

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं. / ITA No.13/Agr/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)

Sh. Akhilesh Pandey 188/189, Line No. 2 Birla Nagar, Gwalior.	बनाम/ Vs.	Income Tax Officer, Gwalior.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADQPP-7494-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. P.K. Sehgal, Adv. – Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Sh. Shailender Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/Date of Hearing	:	19-02-2025
घोषणाकीतारीख /Date of Pronouncement	:	22.04.2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of an order of Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] dated 30-11-2022 in the matter of an assessment framed by Ld. AO u/s 147 r.w.s. 144B of the act on 31-03-2022. The sole grievance of the assessee is confirmation of addition of Rs.20.32 Lacs. Having heard rival submissions and upon perusal of case records, the same is adjudicated as under.

2. The assessee being resident individual is stated to be engaged in business in proprietorship concern namely M/s Dhruv Constructions. The return of income was scrutinized u/s 143(3) on 31-05-2017 accepting the returned income. However, the case was reopened on the ground that the case was subjected to limited scrutiny. One of the issues to be examined

was to verify the increase in capital. It was noted that the capital of Rs.30.93 Lacs was brought in cash for which no supporting documents were furnished. The total increase in capital was for Rs.95.58 Lacs. On this belief of escapement of income, the case was reopened and notice u/s 148 was issued on 30-03-2021. After considering the replies of the assessee, Ld. AO made addition of Rs.20.32 Lacs as unexplained cash credit and framed the assessment. The Ld. CIT(A) confirmed the assessment against which the assessee is in further appeal before us.

3. The Ld. AR has raised pertinent legal issue that the case was reopened beyond 4 years without there being any allegation that the assessee failed to make full and true disclosure of particulars of its income. The Ld. AR also stated that no fresh tangible material came into the possession of Ld. AO to reopen the case of the assessee. We concur with both these arguments. Upon perusal of orders of lower authorities, it could be ascertained that there was no new tangible material before Ld. AO to arrive at conclusion of escapement of income which would vitiate entire proceedings in terms of decision of Hon'ble Supreme Court in the case of **CIT vs. Kelvinator of India Ltd. (320 ITR 561)**. Further, the case was reopened beyond 4 years and there was no allegation that the income had escaped assessment for failure on the part of the assessee to make full and true disclosure of particulars of its income. Considering all these facts, we quash the impugned assessment. Delving into the merits of the case has been rendered mere academic in nature.

4. The appeal stand allowed in terms of our above order.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA