IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI R.P. TOLANI AND SHRI B.C. MEENA

ITA Nos. 5518 to 5524/Del/2012
Asstt. Yrs: 2003-04 to 2009-10

ACIT Cen. Cir.-IX, New Delhi.	Vs.	Shri Manoj Narain Aggarwal, 1, Shankaracharya Marg, Civil Lines, Delhi-110054. PAN: AFSPA 9406 M
(Appellant)		(Respondent)

Appellant by	:	Shri Gunjan Prasad CIT (DR)
Respondent by	:	Shri Piyush Kaushik Adv. & Shri Rakesh Agarwal FCA

O R D E R

PER R.P. TOLANI, J.M::

These seven appeals filed by the Revenue against consolidated order dated 27-08-2012 passed by the CIT(A)-XXXII, Delhi relating to A.Y. 2003-04 to 2009-10, deleting additions made by AO in block assessments framed u/s 143(3)/ 153A consequent to a search carried out on assessee on 10-2-2009. Since common issues are involved for adjudication all these appeals are heard together and disposed of by a consolidated order for the sake of convenience.

2. Revenue's grounds are - ld. CIT(A) erred in law and on facts in:

1. Admitting additional evidence filed by the assessee, under rule 46A(3).
2. In deleting following additions:-

Asstt. Yr.	Addition
2003-04	Rs. 10,00,000/-
2004-05	Rs. 1,05,500/-
2005-06	Rs. 1,35,400/-
2006-07	Rs. 10,00,000/-
2007-08	Rs. 10,00,000/-
2008-09	Rs. 10,03,600/-
2009-10	Rs. 10,56,500/-.

3. Brief facts are – Search and seizure operations were carried out on Gupta and company Pvt. Ltd. Group of cases on 10-2-2009, assessee is claimed to be one of the related entities. All the cases of group entities were centralized with Central Circle 9 – New Delhi. Consequent thereto notices for filing returns of income of the assessee for the impugned years were issued by AO u/s 153A on 11-1-2010. In response thereto assessee by letter dtd.15-12-2010 requested the AO to treat his regular returns already filed u/s 139(1) for AYs 2003-04 to 08-09 as filed in response to notices u/s 153A.

3.1. It appears that AO issued notices u/s 143(2) along with a questionnaire at a very late stage on 22-12-10. It shall be pertinent to mention that assessments u/s 153A read with sec 143(3) have been framed on 31-12-2010 only. AO has alleged that at the time of hearing on 27-12-10 assessee's counsel expressed his inability to furnish any information. AO mode the impugned additions as mentioned above in respect of each assessment year holding that assessee could not substantiate that agricultural income declared in the regular returns of income was in facts agricultural income. The income was held to be not agricultural income and was assessed as income from unexplained sources. Thus the exempt income returned by assessee was held to be taxable income u/s 153A. The reasons, observations and findings for additions do not refer to any incriminating

material and are limited to only one paragraph in 2003-04, which by and large are similar in each year and reads as under:

> "*In the absence of any evidence to establish that the income of Rs. 10.00 lacs shown as agricultural income was actually so the income of Rs. 10.00 lacs cannot but be considered as income from undisclosed sources. Addition of Rs. 10.00 lacs is consequently made to the total income on this account.*
>
> *With these remarks the total taxable income is computed in this case as under:*
>
Total income as returned	*Rs. 22,720*
Add:	
Income from undisclosed sources (as discussed)	*Rs. 10,00,000/-*
Total taxable income	*Rs. 10,22,720/-*

3.2. Aggrieved assessee preferred 1st appeals and requested for admission of additional evidence before ld CIT(A). the same was duly forwarded to AO for his comments and remand report. AO vide his remand report dated 4-6-2012 filed the same commenting on merits and objected to the admission of evidence. CIT(A), however, admitted the additional evidence by following observations:

> *4.3 I have carefully considered the facts and arguments emerging out of the above rival submissions as well as from a perusal of the assessment record for the relevant assessment years. First of all, I would like to decide. the issue of admissibility of additional evidence as furnished by the appellant during the appellate proceedings. The AO has vehemently argued that the appellant should not be allowed to submit the additional evidence as sufficient opportunity was given by the AO to the appellant to submit the necessary evidence. He has also argued that the appellant should have kept all the details and evidences ready with him ever since*

the search was conducted in his case as assessment under section 153A was a mandatory fall out of search action. The AO has also contended that the appellant has not produced any evidence to show that he tried to gather the evidence during the assessment proceedings but could not do so due to paucity of time. These arguments of the AO have to be tested against the facts emerging from the assessment record. The order-sheets show only three entries as follows:

"11-01-2010 Issued notice u/s 153A.
Sd/- AO.

22-12-2010 Issued notice u/s 143(2) fixing the hearing for 27-12-2010. Also issued questionnaire.

27-12-2010 Shri Rakesh Aggarwal CA & AR of the assessee, Attends. No information filed. Case discussed.

Sd/- Sd/-
AO AR

It is clear from above that the assessment proceedings were effectively started on 22-12-2010 when notice u/s 143(2) as well as the questionnaire was issued fixing hearing on 27/12/2010 and the same was completed on 27/12/2010 when the AR of the appellant attended and showed his inability to furnish the necessary evidence as called for due to paucity of time available for compliance. The AO's argument that sufficient opportunity was afforded to the appellant to comply with the notice and the questionnaire cannot be accepted in the face of the facts emerging from the assessment record. The notice u/s 143(2) was issued on 22-12-2010 and a general questionnaire was also issued on the same date in which it is mentioned that the reply to the same should be filed by "23-09-2010 at 11.30 AM/PM". In this questionnaire there are no specific questions about agricultural income but only a general note about sources of income during the year with supporting evidence was sought. There is no doubt in my mind that the impugned assessment was completed in undue haste by the AO due to' the fact that it was getting time barred on 31/12/2010 and

that adequate opportunity was not given to the appellant. The Assessing officer has not raised any doubts about the veracity of the documents furnished by the appellant during the remand proceedings but has only argued that these may not be taken on record at this stage. To my mind, these documents are material to decide the question as· to whether the claim of agricultural income as made by the appellant is correct or not. The Hon. jurisdictional High Court in the case of CIT vs. Text Hundred India Pvt. Ltd.: 239 CTR 263, held that Rule 29 enables the Tribunal to admit any additional evidence which would be necessary to do substantial justice in the matter. Their Lordships further observed that the various procedures, including that relating to filing of additional evidence, is handmade for justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence. In the case of CIT v. Virgin Securities & Credits (P) Ltd.: 332 ITR 396 (Del), the Hon. jurisdictional High Court held that the CIT(A) may admit additional evidence, after obtaining a remand report from the assessing officer, if the evidence sought to be adduced by the applicant is crucial to the disposal of the appeal. Hon'ble ITAT Delhi have also held in the case of Electra (Jaipur) (P) Ltd. vs. IAC (26 ITD 236) that if the evidence is genuine, reliable, proves the assessee's case, then the assessee should not be denied the opportunity. Similarly it was held in Dwarka Prasad vs. ITO 63 ITD 1 (TM) that additional evidence if in the interest of justice, and renders assistance to 231 ITR 1, 21 SOT 218, 293 ITR 53, 94 ITO 79 etc. Since the AO has not given any adverse comments about the veracity of the documents sought to be admitted as additional evidence , it is held that they are acceptable as evidence. In view of the guidance available in the afore-cited judicial pronouncements, I hold that the additional evidence as filed by the appellant are admissible u/r 46A and the same are taken on record.

3.3. Apropos merits, assessee submitted following explanation qua the agricultural income earned by the assessee and declared in the regular returns of income:

> *(i) It was submitted that the appellant is son-in -law of Mr. V. K. Gupta and has no ownership stake 1 business links 1 commercial dealings with Gupta & Co. Group . whatsoever. While Mr. V. K. Gupta is the 1/3 owner of Gupta & Co Group.*
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> *(ii) It was further submitted that the impugned addition for Agriculture Income, in the case of. appellant was neither, formed a part of surrendered income nor generated from any seized incriminating document. The appellant furnished copies of his earlier tax returns filed u/s 139 in the normal course before search as returns u/s 153A.*
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> *(iii) The appellant produced the documents proving his ownership of agriculture land to the extent of 946 acre. Copies of Memorandum of Family Settlement filed in Supreme Court of India & Copies of Khatoni issued by local revenue authorities were filed to support the ownership of land by the appellant.*
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> *(iv) The appellant also furnished proof w.r.t. sale of sugar cane to sugar mills during the years 2002-03 to 2009-10 by 'Prag Agriculture Farm'. It is to be noted that 50% of the entire land of the family commonly known as 'Prag Agriculture Farm' belongs to the assessee.*
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> *(v) The appellant has also claimed that during the period of family dispute which ranged from 1994 to 2010, the appellant was in possession of a part of his agriculture land (28 acre out of his total holding of 946 acre) which was rented out @ 10 Lac PA to a local cultivator Sh. Swatantra Rai. A copy of confirmation from Shri Swatantra Rai giving his complete address has been filed to support this claim. This confirmation shows that following. amounts were received by the appellant from Shri Swatantra Rai as rent for the said 28 acres of land*

for various years:

2002-03	*Rs. 10,00,000/-*
2003-04	*Rs. 1,05,500/-*
2004-05	*Rs. 1,35,400/-*
2005-06	*Rs. 10,00,000/-*
2006-07	*Rs. 10,00,000/-*
2007-08	*Rs. 10,03,600/-*
2008-09	*Rs. 10,56,500/-*
	Rs. 53,01,000/-

It has been clarified in this confirmation that payment of amounts lesser than the agreed amount of RS.1 0 lakh p.a. was due to loss of crop on account of pests/ insects, and higher amounts were paid due to sale of timber etc."

3.4. CIT(A) deleted the addition qua the agricultural income by following observations:

4.3.3 During remand proceedings, the AO was specifically asked to send his report "on the genuineness or otherwise of the documents submitted" so that a proper view about their admissibility may be taken. In his report, however, the AO did not raise any issue about the veracity of the evidences so filed. He has simply mentioned that in the absence of evidence of actual performance of agricultural operations and the corresponding expenses incurred, the claim of the appellant remains unsubstantiated. He has also raised the issue that even the documentary evidence, maintained in the office of Land Revenue Authority, namely "GIRDWARI", which contains the

lists of the crops grown on particular khasra No. in particular crop period has not been produced.

4.3.4 During the hearing on 18/0?/12-the AR was asked to submit copies of Girdawari to prove that the crop was being grown on the land owned by the appellant during the relevant periods. The Ld. AR submitted that the land produce record is known as Khasra in the state of Uttarakhand and copies of the same were produced for the relevant period on14/08/2012. On matching the ownership record of the appellant with the Khasra for Fasli Years 1407 to 1415 which roughly correspond to the period July 200o to June 2008, it was seen that the land owned by the appellant was continuously used for agricultural purposes and· different types of crops including sugarcane, wheat, soyabean, lahi, matar etc. were produced during the said period.

4.3.5 Agricultural income has been defined under section 2(1A) of the Income-tax Act. It is this definition, which has relevance even as regards the power of the State to tax agricultural income under the Constitution of India. All that the definition requires is that there should be income by way of rent or revenue or' income from agricultural operations from land situate in India. The immediate source should be the land. It is not necessary that the person who earns such income should own the land. It is sufficient, if he has some interest in land as had been decided in CIT Vs. Maddi Venkatasubbayya [1951] 20 ITR 151 (Mad), where the assessee was a firm, which had only purchased standing crop and therefore could not be treated as having such interest in land, so as to constitute the profits from the sale of the tobacco crop as agricultural income. This judgment of the Hon. Court, however, indicates what would constitute the requisite interest in the following words:

> *"The owner of the land, or of an interest therein, be he the landlord, ryot, lessee or usufructuary mortgagee, has an interest in the land and derives his income from the land. He may actually cultivate the land or he may receive the rent from cultivating tenants. In either case, the rent is the immediate and collective source of*

income and if the rent is derived from agriculture, the exemption from tax is attracted. "

Section 2(1)(a), (b)(ii) and (iii) and (c) of the Act clearly indicate that the person entitled to exemption are the persons falling within the following categories:

The owner who lets agricultural land to cultivating tenants for a stipulated rent, the owner of agricultural land in which the tenant has a permanent right of occupancy with liability to pay a fixed rent or revenue; the owner of agricultural land who cultivates it himself,' the lessee of such land; an occupancy tenant of such land having a permanent tenancy with liability for a fixed rent; a usufructuary mortgagee of the interest of the owner, landholder or tenant of such land as the case may be; a sub-lessee, and persons occupying a similar position."

4.3.6 The same view without reference to the above precedent was taken in CIT Vs. Associated Metal Co. [1989] 177 ITR 428 (All), where a company having an agreement with bhommidhars undertaking all functions of preparation of the land for cultivation, sowing, growing and protecting the crop under a crop-sharing arrangement with the bhoomidars of the land, who are entitled to have their income treated as agricultural income.

4.3.7 In the instant case also, the appellant being owner of the agricultural land had claimed that he had given his agricultural rand to the cultivating tenant Shri Swatantra Rai on a stipulated annual rent. A confirmation from the cultivating tenant has also been filed by the appellant indicating the- amounts paid by him to the appellant during the various years involved in this appeal: The appellant has also furnished: the copies of land produce records(Khasra) for the- relevant crop periods known as Fasli Years. As such, the claim of agricultural income as made by the appellant could not be denied without bringing any adverse material on record to show that the confirmation was not a genuine one. During the

remand proceedings the AO was specifically asked to examine the genuineness of the documents furnished as additional evidence including the land ownership record as well as the confirmation from the cultivating tenant. However, in his remand report dated 04/06/2012 the AO did not raise any doubt about the genuineness of the confirmation issued by the cultivating tenant, rather he raised the issues of non-furnishing of input cost details as well as non-furnishing of land produce record as documentary evidence of actual agricultural operations on the land owned by the appellant. To my mind, since the 'appellant has only received stipulated rent from the cultivating tenant, he was not required to monitor the input cost as incurred by the cultivating tenant and therefore it would be unfair to deny his claim of agricultural income only on the basis of the argument" that no details of input cost was submitted by him. As regards the land produce record, the appellant has. produced the same before the undersigned which signifies the harvesting of crops and agriculture operations in those years -, It is, therefore, held that the appellant has furnished adequate evidence to support his claim of agricultural income during the years in question which has not been controverted by the AO by bringing any adverse material on record. As such, the addition made by the AO treating the agricultural income as income from undisclosed sources cannot be upheld. This ground of appeal is , therefore, decided in favour of the appellant and the additions made in all the A. yrs. 2003-2004 to 2009-10 on account of treatment of agricultural income as undisclosed income is hereby deleted."

Aggrieved revenue is before us.

4. Ld. Counsel for the assessee made a prayer for admission of further additional evidence contending that AO made the additions in a summary manner without giving adequate opportunity and time for furnishing the evidence. Before ld. CIT(A) assessee furnished the additional evidence which could be gathered by that time. Though ld. CIT(A) has deleted the

additions, however looking at revenue appeals, assessee has gathered more evidence to support its claim of agricultural income which may be admitted. It is further pleaded that for taking copies of govt. record, lot of time is required to obtain the same. Therefore, the additional evidence which is obtained subsequently may be admitted.

5. Ld. DR opposed the admission of additional evidence pleading that assessee has already availed the opportunity before ld. CIT(A) which is also challenged by the department.

6. After hearing both the parties we find that assessee has already availed the opportunity of filing additional evidence before ld. CIT(A). Proper reasons have not been advanced by assessee to justify as to how he was prevented by a sufficient cause in filing this evidence before CIT(A). In view thereof we decline to admit further additional evidence except the questionnaire issued by AO and assessee's submissions, as they are part of the assessment record.

7. Reverting to the revenue appeals, ld. CIT(DR) apropos the first issue i.e. admission of additional evidence contends that CIT(A) has wrongly admitted additional evidence without providing reasonable opportunity to the AO. It is contended that assessee adopted a deliberate and planned approach not to file the necessary evidence before AO and to file it before CIT(A) only. It was done to ensure that AO's enquiries during the course of assessments are avoided. CT(A) is not correct in holding that the assessee was given less time for representing its case in as much as the first notice of hearing u/s 153A was issued on 11-1-2010.

7.1. Further, it is pleaded that on AO's objection for admission of additional evidence CIT(A) should have decided the issue of admission of additional evidence first and thereafter the remand report should have been called. Reliance is placed on Hon'ble Delhi High Court judgment in the case of CIT Vs Manish Buildwell Pvt. Ltd. in ITA No. 928/11 dated 15/11/11.

8. Ld. Counsel for the assessee contends that there is no merit in the contention of ld. DR, the alleged first notice dated 11-1-2010 was a simple notice indicating the beginning of proceedings. In response to it the assessee vide its submission dated 15/03/10 challenged the assumption of jurisdiction u/s 153A on various counts including invalid search warrant. The AO did not proceed further qua the assessment. The first effective notice for attending assessment proceedings is dated. 22-12-2010 asking the attendance on 27-12-10. Assessee duly attended with general record available. as the very same agricultural income was already accepted by the department in regular assessments. AO during the course of hearing dated 27-12-2010 required specific information. Assessee at this juncture expressed its inability for forthwith compliance and requested further time, which was denied by AO and the impugned assessments were framed on 31-12-2010. These facts clearly demonstrate that only due to insufficient opportunity of hearing, assessee was prevented by a sufficient cause in responding to requisite evidence before AO. In these circumstances no lapses or latches can be attributed to assessee. Therefore, the additional evidence was sought to be filed before ld. CIT(A) for which a proper application u/r 46A was filed along with the additional evidence, gist thereof is as under:

"*The evidences / proof of agriculture income could not be produced before the AO on account of following reasons:*

1. There was intense dispute among the family members of the assessee over the issue of agriculture land. The land holding and agriculture income records and other relevant details as well as the major portion of his land was under the possession and control of his other family members and to which access was not available to the assessee. There were criminal and civil cases going on among the family members. The dispute got settled in court in July 2010 and after a considerable time period the assessee could get access to land and crop records. This cause prevented the assessee from producing the requisite evidence.

2. The health of the assessee was very poor. He is a chronic patient of abdomen disorder - Pancreatitis and adenoma of Parathyroid for which he had undergone major surgery for third time in the year 2010. Due to poor health conditions, he could not stress himself in assimilating the old scattered records to prove the agricultural income. This cause prevented the assessee from producing the requisite evidence.

3. The assessee was unaware that an income unrelated to the seized documents / assets can be subject matter of questing for re-assessment proceedings subsequent to search. The assessee being an individual and his main source of income was from agricultural operations, he did not keep the old records systematically ready for production before the authorities.

4. The time period available to the assessee for furnishing details was less than 7 days as the questionnaire for furnishing of details for agriculture income was issued on 23.12.2010 and assessment was framed on 31.12.2010"

8.1. Thus assessee gave four valid reasons for filing the additional evidence before CIT(A). Existence of even a single reason i.e. giving abysmally less time to file information during the course of assessment by

AO, itself fully justifies the action of ld CIT(A) in admitting the additional evidence. The assessment framed by AO was in complete violation of principles of natural justice. Ld. AO without appreciating any factual or legal aspect has held the assessed agricultural income as unexplained income. Huge additions were made without giving even a semblance of adequate opportunity. As per the amended provisions of Income Tax Act CIT(A) does not have the powers of setting aside even in an ex parte assessment. In these circumstances assessee was left with no other remedy except to file additional evidence. CIT(A) before proceeding to admit the additional evidence duly forwarded it to AO giving full opportunity of enquiry, investigation and ascertainment of facts and further to file detailed observations and comments thereon. Revenue cannot adopt such a course of action i.e. neither to give proper time for assessment and frame an arbitrary assessment and not allowing the assessee to bring material on record to defend such arbitrary action. It is pleaded that income tax proceedings are not adversarial proceedings, there is no lis between assessee and department. The entire proceedings are framed to ensure a fair and proper determination of tax liability. Thus while ascertaining the correct tax liability revenue has to be fair in the proceedings i.e. to give proper opportunity of hearing and ensuring smooth procedure to allow proper evidence to come on record. In contradistinction, in this case AO has made no such endeavor to frame a proper assessment, it rather has turned out to be an arbitrary exercise. If ld. CIT(A) has corrected these aberrations by admitting additional evidence and carrying out due exercise of verification in this behalf, revenue has no justification to challenge it.

8.2. In these circumstances it emerges that revenue wants to adopt an unfair course for ascertaining the tax liability, firstly by making an arbitrary and untenable sort of ex parte assessment and secondly not ensuring the process for proper evidence to come on record. Thus there is no justification for revenue to challenge the CIT(A)s action in admitting the additional evidence after following the due procedure laid down by the act. CIT(A) has been vested with powers coterminous to that of AO, over and above it to undertake further inquiries and even to enhance the assessment.

8.3. Observations of ld. CIT(A) clearly indicate the fact that the AO not only had an opportunity of submitting its comments on the merits of the case but also he actually submitted requisite comments. If AO only desired to object admission of additional evidence, there was no necessity to submit remand report on the merits of evidence. This clearly demonstrates that AO knowingly submitted a consolidated remand report i.e. on admission and on merits. The case of Manish Buildwell (supra) was rendered on 15-11-2011 and was already reported in that case AO should have requested the ld. CIT(A) to first decide the issue about admissibility of additional evidence and then to call for remand report on merits. Thus AO being in full knowledge of Manish Buildwell case submitted a consolidated remand report on admission of additional evidence and merits. In these peculiar facts and circumstances by no stretch of imagination it can be held that CIT(A) committed any error in admitting the additional evidence in terms of Manish Buildwell case.

9. We have heard the rival contentions on the issue of admission of additional evidence and perused the material available on record. As the

facts emerge the assessments were completed in unjustifiable manner violating even the basic principles of natural justice. Neither sufficient opportunity of hearing nor time was given to the assessee to represent his case. The questionnaire issued by AO had no question about the agricultural income already assessed. This income was not being shown for the first time and has been regularly accepted year to year by department in preceding years.

9.1. In these circumstances assessee had no remedy except to file additional evidence in first appeal. Thus it is writ large on the record that assessee was prevented by sufficient cause in filing these papers during the course of 153A assessment proceedings.

9.2. Apropos CIT(A)'s action of admitting the additional evidence, in our considered view, in the given facts and circumstances the action is fully justified. AO has submitted the remand report on both counts i.e. admission thereof and on merits. Manish buildwell case was much earlier pronounced. In these circumstances AO should have requested ld. CIT(A) to first decide the admissibility of additional evidence and then to call remand report on merits. Having filed remand report on both counts, it does not behold on revenue now to take a technical plea in this behalf more so when Manish Buildwell case was already reported before the submission of remand report by AO. Ld. CIT(A)s reliance on Delhi High Court judgments on the cases of Text Hundred India and Virgin securities (supra) is well placed and reinforces our view. Consequently revenue ground on admission of additional evidence is dismissed.

10. Apropos merits ld DR contends that :

i. The confirmation filed by Shri Swatantra Rai is typed on a computer. He being an agriculturist, it indicates that the confirmation was prepared by the assessee and is signed as ordered. Thus the veracity of evidence is unreliable and reliance thereon by CIT(A) is unjustified.

ii. There are discrepancies in the land record i.e. khasra, girdwari and produce record.

iii. The agricultural income has been accepted in regular assessments without making any inquiries by the department.

iv. AO u/s 153A can examine even the issues which have been earlier accepted by the department and has powers to inquire into these aspects.

v. Order of AO is relied on.

11. Ld. Counsel for the assessee contends that:

(a) The agricultural income has been already disclosed in the regular returns of income filed u/s 139 and have been accepted by the department. It is settled proposition that any addition can be made in assessment under sec 153A, consequent to search, only and only when some incriminating material in this behalf is found and seized during the course of search which evidences any undisclosed income. There is neither any finding nor any reference to any incriminating material to hold that agricultural income accepted by the department is not agricultural in nature and represents undisclosed income of the assessee. Thus the deletion of additions on this issue on this legal

proposition is rightly decided by ld. CIT(A). Reliance in this behalf is placed on

- All Cargo Global Logistics Ltd. Vs. DCIT (2012) 18 ITR (Trib) 106 (Mumbai) (SB);

- Gurinder Singh Bawa v. DCIT (2012) 28 Taxmann.com 328 (Mum. Trib);

- Jai Steel India Vs. ACIT 259 CTR 281 (HC)(Raj.);

- Kusum Gupta v. DCIT (ITA nos. 4873/Del/2009, (2005-06) 2510(A.Y. 2003-04); 3312(A.Y. 2004-05); 2833/Del/2011 (A.Y. 2006-07):
- MGF Automobiles Ltd. Vs. ACIT (ITA nos. 4212 & 4213/Del/2011);
- Tarannum Zafar Khan Vs ACIT (ITA nos. 5888 to 5890/Mum/2009);
- Vee Gee Industrial Enterprises vs. ACIT (ITA no. 1/Del/2011 & ITA no. 2/Del/2011)
- ITA nos. 1153 to 1159/Hyd/2012 Mir Mazharuddin 24-1-2013.
- Asha Kataria ITA nos. 3105, 3106 & 3107/Del/2011 dated 20-5-2013.

(b) From the material on record it is undisputed that the assessee's family owns 1898 acres of agriculture land in Rudrapur, Uttarakhand, which is known as 'Prag Agricultural Farms' and remained under cultivation since decades i.e. since 1933.This is evident from following documents:

i. Copy of Lease Deed of Agricultural land dated 01.03.1933 (*pages 6-14 Paper book*);
ii. Copy of Land ownership record known as 'Khatoni' dated 30/11/09 wherein the name of assessee is appearing as a joint

owner being a proof of land ownership in the name of assessee (*page 15 paper book*);

iii. Copy of Court's order & family settlement deed showing settlement of 946.50 acres of agricultural land in favor of assessee (*pages 16-52 paper book*);

iv. Copy of confirmation issued by Sugarcane development society with respect to production of sugarcane during various years in Prag Agriculture Farms (*pages 53-55 paper book*);

v. Certificate from Nayab Tehsildar certifying that the agricultural operations are being carried out in the land (*page 56 paper book*);

vi. Confirmation (*page 57 paper book*) from the cultivating tenant Sh. Swatantra Rai stating payments of annual rent made to assessee during various years for utilization of land for cultivation purposes.

(c) The CIT(A) has categorically recorded that during the remand proceedings the AO was specifically asked to send his report on the "genuineness or otherwise of the documents submitted". AO has not raised any pertinent question about the veracity of evidences filed. AO has simply stated that in the absence of evidence of agricultural operations and corresponding expenses claim of assessee remains unsubstantiated & Girdwari record is not submitted.

(d) CIT(A) has countered AO's adverse inferences by observing that confirmation from the cultivating tenant clearly mentions that the expenses were borne by him and amounts paid to the assessee during the various years qua assessee's part of agricultural income. Copies of land produce records for the relevant crop periods was also filed. Ld. CIT(A) findings are correct in law and on facts that the claim of agriculture income which is accepted by department can not be denied without bringing any adverse material on record. There is no

adverse evidence that cultivating tenant did not make the respective payments of agricultural income. As the assessee's agricultural operations were carried out by contract with Shri Swatantra Rai year after year assessee was not required to bear the input cost or expenditure as it is incurred by the cultivating tenant. Land produce record was produced before ld. CIT(A) (*pages 67-90 paper book*) consequent to a query raised by him in accordance with powers vested in him as an appellate authority.

11.1. It is pleaded that u/s 2(1A) of the Act, agricultural income means, inter alia, any rent or revenue derived from land which is situated in India and is used for agricultural purposes. In this case an uncontrovrted confirmation from the cultivating tenant with all the necessary details is on record demonstrating the fact that it is agricultural income only and not undisclosed income as surmised by the AO. Under these circumstances, the observation of AO that input cost details could not be provided by assessee is only a superfluous observation. It does not in any way militate against the fact of impugned income being agriculture in nature only which can not to be held as income from undisclosed sources on assumptions, surmises and conjectures. The cultivation is undertaken by the tenant and the assessee is receiving 'rent' for agricultural operations which very well qualifies as an agricultural income u/s 2(1A).

11.2. The CIT(A) vide pages 17 & 18 of its order very rightly notes the following two decisions from High Court wherein it has been held that rent received from cultivating tenant certainly qualifies as an agricultural income:

i. CIT VsMaddiVenkatasubbayya 20 ITR 151(Mad.);
ii. CIT Vs Associated Metal Co. 177 ITR 428 (All.)

11.3. Ld. Counsel for the assessee contends that in vie of these legal and factual submissions categorical findings of ld. CIT(A) based on evidence and remand report, the additions have been rightly deleted. Orders of CIT(A) are relied on.

12. We have considered the rival submissions and perused the material available on record and proceed to decide the appeals in following manner:

Legal issue:

12.1. Ld. Counsel for the assessee has vehemently argued that no incriminating material what so ever was found during the course of search to suggest that the agriculture income earned by the assessee and accepted by the department in earlier years was not agricultural and it represented any unexplained income of the assessee. It is also not disputed that agriculture income has been assessed year after year. In the absence of any incriminating material legally these additions cannot be made. We have perused the case laws relied on by assessee which raise following proposition:

(i) All Cargo Global Logistics Ltd. v. DCIT (2012) 18 ITR (Trib) 106 (Mumbai)(SB) – for the proposition that in assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately. In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means - (i) books of account, other

documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search.

(ii) Gurinder Singh Bawa v. DCIT (2012) 28 Taxmann.com 328 (Mum trib) – for the proposition that where in search assessment under section 153A all assessments pertaining to six immediately preceding assessment years were complete, Assessing Officer cannot make any addition there under unless there is any incriminating material discovered during the search.

(iii) Jai Steel India v. ACIT 259 CTR 281(HC) (Rajasthan)

29. The argument of the learned counsel that the AO is also free to disturb income, expenditure or deduction de hors the incriminating material, while making assessment under s. 153A of the Act is also not borne out from the scheme of the said provision which as noticed above is essentially in context of search and/or requisition……..if taken to its logical end would mean that even in cases where the appeal arising out of the completed assessment has been decided by the CIT(A),ITAT and the high court , on a notice issued under section 153A of the Act, the AO would have power to undo what has been concluded upto the High Court .Any interpretation which leads to such conclusion has to be repelled and/or avoided as held by the Hon'ble Supreme Court in the case of K.P. Varghese

(iv) Kusum Gupta v. DCIT, ITA Nos. 4873/Del/2009, (2005-06) 2510 (A.Y. 2003-04), 3312(A.Y. 2004-05) 2833/Del/2011 (A.Y. 2006-07)

15. Since there is no change on this material fact that during all these assessment years no incriminating material was recovered or statement was recorded during the course

of search suggesting non-genuineness of the claimed gifts or expenses etc. and no such addition/disallowance was made in the original assessment which remained unabated, we following the decision on the issue hereinabove in the appeal preferred by the revenue for A. A 2002-03, hold that such addition/disallowance cannot be made in the assessment framed u/s 153A of the Act in this A. Y in appeals. In result the issue is decided in favour of the assessee and against the revenue. In view of this finding the remaining grounds questioning the merits of additions/disallowances do not need adjudication as they have become infructuous and academic only . Consequently appeals preferred by the assessee for the A.Ys. 2003-04, 2004-05, 2005-06 and 2006-07 are allowed and appeals preferred by the revenue in the A.Ys. 2002-03, 2005-06, 2006-07 are dismissed.

