

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&**

Sh. M. Balaganesh, Accountant Member

ITA No. 227/Agr./2016 : Asstt. Year: 2005-06

Alok Agarwal, 103/4, Punjabi Colony, Mainpuri	Vs	ACIT, Central Circle, Agra-282002
(APPELLANT)		(RESPONDENT)
PAN No. AACCR9715L		

ITA No. 311/Agr./2016 : Asstt. Year: 2005-06

Ajay Agarwal, 103/4, Punjabi Colony, Mainpuri	Vs	ACIT, Central Circle, Agra-282002
(APPELLANT)		(RESPONDENT)
PAN No. AEBPA9211Q		

Assessee by : Sh. Deependra Mohan, CA

Revenue by : Sh. Sukesh Kumar Jain, CIT-DR

Date of Hearing: 05.02.2025

Date of Pronouncement: 05.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

Both these assessees i.e. Alok Agarwal and Ajay Agarwal, have filed their instant twin appeals ITA Nos. 227 & 311/Agr./2016 for Assessment Year 2005-06 against the CIT(A)-1, Agra's as many orders, dated 03.03.2016 and 30.06.2016, in case Nos. 365 & 469/CIT(A)-1/AGRA/ACIT(Central Circle)/Agra/07-08, in proceedings u/s 153A/143(3) of the Income Tax Act, 1961 (in short "the Act"), respectively.

2. Heard both the parties at length. Case files perused.
3. The former assessee's appeal ITA No. 227/Agr./2016 raises the following substantive grounds:

"1. That the Id. CIT(A) has erred in law and on facts in sustaining the assessment passed u/s 153A of the Income Tax Act, 1961 even when no incriminating material was found during the search conducted on the appellant group.

2. That the authorities below have erred in law and on facts in making protective assessment on the appellant on account of investment of Rs.9,50,000/- as unexplained investment in FDR.

3. That the authorities below have erred in law and on facts in not appreciating that Rs.9,50,000/- was already offered to tax by the appellant's brother as his income before the Hon'ble Settlement Commission.

4. That the authorities below have erred in law and on facts in making addition of Rs.1,40,000/- on account of interest income on the FDR which was surrendered by the appellant brother.

5. That the Id. CIT(A) has erred in law and on facts in sustaining the addition of Rs.20,000/- on account of undisclosed investment on substantive basis in the hands of the appellant, even when the same was duly shown in the balance sheet of the appellant.

6. That the order passed by the authorities below is bad in law and against the facts of the case."

4. Learned counsel *inter alia* submits at the outset that the assessee does not wish to press for his first and foremost legal

ground challenging validity of the impugned section 153A assessment for want of the alleged incriminating material and fifth substantive ground keeping in mind smallness thereof; respectively. Rejected in very terms.

5. Next comes the assessee's second to fourth substantive grounds challenging both the learned lower authorities' action making "protective" addition of Rs.9,50,000/- as unexplained investment in FDRs and interest income of Rs.1,40,000/-; respectively. Learned counsel's sole plea before us is that the assessee's brother already stand assessed on substantive basis *qua* the same as per the order dated 30.12.2023 passed by the Income Tax Settlement Commission ("ITSC"). The Revenue's comes on the other hand is that the assessee's instant argument more requires an afresh factual verification by the learned Assessing Officer since all these alleged intervening developments have taken place post facto the lower appellate order under challenge.

6. Faced with this situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant second to fourth substantive grounds back to the Assessing

Officer to ensure that there is no double addition of both these amounts of unexplained investment and interest income; in assessee's hands once his brother already stands assessed. Ordered accordingly.

7. The former assessee's appeal ITA No. 227/Del/2016 is partly allowed for statistical purpose in very terms.

8. The latter assessee's appeal ITA No. 311/Del/2016 raises the following substantive grounds:

"1. That the Id. CIT(A) has erred in law and on facts in sustaining the assessment passed u/s 153A of the Income Tax Act, 1961 even when no incriminating material was found during the search conducted on the appellant group.

2. That the authorities below have erred in law and on facts in making protective assessment on the appellant on account of investment of Rs.19,76,153/- as unexplained investment in FDR.

3. That the authorities below have erred in law and on facts in not making an addition on account of undisclosed investment and interest earned on NSCs at Rs.33,400/-even when the same were fully explained and did not relate to the A.Y. under consideration.

4. That the authorities below have erred in law and on facts in confirming the addition of Rs.51,000/- being the unsecured loan, even when the same were fully explained.

5. That the authorities below have erred in law and in facts in estimating the sales at Rs.56 lacs and applying the net profit rate at 8% resulting in addition of Rs.4,38,000/-.

6. That the order passed by the authorities below is bad in law and against the facts of the case."

9. Learned counsel states very fairly herein as well that he is only pressing for the assessee's first and fourth substantive grounds as per his preceding statement. Rejected in very terms.

10. Learned counsel next submits that the unexplained investment in FDRs of Rs.19,76,153/- forming subjecting matter of adjudication in the assessee's second substantive ground; on "protective" basis stood assessed in his brother's hands as per the ITSC's order, in very terms. We thus restore the assessee's instant second substantive ground back to the Assessing Officer for his afresh factual verification as in the preceding appeal, in very terms. This second substantive ground is taken as accepted for statistical purposes.

11. Next comes the assessee's third substantive ground seeking to reverse both the learned lower authorities' action making undisclosed investment and interest of Rs.33,400/- in the course of assessment and affirmed in the lower appellate

proceedings. We notice during the course of hearing that the corresponding investments had been made on 18.07.2005 as per para 10.1 in the lower appellate discussion i.e. not in the impugned assessment year 2005-06. We thus reject Revenue's vehement arguments to delete the impugned addition.

12. Lastly comes the assessee's fifth substantive ground challenging both the learned lower authorities' action applying net profit rate @ 8% on estimated sales of Rs.56,00,000/-; coming to Rs.4,38,000/-, in question. We notice from a perusal of the assessment discussion dated 28.12.2007 at page 6 para 6 that the same is only based on estimation than any actual supportive evidence unearthed during the course of search/survey herein dated 05.01.2006. We therefore, hold that such an extrapolated income addition which is based on mere assumptions and presumptions is not sustainable in law. The Revenue's vehement contentions in support thereof are hereby rejected. The impugned addition stand deleted.

13. No other ground or argument has been pressed before us.

14. To sum up, the former assessee's appeal ITA No. 227/Del/2016 is partly accepted for statistical purposes and the

latter assessee's case ITA No. 311/Del/2016 is partly allowed, in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 05/02/2025.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 05/02/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR