

Shri Om Sai Infrapromoters Pvt. Ltd vs Dcit, Central Circle 03, New Delhi

ID: F2J-C-2332 Court: Delhi High Court
Case: ITA 163/2025 Date: 2025-05-22

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[Cites 11, Cited by 0]

Delhi High Court Shri Om Sai Infrapromoters Pvt. Ltd vs Dcit, Central Circle 03, New Delhi on 22 May, 2025 Author: Vibhu Bakhru Bench: Vibhu Bakhru \$~67 to 73 & 82 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: 22.05.2025 + ITA 163/2025 SHRI OM SAI INFRAPROMOTERS PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND + ITA 164/2025 SHRI OM SAI INFRAPROMOTERS PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND

+ ITA 165/2025 SHRI OM SAI INFRAPROMOTERS PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND + ITA 166/2025 SHRI SAI OM INFRAVISION PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND + ITA 167/2025 SHRI SAI OM INFRAVISION PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND + ITA 168/2025 SHRI SAI OM INFRAVISION PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent

Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 1 of 13 16:51:00 AND + ITA 169/2025 SHRI OM SAI INFRAPROMOTERS PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent AND + ITA 172/2025 SHRI SAI OM INFRAVISION PVT. LTD.Appellant versus DCIT, CENTRAL CIRCLE 03, NEW DELHIRespondent Present: Mr Aseem Chawla, Senior Advocate with Mr Jasmeet Singh, Mr Maninder Singh Hura, Mr Saif Ali, Mr Pushpendra S. Bhadoriya, Mr Pranav Menon, Ms Pratishtha Chaudhary, Ms Sejal Garg, Ms Mamata Chakrobarty, Ms Vijay Sharma and Mr Saurav, Advocates for the appellant.

Mr Ruchir Bhatia, senior standing counsel for Revenue with Mr Anant Mann, Advocate.

CORAM: HON'BLE MR. JUSTICE VIBHU BAKHRU HON'BLE MR. JUSTICE TEJAS KARIA VIBHU BAKHRU, J. (ORAL)

CM APPL. 31538/2025 in ITA 163/2025 CM APPL. 31540/2025 in ITA 164/2025 CM APPL. 31545/2025 in ITA 165/2025 CM APPL. 31548/2025 in ITA 166/2025 CM APPL. 31549/2025 in ITA 167/2025 CM APPL. 31551/2025 in ITA 168/2025 CM APPL. 31556/2025 in ITA 169/2025 CM APPL. 31809/2025 in ITA 172/2025

1. Exemptions are allowed, subject to all just exceptions.
2. The applications are disposed of. Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 2 of 13 16:51:00 ITA 163/2025 ITA 164/2025 ITA 165/2025 ITA 166/2025 ITA 167/2025 ITA 168/2025 ITA 169/2025 ITA 172/2025
3. Issue notice.
4. The learned counsel appearing for the Revenue accepts notice.
5. The appellants have filed the present appeal under Section 260A of the Income Tax Act, 1961 [the Act] impugning common orders dated 15.01.2025 [impugned order] passed by the Income Tax Appellate Tribunal [ITAT], which dealt with a set of eight appeals. The said appeals were preferred by the two Assesseees in respect of four assessment years [AYs] being 2014-15 to 2018-19. A tabular statement setting out the relevant details of the appeals and the additions sustained by the learned ITAT are set out below: Matter Particulars ITA Nos. Assessment Years Additions sustained by ITAT Shri Sai Om 166/2025 2014-15 ■15,00,000 Infravision Pvt. 168/2025 2015-16 ■50,00,000 Ltd. vs. DCIT, 167/2025 2017-18 ■16,00,000/-

Central Circle-03, 172/2025 2018-19 ■5,00,000 New Delhi

Shri Om Sai 164/2025 2014-15 ■15,00,000/- Infrapromoters Pvt. 169/2025 2015-16 ■50,00,000/- Ltd. vs. DCIT, 165/2025 2017-18 ■16,00,000/- Central Circle-03, 163/2025 2018-19 ■5,00,000/- New Delhi

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6. As is apparent from the above, the appeals (eight in number) filed by the Assesseees [being Shri Sai Om Infravision Pvt. Ltd. and Shri Om Sai Infra Promoters Pvt. Ltd.] had arisen from a common order passed by the Commissioner of Income Tax (Appeals), 23, New Delhi in respect of each of the two Assesseees. The CIT(A) has passed an order dated 11.01.2023 in respect of M/s Shri Sai Om Infravision Pvt. Ltd. in respect of AYs 2014-15 to 2018-19 and had passed an order dated 13.01.2023 in respect of appeals preferred by M/s Shri Om Sai Infra Promoters Pvt. Ltd. in respect of AYs 2014-15 to 2018-19.

7. Admittedly, both the Assesseees are interrelated and were engaged as co-developers of real estate projects. At the material time Search and Seizure operations were conducted under Section 132 of the Act in respect of the aforesaid two entities including at the premises of Kaushalya Residency Girls Hostel. During the course of the search, certain diaries were found and seized. The said diaries contained certain entries which the Assessing Officer [AO] found reflected cash received in respect of the real estate projects that were being co-developed by the two Assesseees. This led the AO to reassess the income of the Assesseees for the relevant assessment year.

8. It is material to note that the reassessment proceedings were conducted pursuant to the notices issued under Section 153A of the Act.

The AO taking note of the various entries in the diaries made an addition of the amounts as reflected in the diaries. This also included certain

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16:51:00 amounts that were received through banking channels and corresponded to the entries recorded in the formal books of accounts maintained by the Assessee in the normal course of business. For the purposes of the present appeals, we shall refer to the re-assessment order passed in respect of Shri Sai Om Infravision Pvt. Ltd. [the said Assessee] in respect of AY 2014-15 unless the context indicates otherwise. The said Assessee had filed its return of income on 25.02.2015 declaring a loss of ₹2900/-, which was processed under Section 143(1) of the Act. A refund of ₹1,36,500/- was generated, which was subsequently reduced to ₹1,14,490/- in terms of a rectification order dated 22.04.2015 passed under Section 154 of the Act.

9. As noted above, search and seizure proceedings under Section 132 of the Act were conducted in the case of Shri Ravinder Singh Tongar Group on 18.09.2018. The Assessee was also covered under the said search operations. Thereafter, the re-assessments were centralised under the charge of the Principal Commissioner of Income Tax, Dehradun in terms of an order dated 12.07.2019 passed under Section 127 of the Act. The said Assessee filed its return of income on 30.08.2020, pursuant to the notice issued under Section 153A of the Act.

10. During the course of the investigation and the assessment proceedings, it was found that one Shri Ravinder Singh Tongar had made an unexplained investment of ₹14.64 crores in the said two Assessee - M/s Shri Om Sai Infra Promoters Pvt. Ltd. and Shri Sai Om Infravision Pvt. Ltd. These companies own three plots of land in Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 5 of 13 16:51:00 Dehradun. As noted above, during the search proceedings, handwritten diaries were recovered from the premises of Kaushalya Residency Girls Hostel, GNHIPL. The AO found that the said diaries mentioned receipts of investments, which were not disclosed. The AO had analysed the said diaries and on the basis of the entries and figures recorded therein, concluded that a sum of ₹6.44 crores was received by the said Assessee and the co-developer M/s Om Sai Infra Promoters Pvt. Ltd. against booking of flats. The AO reconciled the entries in the diaries with the accounts maintained by the said Assessee and Shri Om Sai Infra Promoters Pvt. Ltd. and found that some of the entries reconciled with the amounts received for booking of the flats. From the said material available with the AO, the AO computed the amounts, which according to him, were unexplained receipts. On the said basis, the AO made an addition of ₹6,44,00,000/- in the hands of the said Assessee, albeit on a protective basis. According to the AO, the funds invested in the Assessee belonged to Shri Ravinder Singh Tongar, and was therefore, assessable in his hands as unexplained receipts.

11. The said Assessee appealed the decision of the AO before the CIT(A), which was disposed of by a common order dated 11.01.2023 along with the said Assessee's appeal in respect of AYs 2015-16, 2016-17, 2017-18 and 2018-19 (five in number). The CIT(A) found that no addition was sustainable in respect of AY 2016-17, and accordingly, allowed the appeal. Insofar as the appeals in respect of AYs 2014-15, 2015-16, 2017-18 and 2018-19 are concerned, the CIT(A) faulted the AO for making additions of all entries that were found in the diaries. Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 6 of 13 16:51:00 According to the CIT(A), the entries that were already accounted for in the books of accounts produced of the said Assessee were required to be deleted and only the unaccounted entries were required to be taken into account for determining the income that had escaped assessment. The relevant extract of the order passed by the CIT(A), which was reproduced by the learned ITAT in its impugned order is set out below:

"53. After examination of the data it is seen that the following transactions are not reflected in the books of accounts of either the appellant or the co-developer Om Sai Infrapromoters Pvt. Ltd. It is also seen that the amounts are indicated in lakhs. For example 30 indicates Rs. 30 lakhs. This is so because the corresponding entry in the books of accounts is in lakhs. Thus, if there is 100 written in the diary, then in the books of accounts, 1 Crores is appearing if the entry is matching.

54. To sum up, the following notings are neither reflected in the accounts of the appellant or of the Om Sai Infrapromoters Pvt. Ltd.

Date Particulars Amount Mode of Name of the Remarks of of Payment company in the Booking which amount undersigned (in Cr.) was received CIT(A)

27.03.2014 Booking 0.3 Cash -do- The addition is of Flat made by the AO

05.07.2014 Booking 1 Cash -do- The addition is of Flat made by the AO in the AY 2015-16

29.03.2017 Booking 0.32 Cash -do- The addition is of Flat made by the AO for AY 2017-18

20.04.2017 Booking 0.1 Cash -do- The addition is made by the

Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 7 of 13 16:51:00 of Flat AO for AY 2018-19

Total 1.72

55. The appellant and M/s Om Sai Infrapromoters Pvt. Ltd. were equal partners in the project being undertaken at Dehradun. Therefore, the unaccounted income is equally distributed between the two companies.

56. The year-wise breakup of the undisclosed business income on the basis of the notings in the diary in the case of two companies is computed as under:-

Unaccounted Share of income in Share of income in receipts as per the hands of Shri the hands of Shri Sai the diary Sai Om Infravision Om Infrapromoters (amount in Pvt. Ltd. (In Rs.) Pvt. Ltd. (In Rs.) Rs.) AY 2014-15 30,00,000 15,00,000 15,00,000 AY 2015-16 1,00,00,000 50,00,000 50,00,000 AY 2016-17 Nil Nil Nil AY 2017-18 32,00,000 16,00,000 16,00,000 AY 2018-19 10,00,000 5,00,000 5,00,000"

12. Thus, the learned CIT(A) sustained part of the additions made, which were based on the receipts reflected as cash received in the diaries that were seized during the search operations. Consequently, the additions made by the AO were substantially reduced by the learned CIT(A).

13. The learned ITAT found no fault with the additions made on account of unexplained receipts that were recorded in the seized diaries Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 8 of 13 16:51:00 during the Search and Seizure operations carried on under Section 132 of the Act. The learned ITAT accordingly, dismissed the said Assessee's appeal in terms of the impugned order. Consequently, the Assessee has preferred the present appeals impugning the order passed by the learned ITAT.

14. Mr Chawla, learned Senior Counsel appearing for the Assessee, at the outset, contended that the questions of law as projected in the Memorandum of Appeals are required to be reworded and handed over a statement projecting the following questions of law for consideration of this court: -

- "1. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal ("ITAT") has erred in sustaining addition emanating from the seized diary notings only on the Solitary premise that the same were not reflected in the books of accounts of the appellant.
2. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT has erred in not taking into consideration that no corroborative evidence nor any (fresh)/ incriminating material available was taken into account while making such additions.
3. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT without assigning any cogent response was justified in sustaining the addition rather on an extraneous premise that a substantial relief has been granted not being contested by the Revenue.
4. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT has erred in not taking into consideration in the absence of any incriminating material brought on record, no additions could be made to assessments, on the date of the search which stood concluded as. Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 9 of 13 16:51:00
5. Whether on the facts & circumstances of the case and in law, the Hon'ble ITAT has erred in sustaining addition amounting to Rs. 15,00,000/- under section 69A of the Income Tax Act, 1961 ("the Act").
6. Whether on the facts and circumstances of the case and in law, recourse of deeming provisions of section 69A of the Act could have been undertaken as the additions have been made solely on the basis of seized diary notings not forming part of books of accounts."
15. Mr Chawla earnestly contented that the learned ITAT had erred in passing the impugned order, without considering that the diaries seized could not be construed as books of accounts and thus, no addition under Section 69A of the Act could be sustained on the basis of the entries in the said diaries. He also contended that the said diaries could not form the basis of any assessment without corroborative evidence to support the same. He also drew the attention of this court to paragraph no.8 of the order passed by the learned ITAT and stressed that the learned ITAT had dismissed the appeal only on the ground that the CIT(A) had granted substantial relief to the Assessee.
16. He also referred to the decision of the Madras High Court in M. Vivek v. Deputy Commissioner of Income Tax, Central Circle-2(i/c), Trichy: [2020] 121 taxmann.com 366 (Madras), which was referred to by the learned ITAT in the impugned order, and submitted that the said decision is not applicable inasmuch as the court had considered the loose sheets and papers as documents, but had not construed them as 'books of accounts'. He also referred to the decision of the Supreme Court in Common Cause (A Registered Society) v. Union of India: [2017] 77 Signature Not Verified Digitally Signed By:TARUN RANA Signing Date:30.05.2025 ITA 163/2025 & Other Connected Matters Page 10 of 13 16:51:00 taxmann.com 245 (SC) and submitted that in the said case, the Revenue had taken a clear stand that loose documents and books did not have any evidentiary value.
17. We find no merit in the aforesaid contentions. There is no cavil that an addition can be made on the basis of documents, which are found during the course of Search and Seizure operations if on appreciation, it is found that the said documents have a bearing on the income of the Assessee. It is not necessary that additions are required to be made only on the basis of the 'books of accounts' and no other documents. If any incriminating material is found, during the search under Section 132 of the Act or any requisition made under Section 132 of the Act, the AO can assume jurisdiction to assess/reassess the income.
18. The questions whether additions can be made on the basis of documents or diaries is necessary to be construed by the nature of the entries or the material recorded in those diaries. In the present case, the facts as found, indicate that the seized diaries contained recordings of receipts, which pertained to booking of flats. The additions made in the present case were not solely on the basis of the diaries alone but also on the basis of reconciling the material as found in the diaries and the formal books of accounts maintained by the Assessee. The findings, essentially, are that cheque payments for booking of flats were reflected in the diaries, and also reflected in the formal books of accounts. However, certain cash entries, which were received for the said bookings, did not - for obvious reasons - find mention in the formal books of accounts, which were maintained using the accounting software, 'tally'. Thus, the fundamental premise on which the contentions advanced on behalf of the Assessee are founded - that the addition has been made on the basis of random documents on a standalone basis - fails to take into account the exercise conducted by the Income Tax Authorities in unearthing the unexplained receipts. There is also no absolute proposition that diaries found cannot be construed as books of accounts. If accounts are maintained in a diary, even though the accounts may be partial, the same, in given circumstances may qualify as books of accounts.
19. We also consider it apposite to refer to the definition of 'books or books of account' under Section 2(12A) of the Act, and 'books and papers', the same is set out below:
- "2(12A) 'books or books of account' includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro- magnetic data storage device."
20. It is apparent from the plain language of Section 2(12A) of the Act, the definition of 'books of accounts' is couched in wide language. The use of the word 'includes' also indicates that the expressions 'books' or 'books of accounts' are required to be construed in an expansive manner.
21. The plain meaning of the books of accounts would obviously be books where accounts or some part thereof are entered. It is not necessary that the books be maintained in physical forms, there could be also soft files, which would also, in given circumstances, be construed as books of accounts. In the facts of this case, where the diaries were found to record receipts of bookings of flats, it would be erroneous to construe the diaries as a random paper or dumb documents that did not reveal any information.
22. The decision in the case of Common Cause (A Registered Society) v. Union of India (supra) is also of no assistance to the Assessee. In the facts of that case, certain documents were found to have no evidentiary value. The said decision is not an authority to the proposition that no document found during the Search and Seizure operations conducted as per law, can possibly have evidentiary value. This is a complete misreading of the decision of the Supreme Court.
23. We find no substantial question of law arises in the facts of the present case. The appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J MAY 22, 2025 RK Click here to check corrigendum, if any

