

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1515/Del/2023
Assessment Year: 2017-18

Vineet Gupta E-1/6, Krishna Nagar, Delhi Delhi-110051 PAN No.AHCPG7378Q	Vs	ACIT Central Circle -16 New Delhi
(APPELLANT)		(RESPONDENT)

Appellants by	Sh. C.S. Anand, Advocate Ms. Sarthak Upadhyay, Advocate Sh. Vaishnavi Yadav, Advocate
Respondent by	Sh. B.S. Anand, Sr. DR

Date of hearing:	05/09/2024
Date of Pronouncement:	08/10/2024

ORDER

PER SUDHIR KUMAR, JM:

The above captioned appeal by the assessee is directed against the order of the NFAC/Commissioner of Income Tax (Appeals), Delhi [hereinafter referred to as "CIT(A)"], vide order dated 17.03.2023 pertaining to A.Y.2017-18 arises out of the order passed by the Assessing Officer dated 30.12.2018 u/s

143(3) of the Income Tax Act,1961[hereinafter referred as 'the Act']

2. The assessee has raised the following grounds of appeal :-

1. That the impugned appeal order is bad in law.

2. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in dismissing the Ground of Appeal (bearing No. 1) raised by the assessee before him, through which the quashing of assessment proceedings was sought on the ground that the proceedings were not initiated under proper section.

3. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in dismissing the Ground of Appeal (bearing No. 2) raised by the assessee before him, through which the quashing of assessment order was sought on the ground of gross violation of principle of natural justice.

4. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in confirming the addition of Rs.1700000/- (which was made by the learned AO u/s 69A r.w.s. 115BBE) while blindly relying upon the pre-recorded statements of Sh. Mohit Garg etc. and not

allowing opportunity to cross examine the concerned persons.

5. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in confirming the addition of Rs.1700000/- (which was made by the learned AO u/s 69A r.w.s. 115BBE) while forming an imaginary view that the assessee must have removed the ill-gotten money from his residence prior to the search conducted by the department.

6. That on the peculiar facts of the case and in law, the addition made at Rs.1700000/- u/s 69A r.w.s. 115BBE in the hands of the assessee, is liable to be deleted.

7. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in sustaining the addition to the extent of Rs.2900000/- (which was made by the learned AO u/s 69A r.w.s. 115BBE) while blindly relying upon the pre-recorded statements of Sh. Mohit Garg etc. and not allowing opportunity to cross examine the concerned persons.

8. That on the peculiar facts of the case and in law, the learned CIT(A) has erred in sustaining the addition to the extent of Rs.2900000/- (which was made by the learned

AO u/s. 69A r.w.s. 115BBE) while forming an imaginary view that the assessee must have removed the ill-gotten money from his residence prior to the search conducted by the department.

3. The brief facts of the case are that a search and seizure operation u/s 132 of the Act was carried out at the premise of Mohit Garg and bothers on 25-11-2016 and during the course of search certain documents belonging to the assessee were sized. The assessee has filed the return of income declaring total income of Rs 6,55,060/- on 29-06-2017 for the A.Y.2017-18. A notice u/s 143(2) of the Act was issued and another notice u/s 142(1) of the Act was issued with questionnaire. The AR of the assessee has attended the proceedings and furnished certain details. The AO has made the addition of Rs 1700000/- on account of unexplained income u/s 69 r.w.s 115 BBE of the Act and Rs 60,00,000/- on account of the earned commission from the Rajeev Singh Kushwaha u/s 69 A r.w.s 115BBE of the Act. Aggrieved by the order of the AO the assessee has preferred the appeal before the Ld CIT(A) who vide his order dated 17-03-2023 partly allowed the appeal against which the assessee is in appeal before us.

4. The Ld. AR has stated that a search and seizure action u/s.132 was carried out on 25.11.2016 at the residential

premises of the assessee located at C-34, IInd Floor, Vivek Vihar, Delhi and also at the bank locker no. 98 with Axis Bank, Kashmere Gate Branch, Delhi. The AO had recorded his observations that cash of Rs.500000/- was given to assessee by the Rajeev Singh Kushwaha through Sh. Raj Kumar Sharma on 11.11.2016 and cash Rs.1200000/- was given to the assessee by the Rajeev Singh Kushwaha on 12.12.2016. The assessee has denied the allegation and stated that the addition has made on the assumption basis, no incriminating material was recovered from the assessee during the search and seizure operation. He has further submitted that the section 69 A is not applicable in this case because the assessee was not maintaining the books of accounts. He has also submitted that addition cannot be sustained merely on the basis of the statement unless and until some materials corroborating the content of the statement is found during the course of search action u/s 132 of the Act.

5. The Ld. AR relying upon the following decisions :-

- 1. Hon'ble ITAT – Delhi Bench 'F' in DCIT vs. Yograj Arora (ITA No.24440/Del/2022-Order dated 07.11.2023)**

2. Hon'ble Delhi High Court in CIT Vs. Hersh Washesher Chadha

3. Delhi High Court in Pr. CIT Vs. Pavitra Realcom Pvt. Ltd. [ITA579/2018]

4. Hon'ble Supreme Court of India in CIT vs. Jeet Construction Company [2021] 124 taxmannn.com 527 (SC)

6. The Ld. DR relying upon the orders of the authorities below and submitted that the addition was made on the basis of the evidence. He has further submitted that Rs 500000/- was given by shri Rajeev Singh Kushwaha through Raj Kumar Sharma.

7. We have heard the rival arguments and perused the material available on record. The Ld CIT(A) has observed in his as under :-

“7. Ground No.3 to 7: These grounds have been taken together since they relate to the addition made of Rs. 77,00,000/- u/s 69A r.w.s 115BBE of the Act. The appellant has submitted that the AO has erred in making addition in the hands of the appellant by not appreciating the principle of law that the onus to prove

an allegation is always on the person who make such allegation.

7.1 During the course of assessment proceedings the AO had made the addition of Rs. 17,00,000/- on account of receipt of commission in cash and Rs. 60,00,000/- against the receipt of 1kg gold in lieu of facilitating the cash deposits in the bank accounts of certain entities related to Sh. Rajeev Singh Kushwaha. The above conclusion has been drawn on the basis of following observations based upon the investigation by the IT Department and Enforcement Directorate:

i) On 11/11/2016 first instalment of commission of Rs. 5 Lakhs was given by Shr. Rajeev Singh Kushwaha through Raj Kumar Sharma in appellant's cabin in Axis Bank Kashmere Gate branch.

i) On 12/11/2016 the commission was increased to 2% from 1% and accordingly after depositing Rs. 6 Crores cash in fictitious companies/firms accounts Rs. 12 lakhs was again given to the appellant in his cabin by Shri Rajeev Singh Kushwaha.

iv) From 13/11/2016 it was mutually decided that by the appellant and Shri Shobhit Sinha that commission would be given in the form of gold. On 20/11/2016 Mohit Garg had given 1 Kg gold bar each to you and Shri Shobhit Sinha."

7.2 The submission of the appellant and the facts of the case has been considered. Following facts emerges from the facts on record and from the investigation done by the Income Tax Department and Enforcement Directorate:

i. Shri Mohit Garg, Shri Devendra Kumar Jha and Shri Raj Kumar Sharma were caught with cash of Rs. 3.70 Crores (approx.) in demonetized currency on 22/11/2016 by the SHO, P.S, Kashmere Gate, Delhi, later on handed over to the Income Tax Department. From the statements recorded, it was found that they were regularly depositing cash in demonetized currency in the bank accounts of fictitious entities managed by Shri Rajeev Kumar Kushwaha in Axis Bank, Kashmere Gate branch, with the help of Shri Vineet Gupta and Shri Shobhit Sinha, who were also the branch head and operation head of the Axis Bank.

ii. *Later on, search & seizure operation was conducted on various persons connected with the deposit of unaccounted demonetized currency including Shri Vineet Gupta.*

iii. *Shri Mohit Garg had admitted that in collusion with Shri Rajeev Singh Kushwaha, Shri Nitin Gupta and Shri Devendra Kumar Jha a scheme was devised to collect cash and deposit it in the bank accounts of shell entities operated and controlled by Shri Rajeev Singh Kushwaha. The funds were deposited and immediately layered through multiple RTGS with the help of Axis Bank, Kashmere Gate employees.*

iv. *In the statement recorded u/s 131(1A) of the Act, Shri Vineet Gupta, the appellant had accepted that:*

** In the bank accounts of the entities controlled and operated by Shri Rajeev Singh Kushwaha huge unaccounted cash of Rs. 39.26 Crores were deposited after demonetization.*

** The cash were brought by Shri Mohit Garg, Shri Devendra Kumar Jha and Shri Raj Kumar Sharma.*

The cash were allowed to deposit between 6:30 PM to 7:15 PM, however, the normal hours of the bank are 9:30 AM to 3:30 PM.

The appellant was aware that they used to count the packets in bundles (currency notes per packet were never counted), each packet bore a specific mark 'RK' belonged to these four persons and were meant to be deposited in the specific bank accounts.

The cash deposited in four bank accounts was immediately transferred to bank account of M/s Aadi Traders held with Axis Bank, Chandni Chowk branch, mainly at the instance of Shri Rajeev Singh Kushwaha, since after 6:15 PM RTGS cannot be done online.

The appellant was in regular touch through phone with these persons. He had stated that Shri Mohit Garg had made call on 20/11/2016 citing some urgency to discuss and requested him to meet wherever possible

without revealing the reason. He met him at around 8:45 to 9:00 PM near his residence in Vivek Vihar and had called Mohit Garg to know where he was waiting for him. He had also received a call from Rajeev Singh Kushwaha at around Mid-night on the day of their arrest. He had called to inquire whether his associates had come to bank to deposit cash. From the above, it is obvious that the appellant had prior information that Rajeev Singh Kushwaha and his associates were arrested in connection with the huge unaccounted cash which were caught by the police.

The findings recorded in the assessment order by the AO is based on the statement given by Shri Mohit Garg who has been handling the cash and deposited in various fictitious companies/firms accounts in Axis Bank, Kashmere Gate branch, Delhi.

In view of the above, it is obvious that the appellant was aware that the enquiry related to depositing of huge unaccounted money were being done by the Government agencies including the Income Tax Department. The statements of Shri Mohit Garg and the circumstantial evidences proves that the

transaction of payment of commission in the form of cash and gold must have been done. Since, the appellant was having prior information of the enquiries being done, he must have removed the ill-gotten money from his residence prior to the search conducted by the Department. It is impossible to think that the bank authority will be working beyond the working hours in violation of rules and regulations put down by the bank without any interest.”

8. The Ld AR has submitted that the assessee is an individual so the provision of section 69A of the Act are not applicable because the assessee has not maintained the books of account. In the case of **CIT vs Hersh Washeser Chadha** the Hon'ble Delhi High Court has keep open this question to be decided in some other case. This argument is not tenable. Ground raised by assessee decided accordingly.

9. On perusal of the order of the Ld CIT(A) reveals that no cash or gold was recovered from the house of the assessee. The addition was made on the assumption basis because the assessee who was working in the bank as a bank employee finished their work beyond the working hours. If the assessee has done the work beyond the working hours this may be the

violation of the banking rules but on that basis the addition cannot be made assuming that the assessee has received the commission from the Rajeev Singh Kushwaha. In the case of Pr. **CIT vs Pavitra Realcon Pvt Ltd ITA 579/2018** the Hon'ble Deli High Court held that in para 22 as under;-

"22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of CIT v. Harjeev Aggarwal, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:

*"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. **The words "evidence found as a result of search" would not take within its sweep statements recorded during search and***

seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. However, such statements on a stand alone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.”

10. However it is an undisputed fact that the statement recorded under section 132(4) of the Act has better evidentiary value but it is also settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements. In this case addition was made merely on the statement basis and no other corroborating material was found during the search and seizure operation. According to AO 1 kg gold bar was seized by the Enforcement Directorate from the premise of

the accomplice of the assessee Shri Shobhit Sinha sister's residence at Lucknow on 03-12-2016. We have observed that the AO has made the addition on the basis that the assessee had helped Shri Rajeev Singh Kushwaha in cash deposits by flouted the banking norms. The AO has made the addition only on mere assumption and not on any material recovered during search and seizure. In the absence of the supporting evidence additions made by the AO is not sustainable. The appeal of the assessee is liable to be allowed.

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

Order pronounced in the open court on 08.10.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS
Date:-08.10.2024
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI