to three assessee herein, namely, Shri Saurabh Garg, Smt. Sheela Devi Garg and M/s. K.S. Real Estate Pvt. Ltd. All other relevant details thereof are tabulated as under:

Sl. No.	Appeal/CO No.	Appellant	Respondent	Order Appealed against
1.	362/Agr/2017 & A.Y. 2004-05	ACIT, Circle-2, Gwalior.	Sh. SaurabhGarg	CIT(Appeals), Gwalior's order in Appeal No. 786/IT/2011-12/Gwl dated 05.06.2017, involving proceedings under section 143(3) r.w.s. 153A
2.	CO No. 34/Agr/18 A.Y. 2004-05	Sh. SaurabhGarg	ACIT, Circle-2, Gwalior.	

3.	26/Agr/2014 A.Y. 2005-06	ACIT, Circle-2, Gwalior.	Smt. Sheela Devi Garg	CIT(Appeals), Gwalior's order in Appeal No. 752/IT/2011-12/Gwl dated 13.11.2013, involving proceedings under section 143(3) r.w.s. 153A
4.	CO No. 03/Agr/16 A.Y. 2005-06	Smt. Sheela Devi Garg	ACIT, Circle-2, Gwalior.	
5.	28/Agr/2014 A.Y. 2008-09	ACIT, Circle-2, Gwalior.	Smt. Sheela Devi Garg	CIT(Appeals), Gwalior's order in Appeal No. 750/IT/2011-12/Gwl dated 13.11.2013, involving proceedings under section 143(3) r.w.s. 153A
6.	CO No. 04/Agr/16 A.Y. 2008-09	Smt. Sheela Devi Garg	ACIT, Circle-2, Gwalior.	
7.	52/Agr/2014 A.Y. 2008-09	ACIT, Circle-2, Gwalior.	K.S. Real Estate Pvt. Ltd.	CIT(Appeals), Gwalior's order in Appeal No. 476/IT/2011-12/Gwl dated 12.12.2013, involving proceedings under section 143(3) r.w.s. 153A
8.	CO No. 05/Agr/16 A.Y. 2008-09	K.S. Real Estate Pvt. Ltd.	ACIT, Circle-2, Gwalior.	

2. Heard both the parties. Case files perused. Shri S.K. Jain, learned CIT(DR) has filed an adjournment letter stating that since unprecedented number of cases are fixed for hearing, he is unable to assist the Bench. We make it clear that since, all these cases are old appeals filed way back in the year 2014, 2016 and 2018, as the case may be, we see no merit in the aforesaid adjournment petition. The same stands rejected.

3. We now proceed assessment year wise for the sake of convenience and brevity.

4. The first and foremost assessment year is 2004-05 herein involves the Revenue's appeal No. 362/Agr/2017 in case of Shri Saurabh Garg along with his cross objection C.O. No. 05/Agr/2018 therein. A perusal of the assessment order dated 14.12.2011 passed by the learned Assessing Officer indicates that he had in fact made addition u/s. 56 of the Act amounting to Rs.2,10,90,000/- as unexplained, in furtherance to

the search action dated 11.03.2011, conducted by the departmental authorities at assessee's residential premises. It further emerges that the assessment for assessment year 2004-05 is an "unabated" one wherein, any addition has to be made going by incriminating materials only as per PCIT vs. Abhisar Buildwell Pvt. Ltd. [2023] 149 taxman.com 399 (SC). Learned Assessing Officer had not made his addition based on any seized/incriminating material. We, therefore, quash the impugned assessment itself in these facts and circumstances. Thus, . Revenue's appeal ITA No. 362/Agr/2017 fails and assessee's cross objection succeeds in very terms.

5. Next comes assessment year 2005-06 involving the Revenue's appeal ITA No. 26/Agr/2014 and CO No. 03/Agr/2016 in case of Smt. Sheela Devi Garg. Learned lower authorities had not made any addition based on the seized/incriminating material found in search. We adopt the preceding analogy herein as well to decline Revenue's appeal ITA No. 26/Agr/2014 and the assessee's cross objection No. 03/Agr/2016 is accepted, in very terms.

6. Next assessment year A.Y. 2008-09 involves Revenue's appeal ITA No. 28/Agr/2014 and C.O. No. 04/Agr/2016 in case of Smt. Sheela Devi Garg and ITA No. 52/Agr/2014 with the assessee's C.O. No. 05/Agr/2016 in case of M/s. K.S. Real Estate Pvt. Ltd., respectively. The

assessment orders in these cases also nowhere indicate that the learned lower authorities had made additions based on any seized/ incriminating material found in the search. We accordingly quash the impugned corresponding assessments in very terms. These Revenue's appeals ITA Nos.28/Agr/2014 and 52/Agr/2014 are dismissed and assessee's cross objections Nos. 04/Agr/2016 & 05/Agr/2016 succeed.

7. To sum up, these Revenue's appeals ITA No. 362/Agr/2017, 26 & 28/Agr/2014 and 52/Agr/2014 are dismissed and the assessee's cross objections Nos. 34/Agr/2018, 03 & 04/Agr/2016 and 05/Agr/2016 are allowed, in above terms. A copy of this common order be placed in respective case files.

Order pronounced in the open court on 11TH February, 2025.

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

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

Dated: 11TH February, 2025.

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra