

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

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

1. आयकरअपीलसं./ ITA No.141/Agr/2023
(निर्धारणवर्ष / Assessment Year:2014-15)
&
2. आयकरअपीलसं./ ITA No.142/Agr/2023
(निर्धारणवर्ष / Assessment Year:2015-16)
&
3. आयकरअपीलसं./ ITA No.143/Agr/2023
(निर्धारणवर्ष / Assessment Year:2016-17)
&
4. आयकरअपीलसं./ ITA No.144/Agr/2023
(निर्धारणवर्ष / Assessment Year:2017-18)
&
5. आयकरअपीलसं./ ITA No.145/Agr/2023
(निर्धारणवर्ष / Assessment Year:2018-19)
&
6. आयकरअपीलसं./ ITA No.146/Agr/2023
(निर्धारणवर्ष / Assessment Year:2019-20)
&
7. आयकरअपीलसं./ ITA No.147/Agr/2023
(निर्धारणवर्ष / Assessment Year:2016-17)
&
8. आयकरअपीलसं./ ITA No.148/Agr/2023
(निर्धारणवर्ष / Assessment Year:2017-18)
&
9. आयकरअपीलसं./ ITA No.149/Agr/2023
(निर्धारणवर्ष / Assessment Year:2018-19)
&
10. आयकरअपीलसं./ ITA No.150/Agr/2023

(निर्धारणवर्ष / Assessment Year:2019-20)

M/s Agra Infraland Developers Private Limited 17/2/4, Friends Wasan Plaza, Sanjay Place, Agra.	बनाम/ Vs.	DCIT/JCIT, Central Circle Agra.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AALCA-9430-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Rajendra Sharma, Adv. – Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Sukesh Kumar Jain – Ld. CIT-DR

सुनवाईकीतारीख/ Date of Hearing	:	20-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	25-04-2025

आदेश / ORDER**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2014-15 to 2019-20 arises out of separate orders of learned first appellate authority in the matter of quantum assessments as well as levy of penalties for these years. First, we take up quantum appeal ITA No.141/Agr/2023 for AY 2014-15 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Kanpur-4, [CIT(A)] on 28-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 153A of the Act on 27-09-2021. The grounds as raised by the assessee read as under: -

1.The CIT Appeals has been arbitrarily and unjust while sustaining the addition for Rs.22,00,000/- made by AO treating the amount written to loose papers as an income, no addition is liable to be made, the addition made, on presumption having no supporting evidence in support of such amount is not called for. Addition made by AO sustained by the CIT (Appeals) is liable to be deleted.

2. That the AO has made the addition at Rs. 22,00,000/- treating the alleged money, received in cash by the assessee in lieu of the sale of shops. While sustaining the addition, the CIT Appeals has completely ignored the explanations filed before AO that no such amount has been taken by the assessee as an on money, in absence of any corroborated evidence in support of above addition , amount written in loose papers cannot be treated as an income for the year under consideration, the addition made, relying upon the entries

written on loose papers having no basis, cannot be treated the income for the year under consideration, addition made by AO, sustained by the CIT Appeals is liable to be deleted.

3. That while sustaining the addition, the CIT (Appeals) has completely ignored the facts that the typed loose papers having various entries which the AO has considered as no money taken by assessee, while the other person or the person whose names are written in the loose paper has not accepted the giving of above amount, ignoring the facts as above, without making of any enquiry or having any collaborating evidence, AO has added the same towards the income of the assessee. Addition made, hypothetically, treating the amount written in the loose papers as the income of the assessee for the year under consideration without having any basis, is against the law, no addition is liable to be made, addition made by the AO sustained by the CIT Appeals is liable to be deleted.

4. That the authorities below, while making and sustaining of addition have relied upon some typed loose paper, having most of the entries written therein are undated. Typed loose papers found in the possession of third person cannot be used against the assessee (searched person), as per provisions of section 234 of the Evidence Act being is not the part of books of account as also held by Supreme Court in the case of CBI Vs V C Shukla, after taking into consideration above, the entries written on loose paper, cannot be used against the assessee (searched person). No addition on this score is called for, addition made by the AO, sustained by the CIT (Appeals) is liable to be deleted.

5. That while sustaining the addition, CIT(A) has completely ignored the submissions made before the AO, that the loose paper found is not the part of regular books of account of other person or of searched person prepared by and for the broker projecting the sale of shops, showing maximum amount has received against the booking, so as to give the message showing the demand in market for selling of shops so that the assessee could able to sell the shops easily, entries written as cash, in the loose paper are not the part of regular books of account of assessee or of other person, no addition on the basis of such loose paper could be made, addition made by the AO, sustained by CIT(A) is liable to be deleted.

6. That entries written (B, amount) in the loose paper are rough jotting most of the amount written have no date or year, which proved that entries/amounts written are artificial projected figures, in absence of date and year the amount written can not be accounted for and will not tally with the account of respective buyers, which proved that amount written as (B, amount) is not real amount and are rough, artificial projected jottings not part of booking or of accounts, cannot be considered as real, no addition on this score is liable to be made, addition made by the AO, sustained by CIT (A) is liable to be deleted.

7. That while sustaining the addition, the CIT(Appeals) has completed ignored that the parties of whom the money are mentioned in the loose paper (giving of amount) has not accepted either before the AO of the appellant or before their own AO, in respect of giving of such amount. In absence of collaborating evidence (admission of other person or of various parties), amount written in the loose paper of which maximum entries having no date and year, cannot be used against the assessee for making of addition, no addition is liable to be made, addition made by the AO , sustained by the CIT (Appeals) is liable to be deleted.

8 That while sustaining the addition, the CIT(Appeals) has completed ignored the facts that the most of the person whose names are found in the loose papers for booking of shops alleged to have given on money have cancelled their booking and the entire amount deposited by them are taken back, therefore, question of taking of on money or remaining of booking amount with assessee does not arise, no addition is liable to be made, addition made by the AO, sustained by CIT (A) is liable to be deleted.

9. That while sustaining the addition, made by the AO, treating the amount written in loose paper (alleged booking amount) against the sale of shop, the CIT (Appeals) has completely ignored that most of the bookings are cancelled and entire amount alleged to be given are taken back by the parties, thus there is no booking amount remained with assessee, therefore taking of no money and charging of tax on such is not called for addition made by AO, sustained by CIT (A) is liable to be deleted.

10. That the appellate order of CIT(A), dated 2.08.2023 is bad in law.

2. The Ld. AR advanced arguments on legal grounds and also assailed quantum additions on merits. The Ld. CIT-DR also advanced arguments supporting the orders of lower authorities. Having Heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in real estate. The assessee e-filed its return of income for this year on 06-09-2014 declaring 'Nil' income which was processed u/s 143(1). Pursuant to search action in the case of Saloni Gorup of Cases on 06-02-2019 including at the premises of the assessee, notice u/s 153A was issued to the assessee on 29-02-2020. The assessee e-filed its return of income on 23-03-2020 declaring same income. The same was followed by notices u/s 143(2) and 142(1) calling for various details from the assessee.

3.2 The Ld. AO referred to separate search in the case of Shri Phundi Lal Sharma (one of the directors of the assessee-company) wherein certain incriminating documents were found and seized which were inventorized as Annexure LP-1. The Page Nos. 5 & 6 of this Annexure allegedly contained details of on-money receipts by the assessee from various customers. The Ld. AO alleged that the same were related to shops sold / booked in Corporate Park Project being carried out by the assessee.

3.3 During another search proceedings at F-1, UPEE Tower, Sanjay Place, Agra various documents relating to the assessee were also seized from the office of M/s Mahesh Edible Oil Industries Ltd. The perusal of Page Nos. 96 to 107 of Annexure LP-7 allegedly contained similar type of information revealing that the assessee received cash against booking / sale of shop during financial years 2014-15 and 2015-16. The Ld. AO alleged that the assessee was generating unaccounted money by receiving on-money on sale of shops.

3.4 In statement recorded u/s 132(4) from Shri Phundi Lal Sharma during search proceedings as well as during the course of assessment proceedings, no satisfactory explanation was offered on the same and accordingly, by invoking the presumption u/s 132(4) r.w.s. 292C, Ld. AO proceeded to add the additional receipts u/s 69A.

3.5 The assessee objected to the same on the ground that the proposed addition was on mere presumptions and assumptions without there being any iota of evidence of receipt of on-money by the assessee. The assessee stated that no corroborative evidence was found and the notings were vague, incomplete and inaccurate. In few instances, the negative amount as mentioned in the relevant column was paid through cheques which were considered to be cash column by Ld. AO. Thus, the assessee assailed the conclusion drawn by Ld. AO on the basis of these documents. The assessee denied having received any alleged on-money. Another argument was that out of 48 parties, 18 parties cancelled their booking and the 5 cases had notional figures only. There was no actual sale / registry and therefore, the question of receipt of on-money would not arise. However, Ld. AO rejected the same on the ground that the customer's cancelled the bookings much after the search operation and

therefore, the plea of assessee could not be accepted. Finally, rejecting assessee's submissions, Ld. AO added the amount of Rs.22 Lacs pertaining to this year to the income of the assessee as alleged on-money on these transactions as 'business income' and finalized the assessment.

Appellate Proceedings

4.1 The assessee raised various arguments to assail the impugned addition. It was stated that the assessee recognized revenue on the sale of project by following percentage completion of method of accounting which is recognized method of revenue recognition. It was contended that no incriminating documents was found from the possession of the assessee qua receipt of on-money. Some loose papers were found during search in a car which was owned by another entity viz. M/s Buland Housing Private Ltd wherein separate search proceedings were conducted. The said document was relied upon by Ld. AO without following requisite procedure u/s 153C. Similar separate search proceedings happened at the premises of M/s Mahesh Edible Oil Industries Ltd. wherein some loose papers were seized containing incomplete / improper information without complete description and the same has been likewise relied upon without following required procedure u/s 153C. Annexure A-4/LP-7/Pages 96 to100 was found during search on M/s Mahesh Edible Oil Industries Ltd whereas Annexure B-1/LPA-1/ Page 5 & 6 were found from the car belonging to another entity during search on the director. The same was found from third-party premises and no satisfaction note u/s 153C was shown to have been drawn / recorded. In the present case, loose papers were found and seized from third persons and not from the premises of the assessee. The Ld. AO, therefore, erred in initiating assessment proceedings u/s 153A without

following due procedure of Sec.153C which mandate Ld. AO to record satisfaction note which was absent in the present case.

4.2 The assessee also stated that loose papers do not have any evidentiary value unless there was some corroborative evidence to support the contents of the same. Reference was made to various judicial decisions to support the submissions. The assessee brought out discrepancies in the two documents as referred to by Ld. AO while make the impugned addition and contended that these papers were dumb document having vague / incomplete information and no inference of receipt of on-money could be drawn on the basis of these papers in the absence of any corroborative evidences substantiating the contents thereof.

4.3 The Ld. CIT(A), in para 5.6, rejected the argument on Sec.153C on the ground that Ld. AO relied on seized material which was seized from a car parked in the residential premises of Shri Phundi Lal Sharma, director who was holding 49.5% share in the assessee-company. Another document was found during search on M/s Mahesh Edible Oil Industries Ltd. Shri Dinesh Kumar Rathore who was holding 50% shareholding in assessee-company was main person of that entity. These pages contained similar type of information. Therefore, the relied seized material was found and seized from the premises being controlled by the main stakeholders of the assessee company. Such seized material was utilized in search proceedings of the assessee which were initiated u/s 153A. The Ld. CIT(A) referred to the decision of Hon'ble Apex Court in the case of **M/s Abhisar Buildwell P. Ltd. (149 Taxmann.com 399)** and concluded that if there was some incriminating material in a particular year, assessment u/s 153A was justified in such a case and addition could be

made on these issues as emanating from incriminating material and additions could be made on other issues as well. Finally, other arguments as raised by the assessee were also rejected and the assessment was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee group was searched on 06-02-2019. The regular return of income as filed by the assessee for this year attained finality by processing u/s 143(1) and on the date of search, no assessment proceedings for AY 2014-15 was pending against the assessee. It was thus a case of unabated assessment year. From assessment orders, it also emerges that the allegation of receipt of on-money by the assessee are based on two set of documents. One set of documents was found during search on one of the directors of the assessee company and this set was inventorized as Annexure LP-1 Page Nos.5 & 6. These documents were found from a car which happen to belong to another corporate entity viz. M/s Buland Housing Private Ltd. in whose case also, separate search proceedings were conducted. The other set of documents was found during search proceedings at the premises of another assessee viz. M/s Mahesh Edible Oil Industries Ltd. and the same was inventorized as LP-7, Page Nos. 96 to 107. This entity was also subjected to independent search by the department. It is emerging fact that no incriminating document has been found / recovered from the premises of the assessee which forms the very basis of impugned addition as made by Ld. AO. This being the case, the ratio of decision of Hon'ble Apex Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** would apply to the facts of the present case and the assessment order is, therefore, liable to be

quashed. In this decision, it was held by Hon'ble Apex Court that no addition could be made for completed assessment in the absence of any incriminating material found during the course of search on the assessee.

6. The Hon'ble Court, considering all the earlier decisions holding the field, held as under: -

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. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Approving the decision of Hon'ble Delhi High Court in the case of **Kabul Chawla (380 ITR 573)** as well as the decision of Hon'ble Gujarat High Court in **Saumya Construction (P.) Ltd. (387 ITR 529)**, it was held that in respect of completed assessments / unabated assessments, no addition could be made by Assessing Officer in the absence of any incriminating material found during course of search under section 132 or requisition made under section 132A. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT vs. Continental Warehousing Corporation [2015; 374 ITR 645]** which has been followed in subsequent decision in **CIT V/s Gurinder Singh Bawa (79**

Taxmann.com 398 05/10/2015) which deals with a situation wherein the original return of income was processed u/s 143(1). The present case before us is on similar fact. It was held by Hon'ble Court that in respect of non-abated assessment, the additions are to be strictly based on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search and undisclosed income or undisclosed property discovered during search.

7. We find that similar is the view of Hon'ble Delhi High Court in **Pr. CIT vs. Meeta Gutgutia (82 Taxmann.com 287)** which has primarily followed the decision of **Kabul Chawla (supra)**. We also find that Special Leave Petition (SLP) filed by the revenue against this decision has already been dismissed by Hon'ble Supreme Court on 02.07.2018. The ratio of all these decisions would squarely apply wherein it was held that concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search. The co-ordinate bench of Ahmadabad Tribunal in the case of **ACIT vs. Real Marketing Pvt. Ltd. (ITSS No.128-133/Ahd/2021)**, relying upon the decision of Hon'ble Gujarat High Court in the case of **Soumya Construction (387 ITR 529)**, confirmed quashing of assessment u/s 153A on the ground that there was no seized material in the case of the assessee. Respectfully following all these binding judicial precedents, we would hold that the assessment is liable to be quashed on this very legal ground. The assessee succeeds on this foremost legal ground. To use third-party material against the assessee, proceedings u/s 153C could be initiated for which recording of satisfaction is a mandatory requirement which is not shown to have been fulfilled.

8. Another aspect of the matter is that the perusal of loose sheets Annexure LP-1, Page No.5 & 6 (as placed on record) would show that this document is completely undated. It merely specifies Amount 'A' and Amount 'B' without there being any mention of the dates therein. In document LP-7, there is no date which pertains to AYs 2017-18 to 2019-20. This document is also unsigned document and contain vague / incomplete details only which has been found from a third-party premises. The director, in recorded statement, denied having any knowledge of this document. None of the purchasers have admitted to have paid any cash to the assessee. There is no corroboration of these entries. In fact, most of the bookings have been cancelled and few of the entries are found to be notional entries only. These notings were vague, incomplete and inaccurate. In few instances, the negative amount as mentioned therein was paid through cheques which have wrongly been considered to be cash entries by Ld. AO. It is very clear that there is no corroboration of entries as mentioned in the loose sheets. In the absence of any such concrete corroborative evidence on record, no allegation of receipt of on-money could be made against the assessee and these documents are liable to be treated as mere dumb documents only having no evidentiary value. These sheets lack sufficient details to form an opinion of actual cash receipt by the assessee. The complete details of the transactions could not be deciphered from the same. Under these circumstances, not much credence could be given to these documents to make impugned additions in the hands of the assessee in the absence of corroboration of entries as contained therein.

9. The Hon'ble Karnataka High Court in its recent decision titled as **CIT vs. Sunil Kumar Sharma (159 Taxmann.com 179; 22.01.2024)**,

rendered in the context of Sec.153C, held that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. The Hon'ble Court referred to the decision of Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** as well as another decision in **Common Cause vs. UOI (supra)** while arriving at such a conclusion. The Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)** held that every transaction as recorded in the regular books needs to be independently corroborated and proved when some liability is to be fastened in respect of such transactions. The legal principle as laid down by Hon'ble Supreme Court is that independent corroborative evidence is required in respect of entries in regular books of accounts and the same would apply in the present case. Pertinently, Special Leave Petition (SLP) of revenue against the decision of Hon'ble Karnataka High Court has been dismissed by Hon'ble Supreme Court on 20-08-2024 which is reported as 165 Taxmann.com 846. We are of the opinion that aforesaid principle as laid down by Hon'ble Court would apply to the facts of the present case before us and same strengthens the arguments of Ld. AR. Similarly, Mumbai Tribunal, in the case of **ITO vs. Kranti Impex Pvt. Ltd. (ITA No.1229/Mum/2013)** held that when the seized papers were undated having no acceptable narration and did not bear the signature of any party, they are in the nature of dumb documents having no evidentiary value and could not be taken to be the sole basis for determination of undisclosed income of the assessee. The onus would be on revenue to collect cogent evidences to corroborate the nothings therein. The ratio of these decisions supports the case of the assessee.

10. Upon cumulative consideration of aforesaid facts and reasoning, we would hold that impugned additions as made by Ld. AO, merely on the basis of loose sheets without any corroboration thereof, was not adequate enough to draw adverse inference of cash receipts against the assessee. The assessment stand quashed not only on legal ground but also on merits. Delving into other legal ground on limitation has been rendered academic in nature. The assessee succeeds in this appeal.

11. Facts in AYs 2015-16, 2016-17 & 2017-18 are quite identical. These years are also unabated years. The assessment orders as well as impugned appellate orders are on similar lines. Facts being *pari-materia* the same, our adjudication as for AY 2014-15 shall *mutatis mutandis* apply to all these appeals. The assessee succeeds in AYs 2015-16 to 2017-18. The appeals stand disposed-off accordingly.

12. In AY 2018-19, the assessee filed regular return of income which was processed u/s 143(1). The search has happened on the assessee on 06-02-2019 and this year is abated year since the date to issue notice u/s 143(2) had not expired. However, our adjudication on merits as for AY 2014-15 shall *mutatis mutandis* apply to this year. We find and conclude that the allegation of receipt of on-money by the assessee is not supported by any corroborative evidence on record. Similar are the facts in AY 2019-20. Therefore, the assessee succeeds on merits in both these years. No substantial arguments have been made on limitation in these years. It could not be demonstrated that the assessment orders were barred by limitation. Both the appeals stand partly allowed.

13. The appeals listed at serial nos.7 to 10 for AYs 2016-17 to 2019-20 are penalty appeals assailing levy of penalty u/s 271D. These appeals are consequential to quantum assessment as framed by Ld. AO for these

years. Since we have deleted quantum additions on merits for all the four years, these penalties would not survive and accordingly, the same stand deleted. The assessee succeeds in all these appeals.

14. The appeals listed at Serial Nos. 1 to 6 stand partly allowed. The appeals listed at Serial Nos. 7 to 10 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)
लेखासदस्य /ACCOUNTANT MEMBER

Dated: 25-04-2025

आदेश की प्रतिलिपि अग्रेषित/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