

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
DELHI BENCH 'DEHRADUN/' NEW DELHI  
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**I.T.A. No. 70/DDN/2025 (A.Y 2011-12)**

**I.T.A. No. 71/DDN/2025 (A.Y 2012-13)**

**I.T.A. No. 72/DDN/2025 (A.Y 2013-14)**

**I.T.A. No. 73/DDN/2025 (A.Y 2014-15)**

**I.T.A. No. 41/DDN/2025 (A.Y 2015-16)**

SGGR Hospital and Research Centre Private Limited Plot No. 1, Gas Godam Tiraha Kaladhungi Road, Kusumkhara, Haldwani, Uttarakhand <b>PAN: AAKCS3450P</b>	Vs	DCIT/ACIT Central Circe, Income Tax officer, Khurana Compound, Nainital Road, Haldwani, Uttarakhand
<b>Appellant</b>		<b>Respondent</b>
Assessee by	Sh. Kalrav Mehrotra, Adv	
Revenue by	Sh. Amar Pal Singh, JCIT, DR	
Date of Hearing	10/09/2025	
Date of Pronouncement	17/09/2025	

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The captioned appeals are filed by the Assessee against the orders of Ld. Commissioner of Income Tax (Appeal) ('Ld. CIT(A)' for short), Lucknow, dated 08/01/2025 pertaining to Assessment Years 2011-12 to 2015-16 respectively.

2. There is a delay of 18 days in filing the captioned Appeals. Application for condonation of delay have been filed in all the Appeals contending that the Assessee could not file the Appeals on time due to the reason that the Assessee is based in Dehradun and his Authorized Representative who is handling the matter located in Delhi, due to co-

ordination and logistic issues, the Assessee could not file the Appeal on time which caused delay of 18 days in filing the above Appeals. Thus, sought for condoning the delay in filing the Appeals.

3. For the reasons stated in the application for condonation of delay, the delay of 18 days in filing the Appeals are hereby condoned.

4. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out at M/s SSGR Hospital and Research Centre Pvt. Ltd. "Group of cases", Haldwani and other premises on 04.01.2018. As per the A.O., certain Incriminating documents were found and seized during search and seizure operation, which had bearing on determination of taxable income of assessee. A notice u/s 153A of the Act and notices u/s 142(1) of the Act were issued to the Assessee. In response, the assessee filed his written reply wherein the assessee requested to treat original return of income for the years under consideration as return of income filed u/s 153A of the Act.

5. During the course of assessment proceedings, A.O obtained Report of DVO, Kanpur, wherein Fair Market Value of cost of construction of the building situated at Plot No-1, Gas Godam Tiraha, Kaladhungi Road, Kusum Khara, Haldwani was estimated year-wise and a substantial difference was found in the Value so ascertained by

the DVO and the Value declared by the assessee in its Books of Accounts. The assessee was called to explain the difference by the A.O. In response, the assessee company filed its reply which was considered by the Assessing Officer.

6. The Ld. A.O. in the Assessment Order observed that there is substantial difference in the Fair Market Value of the construction as per the report of the DVO, Kanpur and the value shown by the assessee in its Books of Accounts. Therefore, the difference in the Valuation as per the Report and the value shown by the assessee company for the year under consideration was treated as unexplained investment not fully disclosed in books of accounts accordingly, made addition u/s 69B of the Act in all the years under consideration vide assessment orders dated 28/12/2019 pertaining to Assessment Year 2011-12 to 2015-16.

7. Aggrieved by the assessment orders dated 28/12/2019 for Assessment Year 2011-12 to 2015-16, the Assessee preferred the five Appeals before the Ld. CIT(A). The Ld. CIT(A) vide orders dated 08/01/2025, dismissed the Appeals filed by the Assessee. As against the orders dated 18/01/2025 passed by the Ld. CIT(A), the Assessee preferred the captioned Appeals.

8. The Ld. Counsel for the Assessee not pressed the Ground No. 1 of the Assessee, wherein the Assessee has challenged non-mentioning of DIN in the assessment orders as well as notices issued by the A.O. Recording the submission of the Ld. Assessee's Representative, the Ground No. 1 of the Assessee in all the captioned Appeals are dismissed as not pressed.

9. The Ld. Counsel for the Assessee arguing on the Ground No. 5 of the Appeals submitted that the additions have been made by the A.O. in the absence of any incriminating material found during the course of search, therefore, relying on the Judgment of the Hon'ble Supreme Court in the case of PCIT, Central Circle-3 Vs. Abhisar Buildwell (2023) 454 ITR 212 (S.C) dated 12/05/2023, sought for deletion of the additions confirmed by the Ld. CIT(A). The Ld. Counsel further submitted that the A.O. made the addition based on the statement of one of the Directors and based on the DVO report obtained during the assessment proceedings, therefore, the subject additions have made de-hors the incriminating material found during the course of search, thus, prayed for allowing the Appeal.

10. Per contra, the Ld. Departmental Representative submitted that the statement of one of the Directors coupled with the report of the DVO constitutes incriminating material and the Assessee has miserably failed to substantiate his its claim on merits. Thus, relying on the orders of the

Lower Authorities, sought for dismissal of Ground No.5 of the Assessee in all the Appeals.

11. We have heard both the parties and perused the material available on record. The addition has been made based on the statement of one of the Directors who has stated to have invested unaccounted income in the hospital building construction. The Authorized Officer referred the hospital building for valuation to DVO and based on the report of the DVO, it was found that there was difference in the value of investment as disclosed by the Assessee in its books of account and as estimated by the DVO. The Ld. A.O. treated the statement of the Director who has admitted to have invested unaccounted money in construction of hospital building as incriminating material. Further, the A.O. also found that the cost of construction as disclosed in the books of accounts of the Assessee and the cost actually invested in the building has been worked out by the DVO are entirely different. Accordingly, A.O. made the subject additions in all the Assessment Years.

12. It is well settled law that statement recorded u/s 132 of the Act does not constitute incriminating material in the absence of any other corroborative evidence as held in following judicial pronouncements:

- *“PCIT vs. Best Infrastructure Pvt. Ltd., 397 ITR 82 (Delhi) affirmed by the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax 2 Delhi Versus M/S Best Infrastructure (India) Pvt. Ltd. 2018 (6) TMI 971 - SC ORDER, Dated: 14-5-2018*
- *CIT vs. Harjeev Aggarwal, 2016 (3) TMI 329 - DELHI HIGH COURT, Dated: - 10-3-2016*

- *PCIT (Central) - 3 Versus Anand Kumar Jain (HUF), SatishDev Jain, Sajan Kumar Jain, 2021 (3) TMI 8 – DELHIHIGH COURT, Dated: 12-2-2021*
- *Principal Commissioner of Income Tax (Central) -3 Versus PavitraRealcon Pvt. Ltd.DesignInfracon Pvt. Ltd., And Delicate Realtors Pvt. Ltd., 2024 (5) TMI 1408 - DELHI HIGH COURT, Dated: - 29-5-2024*
- *Principal Commissioner of Income Tax, Delhi-20 Versus Ms. Suman Agarwal, 2023 (2) TMI 1116 - DELHI HIGH COURT, Dated: - 28-7-2022.*

13. Further the Hon'ble Supreme Court in the case of AbhisarBuildwell Pvt. Ltd. (supra) held that addition cannot be made in the absence of any incriminating material found during the course of search. The relevant portion of the Judgment of Hon'ble Supreme Court are reproduced as under:-

*“14. In view of the above and for the reasons stated above, it is concluded as under:*

*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 fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

14. By respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), considering the fact that no incriminating materials/documents or any other evidence was found or seized during the course of search proceedings which

resulted in additions against the Assessee in all the Assessment Years, we find merit in Ground No. 5 of the appeals of the Assessee. Accordingly, we quash the assessment orders and the impugned orders of the Ld. CIT(A). Since, we have allowed the Ground No. 5 and quashed the assessment orders, other Grounds of appeals requires no adjudication.

15. In the result, appeals of the Assessee in ITA Nos. 70/DDN/2024, 71/DDN/2024, 72/DDN/2024, 73/DDN/2024, 41/DDN/2024 are allowed.

**Order pronounced in the open court on 17<sup>th</sup> September, 2025**

**SD/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

Date:- 17.09.2025

R.N, Sr.P.S\*

**Copy forwarded to:**

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

**SD/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR**

**ITAT, NEW DELHI**

