

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

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 770/DEL/2015 ( A.Y 2007-08)**

Sushila Lakhota S-228, Greater Kailsah-II New Delhi AAAPL0618H <b>(APPELLANT)</b>	Vs	ACIT Central Circle-9, New Delhi <b>(RESPONDENT)</b>
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**ITA No. 938/DEL/2015 ( A.Y 2006-07)**

Subhash Chandra HUF S-228, Greater Kailsah-II New Delhi AABHS0848D <b>(APPELLANT)</b>	Vs	ACIT Central Circle-9, New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. P. C. Yadav &amp; Smt. Manju Yadav, Adv</b>
<b>Respondent by</b>	<b>Sh. S. S. Rana, CIT, DR</b>

<b>Date of Hearing</b>	<b>09.04.2019</b>
<b>Date of Pronouncement</b>	<b>12.04.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These two appeals are filed by the assesseees against the order dated 27/11/2014 passed by CIT(A)-XXVII, New Delhi for Assessment Year 2007-08 & 2006-07 respectively.

2. Though the issues are common in both the appeals we are dealing factual aspect and finding separately in each of the appeal. The grounds of appeal being ITA No. 770/DEL/2015 are as under:-

**ITA No. 770/DEL/2015**

1. *That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 31,35,850/- as income from undisclosed sources which was added by the ACIT, Central Circle-9, New Delhi in as much as the entire addition is unwarranted, based on surmises and conjectures, without any basis, illegal and thus, requires to be deleted in toto.*

2. *That the Ld. CIT (Appeal) has erred in law and on facts in not appreciating that the addition of Rs. 31,35,850/- has been made without any positive & cogent evidence and rather on irrelevant facts.*

3. *That the Ld. CIT (Appeal) has erred in law and on facts in not appreciating that the Ld. AO has not considered the evidences produced by the appellant which clearly establishes that no cash payment was made by the appellant.*

4. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

3. Consequent to the search conducted in Aerens group of cases on 17.08.2011, a search and seizure operation u/s 132 of the I.T. Act, 1961 was also conducted at the premises of the assessee on 10.02.2012. The jurisdiction over the assessee was transferred from the ITO, Ward-23 (2), New Delhi to ACIT, Central Circle-9, New Delhi, issued by the CIT, Delhi-VIII, New Delhi u/s 127 of the Act on 25/09/2013. Subsequently, a notice u/s 153A of the IT Act, 1961 was issued and served upon the assessee on 30.09.2013. In response to the same, the assessee stated that the return filed u/s 139(1) on 27.07.2007 be treated as the return filed in response to notice u/s 153A. Subsequently,

statutory notices u/s 143(2) & 142(1) were issued and served upon the assessee. In response to the same, the Authorized Representative of the assessee attended the proceedings, on the dates fixed for hearing made written and oral statements and furnished the information documents accounts etc called for. Thereupon the assessment was completed in terms of an order u/s 153A read with Section 143(3) at a total income of Rs. 33,19,350/- as against the return income of Rs. 1,33,504/- wherein the Assessing Officer made an addition of Rs. 31,85,850/- on account of undisclosed income. In the course of search proceedings u/s 132 in cases of AEZ Group and excel sheet found in the form of hard disk which was found at the Corporate Office, AEZ Group at 301-303, Bakshi House, Nehru Place, New Delhi which was seized and marked as Annexure-A-27. On perusal of the above details,, the Assessing Officer found that the assessee invested a sum of Rs. 39,35,850/- in purchase of flat/space/land with M/s Nehru Vikas Minar, a concerned of AEZ Group. The Assessing Officer observed that out of the above amount of Rs. 39, 35,850/- a sum of Rs. 7,50,000/- was paid by cheque which is duly reflected in the balance sheet but no deals of the cash payment amounting to Rs. 31,85,850/- were available on record. According to the Assessing Officer no statutory explanation was furnished by the assessee except denial of the cash payment. Since the cash payment was approved on the basis of materials seized, the Assessing Officer opined that the assessee make the above cash payment out of the books of account and treated it as unexplained income of the assessee. However, before added back the same while notice dated 5/2/2014 along with copy of excel sheet. The Assessing Officer gave an opportunity to the assessee to furnish the reply. According to the Assessing Officer, the assessee filed reply narrated the history of the case without any merit to consider and extracted para 5 of the said reply and incorporated in the same in the assessment order as under:-

