

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN “SMC” BENCH: DEHRADUN**

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

**[THROUGH VIRTUAL MODE]**

**ITA Nos.90, 95 & 104/DDN/2024**

**[Assessment Years : 2015-16, 2013-14 & 2013-14]**

Sanjay Rawat 18S ATS Colony, Sahastradhara Road, Dehradun, Uttarakhand-248001 <b>PAN-AHOPR5244E</b>	vs	ACIT Central Circle Dehradun, Uttarakhand
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee by</b>	Shri Ajay Wadhwa, Adv. Shri Shivam Garg, Adv. & Shri Raghav Sharma, CA	
<b>Revenue by</b>	Ms. Poonam Sharma, CIT DR	
<b>Date of Hearing</b>	08.12.2025	
<b>Date of Pronouncement</b>	11.02.2026	

**ORDER**

**PER MANISH AGARWAL, AM :**

These three appeals are filed by the assessee against the separate orders dated 16.04.2024, 19.04.2024 & 16.04.2024 of Ld. Commissioner of Income Tax (A)-3, Noida [“Ld. CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the different orders, all dated 17.02.2021 passed u/s 147/143(3) of the Act for Assessment Years 2015-16, 2013-14 & passed u/s 271(1(c) of the Act for AY 2013-14 respectively.

2. At the time of hearing, it was stated that the issues involved in all the captioned appeals are common, interlinked and arising as a result of survey action thus, all these appeals have been heard together and adjudicated by this common order.

3. First we take the appeal of the assessee in **ITA No. 90/DDN/2024** for **Assessment Year 2015-16**.

**ITA No. 90/DDN/2024 [Assessment Year 2015-16]**

4. Brief facts of the case are that assessee was working in SIDCUL in the capacity of DGM and derived income from “Salary” and from “Other Sources” and filed his regular return of income u/s 139(1) of the Act, declaring total income of INR 2,96,090/- on 28.09.2015. A survey operation was conducted in the case of Shri Amit Sharma at 06, Shastri Nagar, Haridwar Road, Rishikesh and M/s. Shiva Electricals , Prop. Shri Amit Sharma, 3-New Friend Colony, Bye Pass Road, Dehradun and during the survey, certain loose papers were found and impounded. As per the impounded materials, it has been noticed that assessee has received payments of INR 1,55,00,000/- for the year under consideration. Thereafter, re-assessment proceedings u/s 147 were initiated after recording the reasons and obtaining the necessary approval from the competent authorities and notice u/s 148 of the Act was issued on 11.03.2020 to the assessee. In response, the assessee filed his return of income of INR 2,96,090/- on 17.04.2020. Thereafter, notice u/s 143(2) and further notices u/s 142(1) alongwith questionnaire were issued to the assessee from time to time. In response assessee filed written explanation and all the requisite details. Thereafter, AO passed the order u/s 147 r.w.s.

143(3) of the Act dated 17.02.2021 at a total income of INR 1,57,96,090/- by making addition of INR 1,55,00,000/- holding the same as unexplained receipts by the assessee.

5. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 16.04.2024, dismissed the appeal of the assessee.

6. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order of CIT(A) is bad both in the eyes of law as well as on facts.*
2. *On the facts and circumstances of the case, Ld. CIT (A) has erred both on facts as well as on the law in affirming the order of the AO which is null; and void for the reason of absence of DIN on the assessment order as mandated by the CBDT Circular No. 19/2019.*
3. *On the facts and circumstances of the case, Ld. CIT(A) has erred in affirming the action of the Ld AO of reopening of the impugned case as the same was done on the basis of wrong facts and borrowed satisfaction without application of independent mind.*
4. *On the facts and circumstances of the case, Ld. CIT(A) has erred in affirming the jurisdiction of the AO under section 147 ignoring that the AO has not followed the mandatory provisions of section 147 to 151 (both inclusive) of the Income Tax Act, 1961.*
5. *On the facts and circumstances of the case, the assessment order as affirmed by the CIT(A) is illegal and void-ab-initio as the approval granted u/s 151 is illegal and mechanical in nature.*
6. *On the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well as on facts in affirming the order of the AO which is in violation of principle of natural justice as no adequate opportunity of being heard and opportunity of cross-examining the persons upon whose statement the AO relied upon was provided to the assessee.*
7. *On the facts and circumstances of the case, Ld. CIT(A) has erred both in law as well as on facts in affirming the order of the AO*

