

IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM

ITA No. 287/Jodh/ 2023
Assessment Year: 2011-12

The DCIT Central Circle-2, Jodhpur	Vs.	Praveen Balar A-75, Veer Durga Das Nagar Rajasthan
PAN NO: ADFPB5666B		
Appellant		Respondent

ITA No. 288/Jodh/ 2023
Assessment Year: 2013-14

The DCIT Central Circle-2, Jodhpur	Vs.	Sohanraj Balar A-75, Veer Durga Das Nagar, Pali Rajasthan
PAN NO: ABAPB8619F		
Appellant		Respondent

ITA No. 289/Jodh/ 2023
Assessment Year: 2013-14

The DCIT Central Circle-2, Jodhpur	Vs.	Vinesh Kumar Balar A-75, Veer Durga Das Nagar, Pali Rajasthan
PAN NO: AATPB8874C		
Appellant		Respondent

ITA No. 291/Jodh/ 2023
Assessment Year: 2013-14

The DCIT Central Circle-2, Jodhpur	Vs.	Kalawati Devi E-89, Industrial Area, Pali Rajasthan
PAN NO: AAPPD8406Q		
Appellant		Respondent

Assessee by : Shri Amit Kothari, C.A
Revenue by : Smt. Runi Pal-CIT-DR

Date of Hearing : 09/10/2025
Date of Pronouncement : 30/10/2025

आदेश/Order

PER LALIET KUMAR, J.M:

All the above appeals have been filed by the Revenue against the separate orders of Ld. CIT(A), Jaipur-5.

2. Since the issues involved in all the above appeals are common and were heard together therefore they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. We shall take the appeal in ITA No. 289/Jodh/2023 for the Assessment Year 2013-14 as a lead case for discussion.

4. This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Jaipur-5 [CIT(A)], dated 01.06.2023 for the Assessment Year 2013-14. The sole issue raised by the Revenue relates to deletion of addition of Rs.23,80,768/- made by the Assessing Officer on account of alleged bogus Long Term Capital Gain (LTCG) claimed exempt under section 10(38) of the Income Tax Act, 1961.

5. Briefly the facts of the case are that the assessee is an individual from Pali, Rajasthan. A search and seizure operation under section 132 of the Act was carried out in the Balar group of cases on 17.12.2015. Consequent to the centralisation of cases, notice under section 153A was issued requiring the assessee to file returns for six preceding years. In compliance, the assessee filed return of income on 05.09.2016 declaring total income of Rs.6,74,960/-, which was the same figure as in his original return filed under section 139(1) on 28.09.2013.

5.1 The Assessing Officer completed assessment under section 153A read with section 143(3) on 27.12.2017 determining the income at Rs.30,55,730/-. In doing so, he treated the Long Term Capital Gain of Rs.23,80,768/- earned on sale of shares of ACI Infocom Ltd. as unexplained income. According to the Assessing Officer, the abnormal

price rise in the scrip of ACI Infocom was a clear case of penny stock accommodation entry, and therefore, the assessee had converted undisclosed income in the garb of exempt LTCG.

6. Against the order of the Assessing Officer the Department preferred appeal before the CIT(A).

7. It was contended that the assessment for A.Y. 2013–14 had already attained finality before the date of search, and therefore, in terms of section 153A read with judicial precedents, no addition could be made in the absence of incriminating material found during the course of search. It was argued that no document or evidence had been seized from the assessee which would suggest that the LTCG was non-genuine. The assessee also filed supporting evidences such as contract notes, demat account statements, broker confirmations, and bank records to demonstrate that the purchase and sale of shares were genuine transactions routed through recognized stock exchange and through proper banking channels.

7.1 After considering submissions and examining the record, the CIT(A) held that no incriminating document had been brought on record by the Assessing Officer. The addition was based merely on general suspicion regarding penny stock transactions. Relying on the judgments of the Hon'ble Rajasthan High Court in *Jai Steel (India) v. ACIT* and the Hon'ble Delhi High Court in *CIT v. Kabul Chawla*, the CIT(A) deleted the addition on the ground that the AO exceeded jurisdiction under section 153A in respect of a completed assessment.

8. Against the order of the Ld. CIT(A) the Department preferred an appeal before the Tribunal.

9. The Ld. DR supported the order of the Assessing Officer. He submitted that the phenomenal rise in the price of the scrip of ACI Infocom, without any financial basis, was itself sufficient to show that the transaction was not genuine. He contended that the assessee's claim of exempt LTCG was a colourable device. The DR placed heavy reliance on the decision of the Hon'ble Supreme Court in *Sumati Dayal v. CIT* (214 ITR

801) to argue that in tax matters the authorities are entitled to look into surrounding circumstances and apply the test of human probabilities. Just as the Apex Court disbelieved repeated horse race winnings in *Sumati Dayal* on the ground of improbability, here also, the sudden astronomical gain in the shares of a little known company should be disregarded as being contrary to normal human conduct.

10. The Ld. AR, on the other hand, reiterated that the assessment year in question was not pending on the date of search and had already been completed. Therefore, in absence of incriminating material, the AO had no power to disturb the concluded assessment. He further submitted that all transactions were fully verifiable from contract notes, demat statements and banking records. He relied on the judgments of *Jai Steel (India) v. ACIT (259 CTR 281)*, *CIT v. Kabul Chawla (380 ITR 573)*, and the Hon'ble Supreme Court decision in *PCIT v. Abhisar Buildwell Pvt. Ltd. (454 ITR 212)*.

11. We have carefully considered the rival submissions and perused the record. It is an admitted fact that during the course of search no document or material was found suggesting that the assessee's share transactions were non-genuine. The Assessing Officer has not relied upon any seized document but only on general reports of price rigging in penny stocks. This, in our view, cannot be equated with incriminating material found during search as envisaged under section 153A.

11.1 The Hon'ble Supreme Court in *Abhisar Buildwell (supra)* has categorically held that in the absence of incriminating material unearthed during search, relating to the assessment year under consideration, no addition can be made in respect of completed/unabated assessments.

11.2 The Hon'ble Rajasthan High Court in *Jai Steel (India)* and the Hon'ble Delhi High Court in *Kabul Chawla* have categorically held that in respect of completed assessments, additions under section 153A can only be made on the basis of incriminating material unearthed during search. The Hon'ble Supreme Court in *PCIT v. Abhisar Buildwell Pvt. Ltd.* has recently reaffirmed this legal position.

11.3 As regards reliance placed by the DR on the decision in *Sumati Dayal v. CIT (supra)*, we find that the principle of human probability is certainly relevant in appropriate cases. However, the same cannot override the statutory requirement under section 153A that additions must be linked to incriminating material found in search. In the present case, since no such material was found, the application of *Sumati Dayal* does not assist the Revenue.

11.4 Accordingly, we are of the considered opinion that the CIT(A) was correct in deleting the addition made by the AO. We find no infirmity in his order. In view of the above discussion, the appeal filed by the Revenue is dismissed.

12. In the result, appeal of the Revenue is dismissed.

13. Both the parties fairly submitted that the facts and circumstances of other appeals i.e ITA Nos. 287/ Jodh/2023, 288/Jodh/2023, 291/Jodh/2023 are exactly identical to the Appeal in ITA No. 289/Jodh/2023 and similar contentions raised therein may be considered, therefore, our findings and directions given in ITA No. 289/Jodh/2023 shall apply *mutatis mutandis* to other appeal also, which are accordingly dismissed.

14. In the result, all the above appeals filed by the Revenue are dismissed.

(Order pronounced in the open Court on 30/10/2025)

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER
AG

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

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JUDICIAL MEMBER

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आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar