

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”, DELHI**

**BEFORE SH. SUDHIR KUMAR, JUDICIAL MEMBER
AND
SH. MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3441/DEL/2025
Assessment Year: 2014-15

Kiran Mahana Trough legal heir Ved Parkash Mahana,229/39, West Patel Nagar New Delhi-110008 PAN No. AIPPM6862K	Vs.	DCIT, Central circle -27 New Delhi New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ved Jain Advocate Ms. Uma Upadhyay, CA Sh. Aditya Garg, AR
Respondent by	Ms. Sita Srivastava, CIT. DR

Date of hearing:	25/09/2025
Date of Pronouncement:	19/11/2025

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order of the Commissioner Of Income Tax (Appeals)-29, New Delhi [hereinafter referred to as “Ld. CIT(A)”] vide order dated 29.01.2025 arising out of the assessment order dated 31-12-

2019 under section 153A of the Income Tax Act (in short “the Act”) pertaining to A.Y. 2014-15.

2. The appeal is time barred by 56 days. An application with affidavit filed by the assessee to condone the delay. In the application the assessee stated that the appeal was dismissed ex-parte. Unfortunately, the assessee passed away on 15-09-2022 due to heart attack during the pendency of appeal. No effective communication was received to the legal heirs of the assessee. Sufficient reason has been shown to condone the delay by the assessee. Therefore, we condone the 56 days delay in filing the appeal and admit the appeal for adjudication.

3. The assessee raised the following grounds in appeal:

1. On the facts and circumstances of the case the order passed by the learned Commissioner of Income Tax (Appeals) (“CIT(A)” is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in passing the order ex-parte ignoring the fact that non-appearance was on account of reasons beyond the control of the assessee.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that proceedings initiated under section 153A and consequent reassessment order is illegal, invalid void ab initio and without jurisdiction.

4. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in rejecting the contention of the

assessee that the additions made by the AO under section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

5.(i) On the facts and circumstances of the case, the assessment order passed by the AO is illegal and liable to be quashed as the same has been passed violating the mandatory provisions of section 153D of the Act.

(ii) That the purported approval u/s 153D of the Act is illegal, bad in law and also without application of mind.

6. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the assessment order passed under section 153A is illegal and liable to be quashed as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being valid Document Identification Number (DIN) quoted in the body of the order.

7(i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.21,80,000/- made by the AO alleging that assessee has made payment in cash towards purchase of property under section 69B of the Income Tax Act.

(ii) That the above said addition has been confirming ignoring the submission made by the assessee before the AO that no such cash payment was made by the assessee.

(iii) That the above said addition has been confirmed despite the fact that no corroborative evidence has been brought on record by the AO

in support of his allegation that assessee had paid cash towards purchase of property.

8. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the same has been made by the AO without conducting any independent enquiry under section 133(6) / 131 of the Act.

9. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the above said addition despite the same has been made by indulging in surmises and conjectures without bringing on any direct evidence against the assessee, only on the basis of presumption suspicion and assumption.

10. The appellant craves leave to add amend or alter any of the grounds of appeal.

3. The brief facts of the case are that the assessee has filed the return of income declaring income of Rs.2,48,330/- on 13-03-2015 for the A.Y.2014-15. The return of income duly processed u/s 143(1) of the Act. Search and seizure operation was conducted on LARA Group of cases under section 132 of the Act on 16-05-2017, 01-06-2017, and 07-07-2017. A warrant of authorization for search was issued in the name of Ms. Kiran Mahana for her locker No. 681 & 187 at PNB West Patel Nagar and Andhra Bank East Patel Nagar, New Delhi. Assessment jurisdiction over the assessee was transferred from Central Circle -15 Delhi to the Central Circle -27 by the Pr. Commissioner of Income Tax (Central)-2. Notice u/s 153A of the

Act was issued to the assessee to furnish the return of income for the year under consideration. In the response of the notice the assessee filed return of income on 22-11-2019 declaring income of Rs.8,92,310/-. Notices u/s 142(1) along with questionnaire and u/s 143(2) of the Act were issued to the assessee. The Assessing officer completed the assessment after considering the submission submitted by the assessee and made the addition of Rs.21,80,000/- u/s 69B of the Act on account of unexplained investment.

4. Aggrieved the order of the Assessing officer the assessee preferred the appeal before the Ld. CIT(A), who vide his order dated 29-01-2025 dismissed the appeal. Being aggrieved the order of the Ld. CIT(A), the assessee is in appeal before the tribunal.

5. The Ld AR has raised the legal ground no.3. We have heard the parties and perused the material available on record. The crucial question that arises for our consideration was whether the seized documents that was relied upon making the addition towards unexplained investment was found from the locker/ premise of the assessee during the course of search conducted at the LARA Group. This fact is evident from the assessment order that no material/documents were found or seized from the lockers of the assessee. During the search operation no incriminating material was found from the assessee. The assessing officer has made the addition of Rs.21,80,000/- in the

assessment on the basis of the certain documents namely annexure-6(Sale Agreement & Sale deed) which were admittedly found and seized during the course of search conducted in the case of Shri Rahul Mahana at another premises. Ld. AR submitted that there was no pending assessment in the case of assessee at the time of framing the assessment u/s 153A of the Act then the search documents was to be used in the hands of the assessee, the AO could be initiation of separate proceeding on the assessee u/s 153 C of the Act and same cannot be done u/s 153A of the Act.

6. The Ld. AR relied on the decision of the Hon'ble High Court in the case of CIT (Central vs. Kabul Chawala 380 ITR 573 in which the Hon'ble court held that assessment completed under section 153A only if some incriminating material unearthed during the search. Reliance also placed on the following decisions:

- (i) Principal Commissioner of Income Tax, Central -3v. Abhisar Buildwell P. Ltd. 2023 (4) TMI1056 Supreme Court
- (ii) Pr. Commissioner of Income Tax central -2 v, S.S. Con Buil Pvt. Ltd. 2023(8) TMI 685 SC
- (iii)Principal Commissioner of Income Tax Central -1 v. Saroj Sudhir Kothari 2023(8) TMI 686 SC
- (iv) Dy. Commissioner of Income Tax Central Circle 20 v. U.K. Paints (overseas) Ltd. 2023(5) TMI 373 SC

(v))Principal Commissioner of Income Tax Central -1 v. T.S. Pulses Pvt. Ltd. Thr. ITS Director 2023(7) TMI 1217 SC

(vi) Shrikanta Bajaj v. DCIT, ITAT Delhi in ITA NO> 2599/Del/2022 dated 22-05-2024

(vii) Pushpa Devi Bajaj v. DCIT ITAT Delhi in ITA no. 628 /del/2022 dated 02-02-2023

7. Ld. Departmental Representative relied upon the order of the lower authorities. She also submitted that documents recovered during the search proceedings on which basis the assessment was completed. The assessee has not shown the purchase of land in the return of income tax.

8. In the instant case the material on the basis of which the addition has been made was not found from the possession of the assessee, but from the search third party (i.e Shri Rahul Mahana), therefore the assessment should be made under section 153C of the Act not the u/s 153A of the Act. In the case of PCIT v, Anand Kumar Jain HUF reported in 432 ITR 384 the Hon'ble Jurisdictional High Court held as under:

“3 A search was conducted u/s 132 on 18th November, 2015 at the premises of the Assessee (being Anand Kumar Jain (HUF, its coparceners and relatives) as well as at the premises of one Pradeep Kumar Jindal. During the search, statement of Pradeep Kumar Jindal was recorded on oat u/s 132(4) on the same date. Wherein he admitted to providing accommodation entries to Anand Kumar Jain (HUF) and his family members through their Chartered Accountant.

The assessing officer framed the assessment order detailing the modus operandi as to how the cash is provided to accommodation entry operator in lieu of allotment of shares of a private company. Thereafter when the matter was carried up in appeal before the CIT(A), the findings of AO were affirmed. However, in further appeal before the ITAT, the said findings were set aside vide the impugned order.

4. The Revenue is aggrieved with the aforesaid impugned order and has filed the present appeal under section 260A of the Act, proposing the following questions of law:

a. Whether the ITAT is justified in deleting the additions made on account of bogus long term capital gain on the ground that the evidences found during search at the premises of entry provider cannot be the basis for making additions in assessment completed u/s 153A in the case of beneficiary ignoring the vital fact that there was a common search u/s 132 conducted on the same day in both the cases of the entry provider and the beneficiary?

5

6.....

7

8

9.....

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in case of a third party (i.e. search of Pradeep Kumar Jindal) for making the additions in the

hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.

11. Accordingly, the present appeals along with all pending applications, are dismissed.”

6. Respectfully following the said decision, the legal ground of the assessee is allowed and other grounds raised by the assessee are hereby left open.

4. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 19.11.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER
SR BHAATANGGAR
Date:19.11.2025

Sd/-

(SUDHIR KUMAR)
(JUDICIAL MEMBER)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT DELHI