*which has been framed without providing any document/ statement or material which was relied upon by the Ld AO to the assessee.*

8. *Without prejudice to the above, on the facts and circumstances of the case, the order of AO passed u/s 147 and affirmed by CIT(A) is void-ab-initio as in the view of non-obstante provision of section 153C, the AO ought to have invoked section 153C instead of section 147.*
9. *On the facts and circumstances of the case, Ld.CIT(A) has erred both in law as well as on facts in affirming the addition of Rs. 1,55,00,000/- made by the AO only on the basis of dumb documents and without bringing on record any direct evidence/incriminating material against the assessee.*
10. *On the facts and circumstances of the case Ld. CIT(A) while affirming the addition of Rs. 1,55,00,000/- made by the AO has failed to appreciate that statements/documents must be read in whole and not in piecemeal.*
11. *That appellant craves leave to add, alter, modify or to amend any ground of appeal before or at the time of hearing.”*

7. The **Ground of appeal No.2** is not pressed hence, dismissed.

8. In respect of **Grounds of appeal No. 3 to 6** raised by the assessee wherein the assessee has challenged the re-opening of the assessment u/s 148 of the Act, it is stated that sole basis for initiating the proceedings is alleged entries found noted in some loose papers impounded during the course of survey in the case of Shri Amit Sharma. Ld. AR submits that the AO has applied the presumption u/s 132(4A) of the Act in the case of assessee to hold that the entries found noted in the documents impounded from the possession of third person as belonging to the assessee though such presumption is applicable to the person from whose possession, such documents were found/seized. Ld.AR further submits that AO has recorded the “reasons to suspect” and not reason to believe and drew

our attention to the fact that by recording identical reasons, cases of one Shri Ranjan Rajesh Kumar were reopened by invoking the provisions of section 148 of the Act wherein also these entries were alleged as belonging to him. Ld.AR submits that AO was not sure whether the so-called entries were related to the assessee or to some other person. He thus, submits that in terms of order of Hon'ble Supreme Court in the case of ***Chhugamal Rajpal vs S.P.Chaliha 79 ITR 603 (SC)***, such vague and contradictory reasons cannot be equated with reasons to believe and the re-assessment proceedings so initiated, is invalid.

9. Ld.AR further submits that AO has recorded the reasons on the basis of borrowed satisfaction, based on the information received from Investigation Wing in the case of Amit Sharma, Ram Asrey Sharma Group and no independent inquiry or verification was made before reaching to the conclusion that such entries are related to the assessee. Ld.AR further submits that no inquiry/investigation was made before recording the reason from the persons from whose possession, such documents were impounded during survey and for this he drew our attention to the statement of Shri Amit Sharma, recorded during the course of survey wherein when he was confronted with the entries found noted on the alleged documents No. LP 184 & 186, in reply to Q. No. 97 it was stated by him that he does not know about the entries noted in page 186. The relevant questions and answers are at page 144 of the Paper Book filed before us. Ld.AR submits that re-opening done on the basis of borrowed satisfaction without in any manner making any inquiries or investigation thus, the proceedings initiated u/s 148 deserves to be

hold bad in law. For this, he placed reliance on the judgements of Hon'ble Delhi High Court in the case of ***PCIT vs Meenakshi Overseas 2017] 395 ITR 677(Del.)*** and of Hon'ble Calcutta High Court in the case of ***PCIT vs GRD Commodities Ltd. [2023] 149 taxmann.com 223 (Calcutta)***.

10. Ld.AR argued that that it is a well-settled law that the entries found noted in the loose paper /documents, cannot be made the sole basis for re-opening the assessment. For this, he placed reliance on the judgment of Hon'ble Supreme Court in the case of ***CBI vs V C Shukla [1998] 8 SCC 410 (SC)*** and ***Chuharmal v. CIT (1988) 172 ITR 250 (SC)***.

11. Ld.AR stated that ld. PCIT while granting the approval u/s 151 has held that the entries found noted in the loose paper No.184 and 186 found from the possession of Shri Amit Sharma related to the assessee and given his approval for re-opening the case of the assessee. However, while filing the report under Rule 9 before the Hon'ble Settlement Commission, the same PCIT categorically observed that loose paper No.184 and 186 pertained to Shri Rajesh Kumar MD. Therefore, while granting approval u/s 151 of the Act in the case of the assessee, ld. PCIT contradicted from his statement made before the Hon'ble Settlement Commission.

12. In the last, Ld.AR submits that Hon'ble Settlement Commission while disposing the petition filed by Shri Amit Sharma had not taken any contrary view on the entries found noted at pages 184 and 186

and treated the same as business expenditure and applied 10% profit rate in the case of Shri Amit Sharma thus, once it is not treated as gratuitous payment to the assessee, no action should be taken in the hands of the assessee based on such papers. He also drew our attention to the fact that in the case of R. Rajesh Ranjan, the Coordinate Bench of the Tribunal quashed the notice issued u/s 148 of the Act in ITA No.78 & 79/DDN/2023 vide order dated 08.02.2024. It is thus prayed by ld. AR for quashing the notice issued u/s 148 of the Act.

13. On the other hand, Ld.CIT DR for the Revenue has vehemently supported the orders of the lower authorities and stated that in the seized documents bearing No. LP-184 & 186, name of the assessee is appearing and therefore, it could not be said that the said documents do not pertain to the assessee. He further submits that ld. PCIT has recorded his satisfaction after due application of mind on the record available and after considering the facts. Ld. CIT DR submits that the objections raised by the assessee against the reopening of assessment has already been disposed-off by the AO by passing a speaking order and, therefore, the action of the AO in re-opening the case of the assessee u/s 147 of the act is in accordance with provisions of the Act and requested for the confirmation of the same.

14. Heard the contentions of both parties and perused the material available on record. The claim of the assessee is that the AO has proceeded to re-open the assessment solely on the basis of borrowed satisfaction and the information received from the Investigation wing

that during the course of survey in the case of Shri Amit Sharma, loose papers bearing No. LP.184 & 186 were impounded from his possession containing the name of the assessee against certain payments in cash. The AO has made the additions based on the entries found noted in loose papers No. LP.-184 & 186. AT the top of page 186, "Shri Rajesh MD" is mentioned and certain amounts with dates are noted on the left hand and right hand side of the paper, where assessee's name is appearing in the middle side of the page. The AO presumed that the entries at right-hand side of said paper as well one entry of INR 3 Lakhs at page 184 pertained to assessee involving two Assessment Years i.e. 2013-14 and 2015-16. Based on these entries, case of the assessee was reopened for both the Assessment Years. The claim of the assessee is that provisions of section 148 of the Act were invoked on the basis of borrowed satisfaction and no independent verification of fact was made. It is observed that AO has based his satisfaction on the entries found noted in loose papers No. LP 184 & 186 however, in the report filed before the Hon'ble Settlement Commission, the Id. PCOT stated that the entries in these pages pertained to Ranjan Rajesh Kumar who was MD of the company in which assessee was employed. It is thus, observed that PCIT while granting the approval, has taken a divergent stand from what was observed in the case of Ranjan Rajesh Kumar. The Co-ordinate Bench of the Tribunal in the case of **Ranjan Rajesh Kumar in ITA No.78 & 79/DDN/2023** vide order dated **08.02.2024** after appreciating these facts has held that the approval granted by PCIT is mechanical approval. The relevant observations as contained in para 16 of the said order are reproduced as under:-

