

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: F : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No.2033/Del/2021  
Assessment Year: 2015-16

DCIT,  
Central Circle-06,  
New Delhi.

Vs Shri Jatin Madani,  
F-14/50, Second Floor,  
Model Town-II,  
New Delhi – 110 009.

(Appellant)

(Respondent)

Assessee by : Shri Mayank Patawari, Advocate &  
Shri Aakash Ojha, Advocate  
Revenue by : Ms Monika Singh, CIT-DR  
Date of Hearing : 22.07.2025  
Date of Pronouncement : 29.08.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 23.08.2021 of the Commissioner of Income-tax (Appeals)-24, Delhi (hereinafter referred to as the Id. First Appellate Authority or 'the Ld. FAA' for short) in Appeal No.CIT(A), Delhi-24/10098/2019-20 arising out of the appeal before it against the order dated 30.12.2018 passed u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-6, New Delhi (hereinafter referred to as the Ld. AO).

2. The background of the issue is that a search and seizure action was carried out in Ashish Begwani group of cases and the assessee's assessment was completed u/s 153A r.w.s. 143(3) of the Act, wherein the assessee was allegedly found to be the beneficiary of accommodation entries and additions were made which were deleted by the Id.CIT(A) for which the Revenue is in appeal raising the following grounds:-

*“1. The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.95,43,719/- made on account of the alleged cash commission from facilitation of accommodation entries by holding that no incriminating material was seized nor any statement on oath was recorded in the premises of the assessee during search whereas substantial incriminating material was seized and statements were recorded simultaneously from the premises of the closely connected persons committing the same offence as the assessee did.*

*2. The Ld. CIT(A) erred in law and on facts in deleting the Addition of Rs.1,06,440/- made on account of cash commission earned from cash transportation activity by holding that no incriminating material was seized nor any statement on oath was recorded in the premises of the assessee during search whereas substantial incriminating material was seized and statements were recorded simultaneously from the premises of the closely connected persons committing the same offence as the assessee did.*

*3. The Ld. CIT(A) erred in law and on facts in deleting the Addition of Rs.10,00,000/- made on account of unexplained investment u/s 69 r.w.s. 115BBE of the Act by holding that no incriminating material was seized nor any statement on oath was recorded in the premises of the assessee during search whereas substantial incriminating material was seized and statements were recorded simultaneously from the premises of the closely connected persons committing the same offence as the assessee did.*

*4. The Ld. CIT(A) erred in law and on facts in deleting the Addition of Rs.10,05,00,000/- made on account of loan amounts received by the assessee u/s 68 r.w.s. 115BBE of the Act by holding that no incriminating material was seized nor any statement on oath was recorded in the premises of the assessee during search whereas substantial incriminating material was seized and statements were recorded simultaneously from the premises of the closely connected persons committing the same offence as the assessee did.*

5. *The Ld. CIT(A) erred in law and on facts while adjudicating on all the four additions involved in this case by holding the assessee under consideration as “Third Party” ignoring the fact that the assessee is closely associated/involved with persons from whose premises substantial documentary in the form of incriminating evidence were seized and statements were recorded.*

6. *The Ld. CIT(A) erred in law and on facts in disregarding the fact that when the seized documents from premises of connected persons were sufficient to reopen u/s 148 how can the same be disregarded in 153A proceedings & in the process allowing the assessee to go scot free w.r.t the undisclosed income.*

7. *Without prejudice to the above grounds 1 to 4 the CIT(A) erred in law by not invoking provisions of section 150 of the I.T. Act to issue directions to the Assessing Officer to assessee the escaped income u/s 148 of the Income Tax Act in view of the fact that as on date of issue of notice u/s 153A, the relevant assessment years could have been taken up u/s 148 of the Income Tax Act and that all the ingredients of proviso to section 147 and the provisions of section 149(l)(b) are fulfilled in the facts of this case.*

8. *The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

3. The Id. DR has heavily relied the order of the AO submitting that the statements recorded were rightly relied by the Id. AO. It was submitted that the assertion of the Id.CIT(A) that there was no incriminating evidence is not sustainable.

4. After going through the material on record, we find that in paras 4 to 4.1.10 and in para 4.1.20, the Id.CIT(A) has made the relevant observations which are reproduced below:-

*“4. I have considered the material on record including written submission of the AR of the appellant filed in course of appellate proceedings. I have also perused the assessment order u/s 153A/143(3) of the Income Tax Act, 1961 of the Act.*

4.1.1 In Additional Ground No. 1 admitted above, the appellant has contended that the A.O. erred in law as well as in facts by making aggregate addition on account of alleged cash commission earned from supposed cash transportation activity, alleged commission earned for facilitating accommodation entries and on account of alleged unexplained investments in the assessment orders passed u/s 153A of the IT Act, 1961 though no incriminating document was found during the course of search at his premises, which is against the judgment of the Delhi High Court in the case of CIT v Kabul Chawla [2016] 380 ITR 573(Delhi).

4.1.2 In Additional Ground No. 2 admitted above, the appellant has contended that the AO has grossly erred in law by passing the assessment orders u/s 153A of the Act on the basis of material found in the search of third parties than the appellant.

4.1.3 During appeal proceedings, the appellant submitted that search and seizure proceedings u/s 132 of the Income Tax Act were carried out on Ashish Begwani Group on 22.10.2016 and the premises of Sh. Jatin Madani was also covered. The appellant filed his original return of income u/s 139(1) for AY 2015-16 on 17.08.2015 declaring total income of Rs. 41,700/-. Return in response to notice u/s 153A of Income Tax Act was filed on 28.08.2018 declaring income of Rs. 7,18,420/-. The assessment were completed u/s 153A/143(3) vide order dated 30.12.2018 by making additions of Rs.1,06,440/- on account of cash commission for cash transportation, addition of Rs.95,43,719/- on account of commission earned for facilitating accommodation entries, additions of Rs.10,05,00,000/- on account of accommodation entry and Rs. 10,00,000/- on account of unexplained investment.

4.1.4 The appellant submitted that addition of Rs. 95,43,719/- on account of undisclosed commission from cash transportation activity was made relying on a seized diary found at the premises of Sh. Sukanta Roy and the statement of Sh. Ashish Begwani. During the course of search of the appellant's premises, no incriminating material was found. This fact is also confirmed by the Ld.AO since no additions have been made on the basis of material found during the search of the appellant's premises in the assessment orders passed u/s 153A of the Act. Therefore, in absence of any incriminating material found during the course of search, then no addition can be made in assessment u/s 153A of the Act. The AO had surpassed the scope of assessment u/s 153A as laid down by the Income Tax Act, 1961 and settled by Hon'ble Delhi High Court in the case of Kabul Chawla (Supra).

4.1.5 For making addition on the basis on any material including document found during the course of search at the premises of third party, the procedure laid down u/s 153C of the act is to be followed. However, in

*the instant case, said procedure of law has not been followed by the Ld.AO and therefore the additions cannot be legally sustained. For using any material found from the premises of third party (Sh. Sukanta Roy) during the course of search in assessment proceedings of the appellant, the Ld.AO of the third party was required to record satisfaction as the material belong to the appellant in terms of section 153C of the Act and then was required to proceed as per the provisions of the section 153C of the Act. In the instant case the addition in dispute has been made in the assessment completed u/s 153A of the Act and not u/s 153C of the Act. The Act has provided separate provisions for making assessment in case of material found in the course of the search from the premises of the assessee as well as the material found in the course of search at the premises of the third party. The Assessing officer is required to follow the procedure laid down in the Act for making the assessment and he cannot devise his own procedure for shortcut methods. When the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third party, then provision of section 153C of the act would be applicable and have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings u/s 153A in hand and thereafter, the Assessing Officer is at liberty to take action u/s 153C of the Act in respect of the material found from the premise of third party (Sh. Sukanta Roy). Therefore, since separate search warrant has been issued in the case of the appellant as well as in the case of Sh. Sukanta Roy and the Ld. AO has used the material found in the course of search at the premise of Sh. Sukanta Roy, which is not permitted in view of the express provisions of the law. The additions made by the Ld AO are in violation of the procedure provided in the act and thus void-ab-initio and cannot be sustained. Reliance was placed on recent judgement of Hon'ble Delhi High Court in the case of PCIT (Central) -3 Versus Anand Kumar Jain (HUF) decided on 12.02.2021, ITA 23,26 to 31/2021.*

*4.1.6 The appellant further submitted that addition of Rs. 95,43,719/- in AY 2015-16 on account of commission for facilitating accommodation entries was made on the basis of seized material found from premises of other persons as well as statement on oath of Sh. Ashish Begwani. In view of reasons given above, no addition could be made in his hands in the absence of any incriminating material seized from his premises.*

*4.1.7 I have considered facts of the case as well as written submission of the appellant. I have perused the assessment order. With regard to addition of Rs. 95,43,719/- made by the Assessing Officer on account of undisclosed commission, it is observed that in para 5.1 of the assessment order, the Assessing Officer has relied upon statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016. In para 5.2, the Assessing Officer has relied upon following seized material:*

- i. 941, 2nd Floor, Arjun Nagar, Kotla Mubarakpur, Delhi which is the secret office of Nishant Chhajer (Party No. SO-1).
- ii. A-824, 1st Floor, Shastri Nagar, Delhi which is the residence of Nishant Chhajer (Party No. NR-1)
- iii. L-33, Mahendra Park, Jahangirpuri, Delhi, which is the residence of Sukanta Roy (alias "Bappi") (Party No. BR-1)

4.1.8 It is observed that the above seized material relied upon by the Assessing Officer was seized from the premises of Sh. Nishant Chhajer and Sh. Sukanta Roy. No incriminating material relied upon by the Assessing Officer was seized from the premises of the appellant.

4.1.9 It is held that statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016 was recorded during search in the case of Sh. Ashish Begwani and not during the course of search in the case of the appellant. Similarly, seized material found from the premises of Sh. Nishant Chhajer and Sh. Sukanta Roy was not seized during the course of search in the case of the appellant.

4.1.10 From perusal of the assessment order, it is evident that neither any incriminating material unearthed during course of search in the case of the appellant nor any adverse statement on oath recorded with regard to above addition. The appellant had filed return of income on 29.03.2013 i.e. before the date of search. The time limit for issue of notice u/s 143(2) had expired on 30.09.2013 while the search was conducted on 22.10.2016. Various courts have held that no addition could be made in the hands of the appellant since no incriminating material was unearthed during course of search and the assessment of the appellant stood completed on the date of search.

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 4.1.20. Respectfully following the above decisions of jurisdictional Delhi High Court and ITAT Delhi, it is held that if no incriminating material is found during search of an assessee and incriminating material is found in search conducted in the case of a third party, then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act. Since statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016 as well as seized material found from the premises of Sh. Nishant Chhajer and Sh. Sukanta Roy were not seized during course of search in the case of the appellant, it is held that the Assessing Officer could not have made addition u/s 153A of Income Tax Act and the only legal recourse available to him was to initiate proceedings u/s 153C of Income Tax Act. Hence, addition of Rs. 95,43,719/- is hereby deleted. In view of above discussion, Additional Ground Nos. 1 & 2 of the appeal are hereby allowed with respect to addition of Rs. 95,43,719/-.

4.1 Further, in paras 4.2.1 to 4.2.6, the ld. CIT(A) has held as under:-

*“4.2.1 With regard to addition of Rs. 1,06,440/- made by the Assessing Officer on account of undisclosed commission, it is observed that in para 6.4 of the assessment order, the Assessing Officer has relied upon statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016. In para 6.5, the Assessing Officer has relied upon seized material found from the premises of Sh. Sukanta Roy. No incriminating material relied upon by the Assessing Officer was seized from the premises of the appellant.*

*4.2.2 It is held that statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016 was recorded during search in the case of Sh. Ashish Begwani and not during the course of search in the case of the appellant. Similarly, seized material found from the premises of Sh. Sukanta Roy was not seized during the course of search in the case of the appellant.*

*4.2.5 In para 6.6 of the assessment order, the Assessing Officer has relied upon statement on oath of Sh. Ashish Begwani recorded u/s 131 of Income Tax Act on 23.01.2017. Since this statement on oath was recorded three months after search conducted on 22.10.2016, it is held that this statement does not constitute incriminating material found during the course of search. It is evidence collected during post search investigation and even that too in the case of Sh. Ashish Begwani. Hence, no addition can be made on basis of this statement in view of decision of Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla [2016] 380 ITR 573 (Delhi).*

*4.2.6 Respectfully following the above decisions of jurisdictional Delhi High Court and ITAT Delhi, it is held that if no incriminating material is found during search of an assessee and incriminating material is found in search conducted in the case of a third party, then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act. Return of income was filed by the appellant on 29.03.2013 and last date for issue of notice u/s 143(2) of Income Tax Act expired on 30.09.2013, the assessment stood completed on the date of search. Since statement on oath of Sh. Ashish Begwani recorded u/s 132(4) on 22.10.2016 as well as seized material found from the premises of Sh. Sukanta Roy were not seized during course of search in the case of the appellant, it is held that the Assessing Officer could not have made addition u/s 153A of Income Tax Act and the only legal recourse available to him was to initiate proceedings u/s 153C of Income Tax Act. Moreover, statement on oath of Sh. Ashish Begwani was recorded u/s 131 of Income Tax Act on 23.01.2017 in post search proceedings and the same does not constitute incriminating material found during search. Hence, addition of Rs. 1,06,440/- is hereby deleted. In view of above discussion, Additional*

*Ground Nos. 1 & 2 of the appeal are hereby allowed with respect to addition of Rs.1,06,440/- .*

4.2 In paras 4.4.1 to 4.4.5 and in para 4.4.12, the ld.CIT(A) has held as under:-

*“4.4.1 The Assessing Officer made an addition of Rs. 10,05,00,000/- on account of accommodation entry taken by the appellant. In para 3 of the assessment order, the Assessing Officer has discussed modus operandi of accommodation entry activities. In para 4 of the assessment order, the Assessing Officer has relied upon following evidences:*

*(i) Statement of Jatin Madani recorded u/s 131 on 09.06.2017 where he was confronted with the transactions. In his statement, Jatin Madani confirmed that except 4 transactions totalling Rs. 78,00,000/-, all the transactions were correctly recorded. Jatin Madani stated that the funds received were on account of loans which were arranged by Ashish Begwani for him*

*(ii) Statement of Vikas Kumar Aggarwal recorded u/s 131 on 18.05.2017 in Kolkata where he was confronted with the Excel sheets (seized during the search of Sh Ashish Begwani & Group) and also asked to provide a list of the non-descript companies which were being controlled by him and used to provide accommodation entries. He admitted that he was controlling a large number of companies. Search was conducted at his premises on 15.12.2016 where he admitted being an accommodation entry provider. He submitted list of companies controlled and managed by him through which he was providing accommodation entries.*

*4.4.2 During appeal proceedings, the appellant submitted that the Assessing Officer was not justified in making above addition of Rs. 10,05,00,000/- since no incriminating material relating to this addition was found during course of search in the case of the appellant. Reliance was placed upon following judgments:*

*(i) Hon'ble Delhi High Court in the case of CIT v Kabul Chawla [2016] 380 ITR 573(Delhi)*

*(ii) Hon'ble Delhi High Court in the case of PCIT (Central) -3 Versus Anand Kumar Jain (HUF) decided on 12.02.2021, ITA 23,26 to 31/2021*

*(iii) Mr. Trilok Chand Chaudhary v. ACIT, Central Circle-26, New Delhi, ITA No. 5870/Del/2017, Dated: 20 Aug 2019 (ITAT Delhi) (Annexure-16)*

- (iv) *DCIT v. Shivali Mahajan and others, ITA No. 5585/Del/2015, Dated: 19 Mar 2019 (ITAT Delhi). (Annexure 17) - [Group search was conducted]*
- (v) *DCIT v. Vikas Jain, ITA No. 4075/Del/2014, Dated: 19 Mar 2019. (ITAT Delhi). (Annexure 18)*
- (vi) *Pavitra Realcon (P) Ltd. v. ACIT [2017], ITA No. 3185/Del/2015, Dated: 4 Oct 2017 (ITAT Delhi).*
- (vii) *CIT v. Pinaki Misra [2017], ITA No. 119/2004 and ITA No. 423/2004, Dated: 3 Mar 2017 (Delhi High Court) (Annexure 19)*

*4.4.3 I have considered facts of the case as well as written submissions of the appellant. From perusal of the assessment order, it is observed that addition of Rs. 10,05,00,000/- has been made on the basis of Statement of Jatin Madani recorded u/s 131 on 09.06.2017 as well as statement of Vikas Kumar Aggarwal recorded u/s 131 on 18.05.2017 in Kolkata. The issue that arises for consideration is whether these two statements constitute incriminating material seized during the course of search.*

*4.4.4 Statement of Jatin Madani recorded u/s 131 on 09.06.2017 where he was confronted with the transactions. In his statement, Jatin Madani confirmed that except 4 transactions totalling Rs. 78,00,000/-, all the transactions were correctly recorded. Jatin Madani stated that the funds received were on account of loans which were arranged by Ashish Begwani for him. It is observed that search in the case of the appellant Sh. Jatin Madani was conducted on 22.10.2016. His above statement recorded on 09.06.2017 was in compliance to summons u/s 131 of Income Tax Act and recorded after conclusion of the search. Since this statement of the appellant was recorded during post search investigation after search of the appellant had concluded, it is held that it does not constitute incriminating material found during the course of search.*

*4.4.5 Statement of Vikas Kumar Aggarwal was recorded u/s 131 on 18.05.2017 in Kolkata where he was confronted with the Excel sheets (seized during the search of Sh Ashish Begwani & Group) and also asked to provide a list of the non-descript companies which were being controlled by him and used to provide accommodation entries. He admitted that he was controlling a large number of companies. Search was conducted at his premises on 15.12.2016 where he admitted being an accommodation entry provider. He submitted list of companies controlled and managed by him through which he was providing accommodation entries. It is observed that search in the case of Sh. Vikas Kumar Aggarwal was conducted on 15.12.2016 i.e. after the search of the appellant on 22.10.2016. Moreover, the statement on oath was recorded on 18.05.2017 in compliance to summons u/s 131 of Income Tax Act and recorded after conclusion of his search. It is held that statement of Sh. Vikas Kumar Aggarwal recorded on*

*18.05.2017 does not constitute incriminating material found during the course of search of the appellant since:*

- (i) Search in the case of Sh. Vikas Kumar Aggarwal was conducted on 15.12.2016 i.e. after the search of the appellant on 22.10.2016*
  - (ii) statement on oath of Sh. Vikas Kumar Aggarwal was recorded on 18.05.2017 in compliance to summons u/s 131 of Income Tax Act during post search investigation and recorded after conclusion of his search.*
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*4.4.12 In view of above facts, it is held that statements on oath of Sh. Jatin Madani recorded on 09.06.2017 and Sh. Vikas Kumar Agarwal recorded on 18.05.2017 were recorded during post search investigation and does not constitute incriminating material found during the course of search. Hon'ble Delhi High Court in the case of PCIT Vs Subhash Khattar (ITA No. 60/2017) dated 25.07.2017 held that in the absence of incriminating material in a completed assessment, seized material found in some other search could not be utilized for making addition. In view of above judicial decisions, particularly Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla [2016] 380 ITR 573, it is held that it was not open for the Assessing Officer to assume jurisdiction under section 153A of Income Tax Act de hors any incriminating material. Accordingly, addition of Rs.10,05,00,000/- is hereby deleted and additional Ground Nos. 1 & 2 of the appeal are hereby allowed with respect to addition of Rs.10,05,00,000/”*

5. On going through all relevant findings of the Id.CIT(A) in regard to the grounds which have been raised, there is no doubt left that except for the statements recorded there was no incriminating evidences found during the search. As with regard to ground No.1 arising out of addition of Rs.95,43,719/- made on account of alleged cash commission from facilitation of accommodation entries, certainly, the conclusion is on the basis of assumption alone. The alleged seized material was found from the premises of Nishant Chhajer and Sukanta Roy. In case of addition of Rs.1,06,440/- made on account of cash commission earned from alleged cash transportation activity,

similar is the stance. In regard to addition of Rs.10 lakhs made on account of unexplained investments u/s 69 of the Act, the AO has relied the information received from the Investigation Wing showing investment of the assessee in Sukhija group of business. The assessee's claim was that it was a loan of Rs.10 lakhs. However, the AO considered this loan of Rs.10 lakhs to be not from the funds of the assessee, but, from shell companies. Thus, the Id.CIT(A) is right in holding that as the assessment stood completed on the date of search on the basis of the aforesaid Investigation Wing report, no addition could have been made in the absence of incriminating material being found in the search of the assessee. In regard to addition of Rs.10,05,00,000/- made on account of loan amount received by the assessee u/s 68 of the Act, in para 4.4.1 (as reproduced above) the Id.CIT(A) has observed about the alleged evidences used by the AO and, certainly, they being made statements uncorroborated with any material found during the search of the assessee could not have been relied. Thus, the grounds as raised have no substance. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 29.08.2025.

Sd/-

(AMITABH SHUKLA)  
ACCOUNTANT MEMBER

Dated: 29<sup>th</sup> August, 2025.

dk

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi