

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE
SHRI SUDHIR KUMAR, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4764/Del/2024
(ASSESSMENT YEAR 2019-20)

Jai Prakash Virmani, Shop No.7, Sector 58, Faridabad, Haryana-121004 PAN-AHRPP4614R (Appellant)	Vs.	DCIT/ACIT, Central Circle, Faridabad. (Respondent)
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Assessee by	Shri M.K. Gupta, CA
Department by	Shri Om Prakash, Sr. DR
Date of Hearing	21/08/2025
Date of Pronouncement	29/08/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon [CIT(A) in short], dated 04.09.2024 in Appeal No.10863/2018-19 passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) for Asst. Year 2019-20.

2. Brief facts of the case are that the survey u/s 133A was carried out at the business premises of the assessee on 23.01.2019. During the course of survey certain loose papers were found and impounded having entries of cash withdrawals and the undisclosed expenditure on constructions of house, besides other documents were also found

and impounded. Based on these entries assessee had offered additional income in the statements recorded during the course of survey of Rs.1,28,34,958/-. Thereafter, vide letter dated 20.01.2020, the assessee retracted partly from the additional income so offered during the survey. The case of the assessee was taken up for scrutiny and assessment was completed wherein the AO observed that income offered by the assessee towards unexplained investment in the construction of house is taxable u/s 69 of the Act. The AO further observed that the provisions of section 115BBE are applicable on the income of Rs.17,66,380/- offered by the assessee on account of undisclosed investment in constructions house.

3. Against this order, the assessee filed appeal before the Ld. CIT(A), who on 04.09.2024 dismissed the appeal of the assessee. Aggrieved by the said order, assessee is in appeal before the Tribunal by taking following grounds of appeal:

1. *That having regard to the facts and circumstances of the case, Ld. CIT has erred in law and in facts in confirming the assessment made by Ld. AO by assessing the income of Rs. 17,66,380/- u/s 69 and charging tax thereon u/s 115BBE of the Act, stating that the said amount was an unexplained investment.*
2. *That the Ld. CIT(A) erred in confirming the addition completely ignoring the facts that investment for house construction of Rs. 17,66,380/- out of income of Rs. 18,78,500/- was duly disclosed in the Audited books of accounts and ITR of assessee. Accordingly investment of Rs. 17,66,380/- is not an unexplained investment rather same is out of disclosed income i.e. issue involved is Assessee offered income of Rs 17,66,380/- as normal income whereas Ld AO taxed said Income of Rs 17,66,380/- under 115BBE as unexplained income.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT has erred in law and in facts in confirming the interest charged by Ld. AO u/s 234B and 234C.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

4. Both the effective grounds of appeal of the assessee are in relation to the action of the AO in holding additional income offered by the assessee of Rs.17,66,380/- towards investment in construction of house property as unexplained investment u/s 69 of the Act and invocation of provisions of section 115BBE of the Act. Thus, both the grounds are taken together for consideration.

5. Heard both the parties at length and perused the material available on record. It is seen that Assessing Officer has accepted the total income declared by the assessee at Rs.1,54,37,310/- in the return of income filed on 31.10.2019. The sole issue is with respect to the investment of Rs.17,63,380/- found noted in the loose papers impounded during the course of survey in the construction of house property which was claimed by the assessee as application out of income offered on account of undisclosed receipts. The assessee drew our attention to the financial statements filed in PB wherein at page 38 copy of Income & Expenditure Account was filed wherein cash receipts of Rs.18,78,500/- were offered for tax and was shown in the credit side as income. He further drew our attention to page 39 of the PB wherein amount of Rs.17,66,380/- is claimed as drawing for house construction. The claim of the assessee is that invest in house

construction of Rs.7,66,380/- was withdrawn from the additional income offered by the assessee at Rs.18,79,500/- which has not been doubted by the AO and the income declared was accepted as such. Therefore, the application of the same in the construction of house cannot be treated as unexplained investment. The provisions of section 69 reads as under:

69. Unexplained investments.

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

5.1 From the perusal of 69, it is clear that there has to be some investment which is not recorded in the books maintained by an assessee; and the assessee offer no explanation about the nature and source of such investment; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the investment may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offer no explanation" means where the assessee offer no proper, reasonable and acceptable explanation as regards the investment not recorded in the books of accounts. The opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances

available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.

5.2 In the instant case, as observed above, the investment in construction of house was duly recorded in the books as drawings out of capital of the assessee. Further the explanation tendered by the assessee was not rebutted by the AO with proper justification. Thus after considering the facts of the case, we find that once the assessee has recoded the additional income in the books of accounts and claimed withdrawal out of such income for making investment in the house property and such additional income is accepted without any doubts by the AO, the investment cannot be treated as unexplained investment u/s 69 of the Act and, further provisions of section 115BBE could not be invoked.

5.3 In view of these facts, we are of view that the action of the AO in treating the said withdrawal for house construction as unexplained investment u/s 69 of the Act. At the most the same could be treated as application out of the income so declared, thus, the provisions of section 69 of the Act and further section 115BBE of the Act are not applicable under these circumstances. We order accordingly. The grounds of appeal No. 1& 2 of the assessee are allowed.

6. Ground of appeal No. 3 is consequential in nature.
7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29.08.2025.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 29.08.2025

PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI