

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

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.2108/Del/2025
(ASSESSMENT YEAR 2012-13)

Shailesh Kumar, C/o Malik & Co. (Advisors & Advocate- Since 1927), 305/7, Thapar Nagar, Meerut-250001, Uttar Pradesh. PAN-ARGPK0548N	Vs.	Asst. CIT (Central) Meerut.
(Appellant)		(Respondent)

Appellant by	Shri Sankalp Malik, Adv., Shri Sanjay Malik, Adv., Shri Murtaza Shuberi, Adv. and Shri Praveen Bansal, CA
Respondent by	Ms. Pooja Swaroop, CIT-DR

Date of Hearing	18.11.2025
Date of Pronouncement	17.12.2025

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-3, Noida ["Ld. CIT(A)", for short], dated 21.08.2024 for Assessment Year 2012-13.

2. Brief facts of the case are that a search and seizure operation was carried out on 24.05.2017 in the residential premises of the assessee and it was covered in the search in the case of H.S. Tewari group of cases. An assessment order came to be passed u/s 142(3)/153A of the Income Tax Act, 1961 ('the Act' for short) by making addition of Rs.12,01,153/- as the assessee failed to prove the source of the investment in construction.

3. Aggrieved by the assessment order dated 20.12.2019, assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 21.08.2024 partly allowed the appeal of the assessee by sustaining the addition of Rs.6,11,153/-.

4. Aggrieved by the order of the CIT(A) dated 21.08.2024, assessee preferred the present appeal. The Ld. Counsel for the assessee arguing on grounds No.1, 4 & 5 of the appeal, submitted that the addition made by the AO is dehors the incriminating material found during the course of search. Therefore, relying on the ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. M/s Abhisar Buildwell (2024) 2 Supreme Court Cases 433*, sought for allowing the appeal.

5. Per contra, the Ld. DR relying on the orders of the lower authorities, submitted that assessee failed to explain the investment on account of construction of property, therefore, the addition has been rightly made by the AO and the CIT(A) has already given partial relief thus, sought for dismissal of the appeal.

6. We have heard both the parties and perused the materials available on record. Ongoing through the assessment order, it is found that the addition has been made dehors incriminating material, the Hon'ble Supreme Court in the case of *Abhisar Buildwell* (supra) laid down the ratio that, the addition by exercising jurisdiction u/s 153A/153C of the Act can be made only when there is incriminating material found during the course of search and in the absence of any incriminating material found during the course of search, the AO cannot exercise the power conferred u/s 153A of the Act. The relevant portion of the judgment of Hon'ble Supreme Court in the case of *Abhisar Buildwell* (supra) are as under:

“31. As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, the AO gets the jurisdiction to assess or reassess the "total income" in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153-A. the assessment or reassessment, if any relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate. As per sub-section (2) of Section 153-A. if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand reviewed with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the "total income" for the entire six years' period/block assessment period. The intention does not seem to be to reopen the completed/ unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153 A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A and during the search any incriminating material is found, even in case of unabated/completed

assessment, the AO would have the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under Section 153-A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under Sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy."

7. In view of the above, since the addition has been made de hors incriminating materials, the same cannot be sustained. Accordingly, we delete the addition made by the AO which has been confirmed by the CIT(A).

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open Court on 17th December, 2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 17.12.2025

Pk/Sr.PS.

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