IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3031/Del./2012
(ASSESSMENT YEAR : 2003-04)

Shri Parvin Juneja, E – 47, Ground Floor, Greater Kailash – II, New Delhi. **(PAN : AAFPJ2179L)**	vs.	DCIT, Central Circle 4 ,

ITA No.3032/Del./2012
(ASSESSMENT YEAR : 2004-05)

Shri Parvin Juneja, E – 47, Ground Floor, Greater Kailash – II, New Delhi. **(PAN : AAFPJ2179L)**	vs.	DCIT, Central Circle 4 ,

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri V.K. Aggarwal, AR
REVENUE BY : Smt. Meenakshi Singh, CIT DR

Date of Hearing : 21.07.2016
Date of Order : 29.07.2016

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Both the aforesaid inter-connected appeals raising identical question of law and facts are taken up together for disposal by way of consolidated order in order to avoid the repetition of discussion.

2. The Appellant, Shri Parvin Juneja (hereinafter referred to as 'the assessee') by filing the aforesaid appeals sought to set aside the impugned order dated 20.04.2012 passed by the Commissioner of Income-tax (Appeals)-XXXIII, New Delhi qua the assessment years 2003-04 & 2004-05 on the grounds inter alia that :-

ITA NO.3031/Del.2012 (AY 2003-04

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A that too without assuming jurisdiction as per law and without recording requisite satisfaction as per law and without obtaining requisite approval as per law and without complying with the other mandatory conditions as envisaged under the Act.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment in violation of principles of natural justice in as much as passing the impugned order by recording incorrect facts and findings and without providing opportunity of cross examination and without confronting the entire adverse material used against the assessee and without providing adequate opportunity of hearing.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.5,00,000/- on account of advance given by the assessee to M/s BRA Associates (P) Ltd.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.3,31,4501- on account of unexplained expenditure u/s 69C of the income Tax Act, 1961.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.40,85,000/- on account of unexplained expenditure u/s 69C of the income Tax Act, 1961.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.49,00,000/- on account of unexplained expenditure u/s 69C of the income Tax Act, 1961.

7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment in violation of principles of natural justice in as much as passing the impugned order by recording incorrect facts and findings and without providing adequate opportunity of hearing.

8. That in any case and any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned additions and framing the impugned assessment order is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the impugned additions/disallowances made by Ld. AO in the assessment order more so when no incriminating material has been found as a result of search warranting impugned additions/disallowances.

10. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B of Income Tax Act, 1961.

11. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of

hearing and all the above grounds are without prejudice to each other."

ITA NO.3032/Del.2012 (AY 2004-05)

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order U/S 153A that too without assuming jurisdiction as per law and without recording requisite satisfaction as per law and without obtaining requisite approval as per law and without complying with the other mandatory conditions as envisaged under the Act.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment in violation of principles of natural justice in as much as passing the impugned order by recording incorrect facts and findings and without providing opportunity of cross examination and without confronting the entire adverse material used against the assessee and without providing adequate opportunity of hearing.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.l,00,000/- on account of unexplained expenditure u/s 69C of the Income Tax Act, 1961 and that too on presumptive basis.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.3,31,450/- made by Ld. AO on account of unexplained expenditure.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.80,50,000/- on account of unexplained expenditure u/s 69C of the income Tax Act, 1961.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment in violation of principles of natural justice in as much as passing the impugned order by recording incorrect facts and findings and without providing adequate opportunity of hearing.

7. That in any case and any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making the impugned additions and framing the impugned assessment order is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the impugned additions/disallowances made by Ld. AO in the assessment order more so when no incriminating material has been found as a result of search warranting impugned additions/disallowances.

9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B of Income Tax Act, 1961.

10. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

2. Briefly stated, the facts of the cases are : on the basis of search conducted at the residential premises of assessee at E- 47, Ground Floor, Greater Kailash – II, New Delhi on 22.09.2005, notices dated 15.05.2006 under section 153A of the Income-tax Act, 1961 (for short 'the Act') qua Assessment Years 2003-04 and

2004-05 were served and thereafter letter dated 21.08.2007 along with notice u/s 142 (1) was also served upon the assessee and in response thereto, assessee filed return declaring income of Rs.13,86,601/- on 14.09.2007 including long term capital gain of Rs.4,72,500/- qua AY 2003-04 and of Rs.10,45,676/- qua AY 2004-05 respectively. Vide notices u/s 142 (1) and 143 (2) along with questionnaire (Annexure A-2), assessee was called upon to file details as to the income from salary, long term capital gain and other sources to which assessee filed reply. Finding explanation furnished by the assessee not satisfactory, Assessing Officer, proceeded to make an addition of Rs.98,16,450/- and Rs.95,27,126/- qua AYs 2003-04 and 2004-05 respectively on the basis of seized document and assessed the total taxable income at Rs.1,12,03,051/- and Rs.95,27,120/- qua AYs 2003-04 and 2004-05 respectively.

3. Assessee carried the matter before the ld. CIT (A) by challenging the assessment orders who has dismissed both the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended inter alia that none of the loose paper recovered from the residential premises of the Omaxe Limited bears his signatures, handwriting, address of the assessee, date, etc.; that none of the paper was recovered from the possession of the assessee; that no house belonging to the assessee has brought on record by the AO as alleged in the loose paper; that the loose paper even does not pertain to the period under assessment; that there is no entry in the books of account of the assessee pertaining to the payment made by cheque in question; that opportunity of being heard has not been provided to the assessee during assessment proceedings and relied upon the judgments cited as **CIT vs. Vivek Aggarwal 2015-TIOL-459-HC-DEL-IT, Bansal Strips (P) Ltd. & Ors. Vs. ACIT (2006) 99 ITD 177 (Del.), Ashwani Kumar vs. ITO (1992) 42 TTJ (Del) 644 and N.K. Malhan vs. DCIT (2004) 91 TTJ (Del) 938.** However, on the other hand, ld. DR relied upon the order passed by AO/ CIT(A).

6. Undisputedly, seized documents pertain to addition of Rs.98,16,450/- qua the AY 2003-04 are available at pages 1 to 4 of the paper book filed by the assessee; that seized documents

pertaining to addition of Rs.95,27,126/- qua the AY 2004-05 are available at pages 1 to 3 of the paper book filed by the assessee; that seized document, available at pages 1 to 4 qua AY 2003-04 and pages 1 to 3 qua AY 2004-05, do not bear name, address, signatures and handwriting of the assessee.

7. In the backdrop of the aforementioned facts and circumstances, undisputed facts and contentions raised by the parties, the first question arises for determination is :-

> ***"as to whether addition made by AO and affirmed by CIT (A) at Rs.98,16,450/- and Rs.95,27,126/- qua AYs 2003-04 and 2004-05 respectively on the basis of loose paper recovered during search and seizure operation conducted at the residential premises of M/s. Omaxe Limited on 22.09.2005 is not sustainable as alleged by the assessee."***

8. Bare perusal of the assessment orders and impugned orders passed by CIT (A) shows that documents seized during search and seizure apparently goes to prove that the assessments in these cases have been made by the AO and affirmed by the CIT (A) on the basis of suspicion, which is not sustainable in the eyes of law for the following reasons :-

i. that the first document lying at page 1 of the paper book on the basis of which addition of Rs.5,00,000/- has been made is categoric enough to disclose that one K.L. Bhatia, S/o Lal Chand Bhatia has taken interest

free loan of Rs.5,00,000/- from the assessee which has been traced to the cheque no.268868 having been paid by M/s. BHA Associates Pvt. Ltd. to M/s. Landmark Estate Pvt. Ltd. being the sale proceeds for purchase of shop in New Friends Colony;

ii. that the AO as well as CIT (A) have rejected the contention merely on the ground that the cheque number given by the assessee is 26888 whereas cheque no relied upon by assessee is 268868. To our mind, this is a typographical error in writing the cheque number which should have been verified by the AO from the debit credit entries maintained by the respective banks. So, this addition is not sustainable;

iii. that addition of Rs.40,85,000/- on the basis of loose document, available at page 3 of the paper book pertaining to AY 2003-04, is an estimate of house construction of 4800 sq.ft. @ Rs.1,100/-. But this paper does not indicate the location of the house under construction nor does this bear the signatures and handwriting of the assessee. More so, no such house has been located by the AO belonging to the assessee having been constructed during the year under

assessment nor does it indicate if the amount was paid by way of cheque or cash. So, this addition is again made by the AO on the basis of suspicion without collecting evidence, hence not sustainable;

iv. that addition of Rs.49,00,000/- on the basis of loose document, available at page 4 of the paper book pertaining to AY 2003-04, is made under the head "Extras not included in basis construction". Again, this paper does not indicate if it pertains to the assessee nor the address and location of the property is mentioned therein nor such property has been located by the AO during the assessment proceedings. The AO has also not brought on record any forensic evidence to prove the handwriting of the loose paper relied upon by him to make the addition, which is exclusively made on the basis of suspicion and guesswork. Even no corroborative material has brought on record by the AO to substantiate the addition nor the CIT (A) has called for any remand report seeking corroborative evidence, if any;

v. that similar is the fate of the addition of Rs.3,31,450/- made by the AO qua AY 2003-04 on the basis of

paper/bill, available at page 2 of the paper book, as it does not bear the name of the assessee being a purchaser nor does AO brought on record any evidence by making verification qua invoice no.162133 if issued by Johnson, wherein it is categorically mentioned that the payment has been received by way of cheque. AO has also not traced the cheque as to making the payment of the aforesaid amount form the issuing agency of the invoice in question;

vi. that even otherwise, the AO has also not brought on record any material to prove that the assessee was in conscious possession of aforesaid documents on the basis of which addition has been made rather vaguely stated that the document/papers were recovered from the house of assessee.

vii. that despite denial of the assessee that the loose papers do not belong to him in any manner, AO invoked the deeming provisions without collecting any corroborative evidence;

viii. that the AO has made addition of Rs.1,00,000/- qua AY 2004-05 as unexplained expenditure u/s 69 of the

Act on the basis of paper/document, available at page 1 of the paper book –B. Bare perusal of the paper shows that the same does not bear the name of the assessee nor it is in the handwriting of assessee nor does it explain the purpose of making and receiving payment. Merely on the basis of this document, addition cannot be made as the same is not substantiated with any evidence;

ix. that the AO has made another addition of Rs.3,31,450/- on the basis of a seized document, available at page 2 of the paper book-B. Perusal of the document, available at page 2 of Paper Book - B, apparently shows that the document contains the figure of Rs.50,000/- stated to have received as rent but again this document is bereft of name of the recipient, description of the rented property and as to who is the payee of the amount in question. Strangely enough, on the basis of seized document/paper showing the amount of Rs.50,000/- the addition of Rs.3,31,450/- has been made by the AO on the basis of whims and fancies and thereafter the ld. CIT (A) have further perpetuated the error committed by AO

without insisting upon any cogent material to sustain the addition;

x. that on the basis of seized document, available at page 3 of paper book – B, AO made an addition of Rs.80,50,000/- by merely stating that the argument addressed by assessee is not acceptable. For the sake of repetition, it is again reiterated that this document is silent as to the payer and payee of the amount in question nor does it disclose that the payment was made by cheque or cash nor it is proved that the document is in the handwriting of assessee or at least bears his signatures. So, we are of the considered view that the addition of Rs.80,50,000/- on the basis of this document is also not sustainable.

9. In view of what has been discussed above, additions made by the AO and affirmed by the ld. CIT (A) vide impugned orders are not sustainable in the eyes of law, hence hereby deleted and consequently, both the appeals filed by the assessee stand allowed.

Order pronounced in open court on this 29th day of July, 2016.

Sd/-	**sd/-**
(J.S. REDDY)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 29th day of July, 2016/TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A), New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.