

**IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA" BENCH, PATNA
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA Nos. 5 to 11/PAT/2023
Assessment Year: 2010-11 to 2016-17**

Sharan Complex Pvt. Ltd. Near Sharan Nursing Home, Town Hall Road, Motihari, Bihar-845401. (PAN: AANCS8859H)	Vs	ACIT, Central Circle, Muzzafarpur.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sanjeev Kr. Anwar, Advocate
Respondent by : Sm. Rinku Singh, CIT, DR

Date of Hearing : 02.04.2025
Date of Pronouncement : 02.04.2025

ORDER

Per Bench :

All these captioned appeals by the assessee are against the separate orders of the Ld. Commissioner of Income Tax (Appeal), Patna-3 [hereinafter referred to as "the Ld. CIT(A)"] vide order nos. ITBA/APL/S/250/2022-23/1047715787(1), ITBA/APL/S/250/2022-23/1047715732(1), ITBA/APL/S/250/2022-23/1047715692(1), ITBA/APL/S/250/2022-23/1047715648(1), ITBA/APL/S/250/2022-23/104771515603(1), ITBA/APL/S/250/2022-23/1047715565(1), ITBA/APL/S/250/2022-23/1047715438(1), ITBA/APL/S/250/2022-23/1047715787(1) all dated 29.11.2022 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AYs 2010-11 to 2016-17 respectively. Since

grounds are common and facts are identical, we dispose of all these appeals by this consolidated order.

2. Shri Sanjeev Kr. Anwar, Advocate represented on behalf of the assessee and Sm. Rinku Singh, CIT, DR appeared on behalf of the revenue.

3. It was submitted by the Ld. AR that the assessments in the present cases of the assessee were made u/s. 153A r.w.s. 143(3) of the Act. It was the submission that there was a search on the premises of the assessee on 12.08.2015. It was the submission that the returns filed by the assessee consequent to the notice u/s. 153A came to be processed and a building which was under construction by the assessee namely M/s. Sharan Complex was subjected to valuation. It was the submission that the assessee till 31.03.2017 disclosed a value of Rs.3,75,79,867/-. The DVO has valued cost of construction of the building at Rs.4,95,05,725/- for this period. The difference in the valuation was added during the various assessment years during which the construction was done. It was the submission that in the course of search nothing was found to show that the assessee had made undisclosed investment in the building. It was the further submission that the DVO's report was only an estimation and this was not something that was found in the course of search. It was further submitted by the Ld. AR that in the assessment proceedings also the Assessing Officer has not used any incriminating material which has been found in the course of search to show that the assessee had made undisclosed investment in the building. It was the submission that the Hon'ble Supreme Court in the case of Pr. CIT Vs. Abhisar Buildwell Pvt. Ltd. [2013] 454 ITR 212 (SC) have held that as no incriminating material has been used nor found in the course of search which has led the addition, the assessment passed u/s. 153A is liable to be quashed.

4. In reply, the Ld. CIT, DR drew our attention to the question no. 10 of the statement recorded u/s. 132(4), which reads as follows:

“10. When was Sharan Complex constructed? What was the cost of construction and what was the source?”

Ans. The construction of Sharan Complex was started in 2009 and work is still continuing. The cost of construction over the years can be seen from the balance sheet. The source of funding is term loan of Rs.1.44 crore from State Bank of India, unsecured loans from directors and relatives of directors of Rs.21 crore.”

5. It was the submission that in the course of the statement recorded u/s. 132(4), the assessee has been questioned regarding investment in the building. It was the submission that only because the search party felt that there was undisclosed investment in the building, the questions have been raised. It was the submission that the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra) would not apply in the facts of the assessee's case.

6. We have heard the rival contentions. A perusal of the statement recorded u/s. 132(4) as extracted above would clearly show that the assessee has categorically admitted that the investments in the building have been shown in the Balance Sheet of the assessee. There is no statement in the statement u/s 132(4) recorded that the assessee has made undisclosed investment in the building. A perusal of the assessment order also clearly shows that the Assessing Officer has not referred to any seized documents or incriminating material in any manner whatsoever to show that the assessee has used unexplained funds or made unexplained investment in the building. Admittedly, the valuation by the DVO is a subsequent event to the search. Even otherwise the DVO's report is only an estimation. This is not an incriminating material. This being so, in view of the principles laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (Supra) as no incriminating material has been

unearthed in the course of the search in the case of the assessee, the assessment orders passed u/s 153A of the Act for all the impugned assessment years stand quashed.

7. In the result, all the appeals of the assessee are allowed.

Order dictated and pronounced in the open court.

Sd/-

(Rakesh Mishra)
Accountant Member

Sd/-

(George Mathan)
Judicial Member

Dated: 2nd April, 2025

JD, Sr. P.S.

Copy to:

1. The Appellant: M/s. Sharan Complex Pvt. Ltd.
2. Respondent – ACIT, Central Circle, Muzaffarpur
3. CIT(A), Patna-3.
4. Pr. CIT
5. DR, ITAT, Patna
6. Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Patna