(v) MGF Automobiles Ltd. V. ACIT, ITA No's 4212 & 4213/Del/2011 - In the present case it is apparent that on the date of search be on 12/09/2007, the assessments for assessment year 2004-05 & 2005-06 were already completed. There was no incriminating material found during search for these years as is apparent from arguments of Ld. AR and from records and Ld. Departmental Representative did not bring to our notice regarding any incriminating material having been found during search. Therefore following the Judicial Precedents, we are of the opinion that though assessments for the above year were bound to be reopened but additions could be made only if some incriminating document was found during search.

(vi) Tarannum Zafar Khan Vs. ACIT, ITA Nos. 5888 to 5890/Mum/2009

18.3 One more reason is there that most of the additions have been made in the routine manner as the issue has not been discussed in right perspective in taking into consideration the submission and other evidences filed. It is also a matter of fact that no incriminating material was found during the course of search as only during the assessment

proceeding, these expenses were found made through credit cards. In view of the above facts and circumstances of the case, we delete the addition of Rs.9,057/-.

(vii) Vee Gee Industrial Enterprises vs. ACIT, ITA No. 1/Del/2011 & ITA No.2/Del/2011

15. In view of the above, we agree with the contentions of assessee and allow ground no.1 of the appeal. In respect of second ground of appeal regarding disallowance of telephone, car expenses etc we observe that no incriminating material was found in respect of such expenses which could enable the Assessing Officer to disallow a part of it during proceedings u/s 153A. This has been held in various pronouncements of various courts and the latest being by Hon'ble Rajasthan High Court in the case of Jai Steels India vs. CIT in 259 CTR (Raj) 281, where the Hon'ble Court has held that in case of assessment u/s 153A, the completed assessment can be tinkered only on the basis of incriminating material found during search. Therefore, in the present case without any incriminating material Assessing Officer was not justified in making disallowance.

(viii) ITA Nos. 1153 to 1159/Hyd/2012 Mir Mazharuddin, 24.1.2013 addition cannot be made in assessment completed u/s 153A without any reference to the seized material. He further held that it is also not the case of the AO that the seized material if any suggested inflation of agricultural income. He, therefore, concluded that such type of addition cannot be made in the assessment u/s 153A de hors the material found at the time of search

(ix) Asha Kataria, I.T.A. Nos. 3105, 3106 & 3107/Del/2011 20.5.2013

52. we find that in this case the assessment was made u/s. 153A of the I.T. Act. Hence, reliance upon the decision of the Special Bench in the case of All Cargo Global Logistics Ltd. (Supra) is also germane and support the case of the assessee. As expounded in this case assessment u/s. 153A can be made only

on the basis of incriminating material found during the course of search.

12.2. In our considered view this proposition is by now well settled that in 153A/C assessments additions cannot be made unless they are based on any incriminating material or inquiries based on such material. It clearly emerges from record that there is neither reference nor reliance on any incriminating material. Besides there is no reference to any inquiries conducted by AO based on any incriminating material. In these circumstances and relying on these case laws we hold that these additions have been rightly deleted by the CIT(A) on this count.

Factual Issue:

12.3. From facts also it emerges that assessee owns a fairly large agricultural holding known as Prag Farms. Agricultural income has been returned and accepted by department year after year. Confirmation from agricultural tenant is on record. It has been doubted by AO on some conjectures like computer print, in that case he may have examined the tenant. Without carrying out such exercise AO cannot reject documentary evidence on surmises and conjectures. Assessee has supported his claim based on relevant agricultural record. The tenant has confirmed that the agricultural expenses were borne by him and not by the assessee. Therefore, no adverse inference can be drawn to dislodge the explanation of the assessee.

12.4. In the entirety of these facts and circumstances, we find no infirmity in the order of ld. CIT(A) in deleting the addition on merit also. We uphold the impugned orders of ld. CIT(A).

13. In the result, revenue's appeals are dismissed.

Order pronounced in open court on 30-01-2014.

Sd/-	Sd/-
(B.C. MEENA)	(R.P. TOLANI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 30-01-2014.