*“Your honour merely on the basis of an impression which has been drawn by you based on one excel sheet found at the premises of third party no amount of addition can be made to our total income as cash investment in immovable property*

*especially because not one single piece of evidence is available to prove our investment of alleged cash amount in the property.”*

The Assessing Officer further observed that in the same excel sheet the name of one Sh. I.E. Soomar, E-405, Greater Kailash-II, New Delhi also appeared at Sr. No. 39 who admitted that the cash investment of Rs.6.64 crores being made in the said project, and paid the taxes on the same. The Assessing Officer observed that the assessee failed to adduce an iota of evidence in respect of the cash investment of Rs.31,85,850/-. Therefore, in the light of the above discussion and the surrender made by Sh. I.E. Soomar on the basis of similar evidence, the Assessing Officer opined that the cash investment of Rs. 31,85,850/-made by the assessee was not disclosed by assessee in its books of account. Accordingly, the Assessing Officer added the amount of Rs. 31,85,850/-to the income of the assessee as income from undisclosed sources.

4. The Assessing Officer observed that in the same excel sheet name of one Shri I.E. Soomar.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT(A) dismiss the appeal of the assessee.

6. The Ld. AR submitted that the present appeal of the assessee is assessed from order of CIT(A) dated 27/11/2014 and related to Assessment Year 2007-08. Certain dates which goes to the root of matter are as under:-

Date	Event	Remark if any
25.07.2007	Original Return of Income has been filed by the assessee. Total income declared is Rs. 1,33,504/-.	No notice of 143(2) was issued in Stipulated Time and hence the return was not pending.
17.08.2011	A search and seizure action was conducted on the premises of AEZ group.	Alleged document showing investment of Rs 39,35,850/- has been found in this

		search
10.02.2012	A search and seizure action in the case of the assessee was conducted where no incriminating document was found	Submissions before the CIT(A) at page no-12 Para 27(b) of the Act. Finding of CIT(A) that no incriminating document was found in assessee search is at Page No-13-
30.09.2013	Notice under section 153A of the Act was issued and assessee filed its ROI as originally filed	Para 6.1.2

The assessee is an individual, filed her return of income on 27/7/2007. The time limit for issuance of notice u/s 143(2) was expired on 31<sup>st</sup> July, 2008. On 17/8/2011, a search and seizure action has undertaken in the case of AEZ Group during the search. It is alleged that the assessee invest an amount of Rs. 39,35,850/- via cash in Nehru Vikas Minar. Thereafter a search action was also. Thereafter, a search action was also undertaken in the case of assessee on 10.02.2012. However, no evidence supporting the case of revenue vis-a-vis investment in cash in Indrapurarn Habitate Center was found. AO issued notice to the assessee asking the source of alleged investment. During the course of assessment proceedings, the assessee explained that assessee had not invested anything in the alleged property. However, the Assessing Officer relied upon the confession of some I.E. Soomar and made the addition in the hands of the assessee. The Assessee filed appeal before the CIT (A) and argued that no addition can be made as no incriminating material was found in the search of assessee. However, the CIT (A) sustained the addition. The Ld. AR submitted that no addition can be made in absence of any incriminating document unearthed during search. The Ld. AR further submitted that in one similar matter namely in the case of Subhash Khattar a similar addition of Rs 3,21,00,000/- was made by the revenue. In that case also two searches were conducted one at AEZ group on 17.08.2011 and one at Mr Subhash Khattar on 10.02.2012. This addition was also made in respect of

investment in Indrapuram Habitat Center Gziabad and on the basis of confession of Shri I.E.Soomar. The Subhash Khattar filed appeal being ITA No. 902/DEL/2015 before the Tribunal and Tribunal held that no addition under Section 153A of the Act can be made in absence of any incriminating documents found in search. The Tribunal also noted that merely because some third party has surrendered some amount in his hands that does not mean that such surrender binds all other independent assesseees. The Ld. AR submitted that all these aspects have been considered by the Tribunal in its order dated 30.06.2016. The Ld. AR further submitted that order of the Tribunal has now been affirmed by the High Court in ITA no 60 of 2017. The Ld. AR further submitted that while deciding the case of Subhash Khattar, Hon'ble High Court decided the issue after framing the question of law and after taking cognizance of ITAT order evidencing the dates of search and investment in projects of AEZ. The Ld. AR submitted that recently "A" Bench of the Tribunal, Delhi Bench in the case of Asha Rani Lakhotiya, which belongs to same group, following the verdict of Hon'ble Delhi High Court allowed the appeal of the assessee, therein. Thus, the Ld. AR submitted that the issue is squarely covered by the judgment of Hon'ble Delhi High Court and hence no addition can be made in the hands of the assessee.

7. The Ld. DR submitted that during the course of search excel sheet was found in the form of hard disk as Annexure A-32 filed name 'DP Correction sheet. XLS' contained details of sales status of its flat at Indrapuram Habitat Centre. As per these seized documents, the assessee had made payment of Rs.31,85,850/- in cash and Rs. 7,50,000/- by cheque. The Ld. DR further submitted that the assessee fail to discharge its onus for reconciliation of entries in the seized document with its books of accounts as well as return of income as required by provisions of Section 132(4A) and 292C of Income Tax Act. Mere denial of cash payment does not absolve the assessee of the responsibility cast upon her. In the same excel sheet, name of Sh. I.E.Soomar (name appearing at serial no. 39) who admitted the cash invested amounting to

Rs. 6.64 crores and paid taxes on the said amount. As per para 6.1 of order of the CIT(A), annexure A-27 was also seized from corporate office of AEZ Group. Cheque payments made by the Lakhotia family as reflected in the file named 'DP. Correction sheet.xls' and 'Down payment booking details. xls' matched exactly with the cheques paid in the name of each family member of Lakhotia Family. Thus, the Ld. DR submitted various decisions with regard to presumption of entries found recorded in books of account seized during search as per sections 132(4A) & 292C of I.T. Act. The Ld. DR though relied upon these decision could not controvert the decision of the Hon'ble High Court in case of Subhash Khattar.

8. We have heard both the parties and perused all the records. It is pertinent to note that in present case on 17.08.2011, a search and seizure action has undertaken in the case of AEZ group during this search it is alleged that the assessee invested an amount of Rs 39,35,850/-via cash in M/s Nehru Vikas Minar Ltd. Thereafter, a search action was also undertaken in the case of assessee on 10.02.2012. However, no evidence supporting the case of revenue vis-a-vis investment in cash in Indrapurarn Habitate Center was found. AO issued notice to the assessee asking the source of alleged investment. During the course of assessment proceedings, the assessee explained that assessee had not invested anything in the alleged property. However, the Assessing Officer relied upon the confession of some I.E. Soomar and made the addition in the hands of the assessee. The said confession and the said Group search is already taken into account in co-investor's case by this Tribunal. The Tribunal has allowed the appeal of the co-investor which is mentioned in the proceedings of the present assessee (Subhash Khattar Vs. ACIT A.Y. 2006-07 ITA No. 902/Del/2015 order dated 30/06/2016). The Hon'ble Tribunal held in para 8 as under:

*"8. Considering the above submissions, we find that the Learned CIT(Appeals) has upheld the addition in question mainly on the basis of (i) the details*

*written on the hard disc found during the course of search from the premises Aerens Group, wherein payment through cheque and cash have been mentioned against the name of assessee at Sr. No. 32; Shri I. E. Soomar appearing at Sr. No. 39 of the said hard disc had admitted the cash investment of Rs.6.64 crores being made in the said project and had paid the taxes on the same; (iii) the said hard disc cannot be relied upon in part as the assessee has admitted the payment through cheque but denied the cash payment shown therein etc. In our view, a hue addition of Rs.3,21,00,000/- cannot be made in a casual manner without having corroborative evidence in support. It is a prevailing practice in the dealings of immovable properties that cash amount, if any, out of the agreed consideration is paid during the course of execution/registration of the sale deed and admittedly in the present case no sale deed or other mode of transfer has been effected. Merely because name of the assessee is appearing in the said hard disc and amongst other investors are investor Shri I. E. Soomar appearing in the said hard disc has admitted payment of cash amount, cannot be a basis for arriving at a definite conclusion, in absence of corroborative evidence in support, that the assessee had also paid the amount of Rs.3,21,00,000/- in cash. The Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Prem Prakash Nagpal (Supra) wherein Assessing Officer had made certain additions u/s 69 of the Act on the basis of the documents found during search at a place of third party which indicated that assessee had purchased a plot by paying consideration in cash, it was held by the Hon'ble High Court that the Assessing Officer could not prove by evidence that said documents belonged to the assessee and that any on money transaction had taken place. The documents at the best only showed tentative/projected purchase consideration held the Hon'ble High Court. Again, in the case of CIT Vs. Alpha Impact Pvt. Ltd (Supra), the Hon'ble Bombay High Court has been pleased to hold that addition to assessee's income in respect of additional sales consideration received in sale of land merely on the basis of Email recovered during the course of search action at the premises of another person*



*and there being no independent material available supporting such addition, was not justified. Besides, we also find substance in the contention of the Learned AR that assessment u/s153A of the act in absence of incriminating material found during the course of search at the premises of the assessee and in absence of abatement of assessment on the date of search, cannot be made in the present case as per the above cited decisions including the decision of Hon'ble Jurisdictional Delhi High Court in the case of CIT vs Kabul Chawla (Supra). Under the circumstances, we are of the view that the Assessing Officer was not justified in assuming jurisdiction u/s 153A and authorities below are also not justified in making and sustaining the addition in question merely on the basis of a hard disc found during the course of search at the premises of Aerens Group without any corroborative evidence in support. We thus hold that the assessee/appellant succeeds on both the above issues, i.e. on validity of assumption of jurisdiction u/s153A and the addition in question. The grounds involving the above issues are accordingly allowed.*

*9. In result, appeal is allowed."*

The same was confirmed by the Hon'ble Delhi High Court vide order dated 25/7/2017. Thus, the issue raised in the present appeal is already covered in Co-investors' case.

9. In result, appeal of the assessee being ITA No. 770/DEL/2015 is allowed.

10. Now we are taking up ITA No. 938/Del/2015. The grounds of appeal are as under:

*1. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 25,20,884/- as income from undisclosed sources which was added by the ACIT, Central Circle-9, New Delhi in as much as the entire addition is unwarranted, based on surmises and conjectures, without any basis, illegal and thus, requires to be deleted in toto.*

2. *That the Ld. CIT (Appeal) has erred in law and on facts in not appreciating that the addition of Rs. 25,20,884/- has been made without any positive 86 cogent evidence and rather on irrelevant facts.*

3. *That the Ld. CIT (Appeal) has erred in law and on facts in not appreciating that the Ld. AO has not considered the evidences produced by the appellant which clearly establishes that no cash payment was made by the appellant.*

4. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

11. Consequent to the search conducted in Aerens group of cases on 17.08.2011, a search and seizure operation u/s 132 of the Income Tax Act, 1961 was also conducted at the premises of the assessee on 10.02.2012. The case of the assessee was centralized vide order issued by the Commissioner of Income Tax, Delhi-VIII, New Delhi, u/s 127 of the Income Tax Act, 1961 on 25.09.2013 and the jurisdiction over the assessee's case was assigned to the present Assessing Officer, Central Circle- 9, New Delhi. Thereafter, a notice u/s 153A of the IT Act, 1961 was issued and served upon the assessee on 30.09.2013. In response to the same, it was stated that the return filed u/s 139(1) on 25.07.2006 be treated as the return filed in response to notice u/s 153A. Subsequently, statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. In response to the same, the Authorized Representative of the assessee attended the assessment proceedings and furnished the requisite information, documents, accounts etc. Thereupon, the assessment was completed in terms of an order u/s 153A read with section 143(3) at a total income of Rs.26/19/064/-/- as against the returned income of Rs.98,180/-, wherein the Assessing Officer made an addition of Rs.25,20,884/- on account of undisclosed income. In the course of search proceedings u/s 132 in cases of AEZ group, an excel sheet in the form of hard disk was found at the corporate office of AEZ group at 301-303, Bakshi House, Nehru Place, New Delhi which was seized and marked as annexure A-32. On perusal of the above details the Assessing Officer found that the assessee invested a sum of Rs.32,70,884/- for purchase of flat / space / land with M/s Indirapuram

Habitat Centre, a concern of AEZ group. The Assessing Officer observed that out of the above amount of Rs.32,70,884/- the assessee paid a sum of Rs.7,50,000/- by cheque which was duly reflected the balance sheet but no details of the cash payment amounting to Rs.25,20,884/- were available record. According to the Assessing Officer no satisfactory explanation was also furnished by the assessee except denial of the cash payment. Since the cash payment was proved on basis of material seized, the Assessing Officer opined that the assessee made the above cash payment out of the books of account and treated it as unexplained income of the assessee. However, before adding back the same, vide notice dated 5.02.2014, the Assessing Officer gave an opportunity to the assessee to furnish a reply. According to the Assessing Officer, the assessee filed reply narrating the history of the case without any merit to considered and extracted para 5 of the said reply and incorporated in the same in the assessment order as under:

*“Your honour merely on the basis of an impression which has been drawn by you based on one excel sheet found at the premises of third party no amount of addition can be made to our total income as cash investment in immovable property specially because not one single piece of evidence is available to prove our investment of alleged cash amount in the property.”*

The Assessing Officer further observed that in the same excel sheet the name of one Sh. I.E. Soomar, E-405, Greater Kailash-II, New Delhi also appeared at Sr. No. 39 who admitted that the cash investment of Rs.6.64 crores being made in the said project, and paid the taxes on the same. The Assessing Officer observed that the assessee failed to adduce an iota of evidence in respect of the cash investment of Rs.25,20,884/-. Therefore, in the light of the above discussion and the surrender made by Sh. I.E. Soomar on the basis of similar evidence, the Assessing Officer opined that the cash investment of Rs.25,20,884/- made by the assessee was not disclosed by assessee in its books of account. Accordingly, the Assessing Officer added the amount of Rs.25,20,884/- to the income of the assessee as income from undisclosed

sources.

12. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

13. The Ld. AR submitted that the present appeal of the assessee is arising from the order of CIT(A) dated 27.11.2014 and relates to AY 2006-07. The assessee is a HUF and filed its original return on 25.07.2006. The return filed by the assessee was selected for scrutiny and then assessment under section 143(3) was framed. On 17.08.2011, a search and seizure action has undertaken in the case of AEZ group during this search it is alleged that the assessee invested an amount of Rs 32,70,884/- via cash in M/s Indrapuram Habitat Center Pvt. Ltd. Thereafter, a search action was also undertaken in the case of assessee on 10.02.2012. However, no evidence supporting the case of revenue vis-a-vis investment in cash in Indrapuram Habitate Center was found. AO issued notice to the assessee asking the source of alleged investment. During the course of assessment proceedings, the assessee explained that assessee had not invested anything in the alleged property. However, the Assessing Officer relied upon the confession of some I.E. Soomar and made the addition in the hands of the assessee. The Assessee filed appeal before the CIT (A) and argued that no addition can be made as no incriminating material was found in the search of assessee. However, the CIT (A) sustained the addition. The Ld. AR submitted that no addition can be made in absence of any incriminating document unearthed during search. The Ld. AR further submitted that in one similar matter namely in the case of Subhash Khattar a similar addition of Rs 3,21,00,000/- was made by the revenue. In that case also two searches were conducted one at AEZ group on 17.08.2011 and one at Mr Subhash Khattar on 10.02.2012. This addition was also made in respect of investment in Indrapuram Habitat Center Gziabad and on the basis of confession of Shri I.E.Soomar. The Subhash Khattar filed appeal being ITA No. 902/DEL/2015 before the Tribunal and Tribunal held that no

addition under Section 153A of the Act can be made in absence of any incriminating documents found in search. The Tribunal also noted that merely because some third party has surrendered some amount in his hands that does not mean that such surrender binds all other independent assesseees. The Ld. AR submitted that all these aspects have been considered by the Tribunal in its order dated 30.06.2016. The Ld. AR further submitted that order of the Tribunal has now been affirmed by the High Court in ITA no 60 of 2017. The Ld. AR further submitted that while deciding the case of Subhash Khattar, Hon'ble High Court decided the issue after framing the question of law and after taking cognizance of ITAT order evidencing the dates of search and investment in projects of AEZ. The Ld. AR submitted that recently "A" Bench of the Tribunal, Delhi Bench in the case of Asha Rani Lakhotiya, which belongs to same group, following the verdict of Hon'ble Delhi High Court allowed the appeal of the assessee, therein. Thus, the Ld. AR submitted that the issue is squarely covered by the judgment of Hon'ble Delhi High Court and hence no addition can be made in the hands of the assessee.

14. The Ld. DR submitted that during the course of search, excel sheet was found in the form of hard disk as X annexure A-32 file name 'DP.Correction sheet.xls' containing details of sales status of its flat at Indirapuram Habitat Centre. As per this seized document, the assessee had made payment of Rs. 25,20,884 in cash & Rs. 7,50,000 by cheque. The Ld. DR further submitted that the assessee failed to discharge its onus for reconciliation of entries in the seized document with its books of account as well as return of income as required by provisions of section 132(4A) and 292C of Income Tax Act. Mere denial of cash payment does not absolve the assessee of the responsibility cast upon it. In the same excel sheet, name of Sh. I.E.Soomar (name appearing at serial no. 39) who admitted the cash invested amounting to Rs. 6.64 crores and paid taxes on the said amount. As per para 6.1 of order of the CIT(A), annexure A-27 was also seized from corporate office of AEZ Group. Cheque payments made by the Lakhotia family as reflected in the file named 'DP.Correction

sheet.xls' and 'Down payment booking details. xls' matched exactly with the cheques paid in the name of each family member of Lakhotia Family. Thus, the Ld. DR submitted various decisions with regard to presumption of entries found recorded in books of account seized during search as per sections 132(4A) & 292C of I.T. Act. The Ld. DR though relied upon these decisions could not controvert the decision of the Hon'ble High Court in case of Subhash Khattar.

15. We have heard both the parties and perused all the records. It is pertinent to note that in present case on 17.08.2011, a search and seizure action has undertaken in the case of AEZ group during this search it is alleged that the assessee invested an amount of Rs 32,70,884/-via cash in M/s Indrapurarn Habitat Center Pvt. Ltd. Thereafter, a search action was also undertaken in the case of assessee on 10.02.2012. However, no evidence supporting the case of revenue vis-a-vis investment in cash in Indrapurarn Habitat Center was found. AO issued notice to the assessee asking the source of alleged investment. During the course of assessment proceedings, the assessee explained that assessee had not invested anything in the alleged property. However, the Assessing Officer relied upon the confession of some I.E. Soomar and made the addition in the hands of the assessee. The said confession and the said Group search is already taken into account in co-investor's case by this Tribunal. The Tribunal has allowed the appeal of the co-investor which is mentioned in the proceedings of the present assessee (Subhash Khattar Vs. ACIT A.Y. 2006-07 ITA No. 902/Del/2015 order dated 30/06/2016). The Hon'ble Tribunal held in para 8 as under:

*"8. Considering the above submissions, we find that the Learned CIT(Appeals) has upheld the addition in question mainly on the basis of (i) the details written on the hard disc found during the course of search from the premises Aerens Group, wherein payment through cheque and cash have been mentioned against the name of assessee at*

*Sr. No. 32; Shri I. E. Soomar appearing at Sr. No. 39 of the said hard disc had admitted the cash investment of Rs.6.64 crores being made in the said project and had paid the taxes on the same; (iii) the said hard disc cannot be relied upon in part as the assessee has admitted the payment through cheque but denied the cash payment shown therein etc. In our view, a hue addition of Rs.3,21,00,000/- cannot be made in a casual manner without having corroborative evidence in support. It is a prevailing practice in the dealings of immovable properties that cash amount, if any, out of the agreed consideration is paid during the course of execution/registration of the sale deed and admittedly in the present case no sale deed or other mode of transfer has been affected. Merely because name of the assessee is appearing in the said hard disc and amongst other investors are investor Shri I. E. Soomar appearing in the said hard disc has admitted payment of cash amount, cannot be a basis for arriving at a definite conclusion, in absence of corroborative evidence in support, that the assessee had also paid the amount of Rs.3,21,00,000/- in cash. The Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Prem Prakash Nagpal (Supra) wherein Assessing Officer had made certain additions u/s 69 of the Act on the basis of the documents found during search at a place of third party which indicated that assessee had purchased a plot by paying consideration in cash, it was held by the Hon'ble High Court that the Assessing Officer could not prove by evidence that said documents belonged to the assessee and that any on money transaction had taken place. The documents at the best only showed tentative/projected purchase consideration held the Hon'ble High Court. Again, in the case of CIT Vs. Alpha Impact Pvt. Ltd. (Supra), the Hon'ble Bombay High Court has been pleased to hold that addition to assessee's income in respect of additional sales consideration received in sale of land merely on the basis of Email recovered during the course of search action at the premises of another person and there*

*being no independent material available supporting such addition, was not justified. Besides, we also find substance in the contention of the Learned AR that assessment u/s153A of the act in absence of incriminating material found during the course of search at the premises of the assessee and in absence of abatement of assessment on the date of search, cannot be made in the present case as per the above cited decisions including the decision of Hon'ble Jurisdictional Delhi High Court in the case of CIT vs Kabul Chawla (Supra). Under the circumstances, we are of the view that the Assessing Officer was not justified in assuming jurisdiction u/s 153A and authorities below are also not justified in making and sustaining the addition in question merely on the basis of a hard disc found during the course of search at the premises of Aerens Group without any corroborative evidence in support. We thus hold that the assessee/appellant succeeds on both the above issues, i.e. on validity of assumption of jurisdiction u/s153A and the addition in question. The grounds involving the above issues are accordingly allowed.*

9. *In result, appeal is allowed."*

The same was confirmed by the Hon'ble Delhi High Court vide order dated 25/7/2017. Thus, the issue raised in the present appeal is already covered in Co-investors' case.

16. In result, appeal of the assessee being ITA No. 938/DEL/2015 is allowed.

17. In result, both the appeals are allowed.

**Order pronounced in the Open Court on 12<sup>th</sup> April, 2019.**

**Sd/-**  
**(T. S. KAPOOR)**  
**ACCOUNTANT MEMBER**

Dated: 12/04/2019  
R. Naheed

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**



Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	09.04.2019
Date on which the typed draft is placed before the dictating Member	10.04.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	12.04.2019
Date on which the final order is uploaded on the website of ITAT	12.04.2019
Date on which the file goes to the Bench Clerk	12.04.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	