16. *“In the present case, from the facts and circumstances, it can be safely construed that there were factual mistakes in the reasons recorded and there is no independent application of mind by the A.O. and the approval has been granted on the very same reasons which were earlier discarded by the Office of the JCIT. There is also contradiction with the claim made before the Settlement Commission by the very same PCIT and the reasons recorded. Thus, in our opinion, the approval granted by the Pr. CIT is a mechanical approval.”*

15. The Hon'ble Jurisdictional Delhi High Court in the case of ***PCIT vs Meenakshi Overseas [2017] 395 ITR 677*** has held that proceedings u/s 148 is bad in law since the AO has quashed the reassessment proceedings initiated on the basis of borrowed satisfaction. The relevant Head notes read as under:-

2017 (5) TMI 1428 - DELHI HIGH COURT

Other Citation: [2017] 395 ITR 677, [2017] 82 taxmann.com 300 (Delhi)

**Principal Commissioner of Income Tax-6 Versus Meenakshi Overseas Pvt. Ltd.**

No.- ITA 692/2016

Dated:- May 26, 2017

**Reopening of assessment - reasons to believe - Borrowed satisfaction or independent application of mind** -Held that:- In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.

The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

The Court is satisfied no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 to reopen the assessments for the AYs in question does not satisfy the requirement of law. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue.

16. It is further observed that AO has presumed u/s 132(4a) of the Act that the documents impounded during the course survey at third party are related to the assessee. Here it is relevant to state that statement of Shri Amit Sharma was recorded u/s 131(1A) of the Act

on 11.08.2017 at the time of survey on oath and any reply to question No.97, he was asked to explain the nature of entries found noted at page 186 to which he replied that he does not know both such calculation. The relevant question and answer is reproduced herein below:-

प्रश्न ११ : LP का पृष्ठ 186 दिखाया जा रहा है कृपया इस पर  
विभिन्न शरीरों नाम दिखाए लिखा गया है कृपया  
इसे स्पष्ट करें।  
उ० : इसके calculation के बारे में मुझे पता नहीं है।

17. Based on the entries found in the loose papers No. LP 184 & 186, the AO recorded his presumptions that these pertained to the assessee. The Hon'ble Jurisdictional Delhi High Court in the case of **CIT vs Anil Khandelwal [2015] (5) TMI 86/ 373 ITR 534** has held that the presumption u/s 132(4A) & 292C of the Act is available only in the case of the person from whose possession and control, the documents are found and it is not available in respect of the third party. The relevant head note read as under:-

2015 (5) TMI 86 - DELHI HIGH COURT

**Commissioner Of Income Tax Versus Anil Khandelwal**

No.- ITA 247/2015 &amp; ITA 248/2015

Dated:- April 21, 2015

Addition under Section 69 - ITAT's confirmation of the CIT (A)'s order cancelling the addition - justification to reference to Section 132 (4A) and Section 292C - Held that:- It is quite evident that what materially persuaded the AO to make the addition were the extracts from documents - in the form of handwritten ledger entries seized from Shri S.K. Gupta. These mentioned Shri Khandelwal's name as against which certain amounts were indicated. The other material was the statement of Shri S.K. Gupta recorded on 13.12.2006. Shri S.K. Gupta was further examined on 5.4.2011. The AO took recourse to the presumption permissible under Section 132 (4A) on the basis of these two statements. It is a matter of the record - duly noted by the CIT (A) as well as ITAT that the three companies or business concerns whose monies were supposed to have been reflected in the handwritten ledgers (Bondwell Insurance Brokers, E-Synergy Infosystems Pvt. Ltd. and Paradigm Advertising) were all concerns in which the assessee's family members or relatives were alleged to have been interested.

In the absence of any corroborative evidence found during the search at the premises of the appellant, no adverse inference can be drawn against the appellant merely on the basis of the seized documents as found and seized from the premises of the third party. As has been held in a number of judicial pronouncements relied on by the appellant and extracted in para 2.2.2 hereinabove, presumption u/s 134(4A)/292C is available only in the case of the person from whose possession and control the documents are found and it is not available in respect of a third party. Even in the case of such a person from whose possession and control any incriminating document is found, the presumption u/s 132(4A)/292C is a rebuttable one. Since in the case of the appellant, no corroborative documents or evidence has been found from the control or possession of the appellant, thus hold that the legal presumption as incorporated u/s 132(4A)/292C will not be available to the Assessing Officer in the appellant's case. - Decided in favour of assessee.

18. The assessee since beginning of proceedings have denied having any such transaction nor any corroborative evidence was brought on record by the AO and therefore, the assessee cannot be held liable for the entries noted in the papers seized during the course of third party. The Hon'ble Supreme Court in the case of CBI vs V.C.Shukla (supra) has held that the documents were found from the possession of the third person at the best could be held as corroborative evidence and not the substantive evidence.

19. In view of the above discussion, we find that the AO has recorded the satisfaction before re-opening the assessment on the basis of material supplied by Investigation Wing impounded from the

control and possession of third person in whose case, survey was carried out and further the ld. PCIT has taken contrary view and at one place alleged the said entries related to some other person and in the case of assessee alleged as pertained to him. Thus by respectfully following the order of the coordinate bench in the case of Ranjan Rajesh Kumar (supra) in whose case, under identical circumstances, the hon'ble court has held the reopening as invalid, we hold that the re- of the assessment in the case of the assessee is bad in law and thus, the notice issued u/s 148 is invalid and consequent reassessment order passed u/s 147 of the Act is hereby, quashed.

20. Since we have allowed Grounds of appeal No.3 to 6 raised by the assessee, remaining Grounds of appeal raised by the assessee are not decided being academic in nature.

21. In the result, appeal of the assessee is allowed.

**ITA No.104/DDN/2024 [Assessment Year 2013-14]**

22. As the facts in captioned appeal are similar and addition of INR 01.00 crore is made on the basis of same documents, based on which re-opening for AY 2015-16 in the case of the assessee was done wherein vide order in ITA No.90/DDN/2024, we have already held that the notice issued u/s 148 for re-opening the case as invalid based on mechanical approval granted by ld. PCIT. Therefore, by following the observations made in ITA No.90/DDN/2024 which are ***Mutatis Mutandis*** applicable to the facts of the present case, the

legal grounds taken on the reopening of the case for AY 2013-14 are allowed.

23. In the result, appeal of the assessee is allowed.

**ITA No.95/DDN/2024 [Assessment Year 2013-14]**

24. The captioned appeal is preferred by the assessee against the penalty levied u/s 271(1)(c) of the Act on the addition of INR 01 crore in the order passed u/s 148 of the Act dated 17.02.2021.

25. In assessee's appeal in ITA No.104/DDN/2024 for AY 2013-14, we have already quashed the re-assessment order passed u/s 147 of the Act wherein the present penalty proceedings were initiated therefore, when the vary basis of initiation of proceedings u/s 271(1)(c) has no legs to stand the consequent order passed imposing the penalty u/s 271(1)(c) is invalid and accordingly, deleted.

26. In the result, appeal of the assessee is allowed.

27. In the final result, appeal of the assessee in **ITA No.90/DDN/2024 [Assessment Year 2015-16], 95/DDN/2024 [Assessment Year 2013-14] and 104/DDN/2024 [Assessment Year 2013-14]** are allowed.

Order pronounced in the open Court on 11.02.2026.

**Sd/-**

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

**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

**Date:- 11.02.2026**

*\*Amit Kumar, Sr.P.S\**

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