

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

**SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2294/Del/2014
Assessment Year : 2003-04**

| | | |
|--|----------------------------|-------------------------------|
| Abha Gupta, 292, Tagore Park Extn., Model Town-I, New Delhi-110009 (PAN: AAOPG8309G) | vs | ACIT, CC-19, New Delhi. |
| Appellant by | Shri B.L. Gupta, AR | |
| Respondent by | Shri S.K. Jain, DR | |

| | |
|------------------------------|-------------------|
| Date of Hearing | 09.03.2017 |
| Date of Pronouncement | 31.05.2017 |

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal has been preferred by the assessee against the order of Ld. CIT (A)-VI, New Delhi dated 21.02.2014 and pertains to assessment year 2003-04.

2. Brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('the Act') was conducted on 15th December 2004 in the Brij Mohan Gupta group of cases. During the course of search proceedings, certain

documents and books of accounts were seized from the residential premises from Shri Brij Mohan Gupta and from the residence of Shri Ram Avtar Singhal, Accountant of Shri Brij Mohan Gupta. As per the seized documents, as appearing in Annexure A-5 of Para H-4, it was the AO's observation that the assessee Smt. Abha Gupta, during the assessment year, had advanced cash loan to the tune of Rs. 31 lakh on different occasions, the peak of which was calculated at Rs. 20 lakh. The assessee had also earned interest thereon to the tune of Rs. 1,48,967/-. It was also inferred from the seized records coupled with the contents of the statement of Shri Ram Avtar Singhal, Accountant, that the figures of cash amount of such advances made by the assessee through Shri Brij Mohan Gupta were in lakhs. Shri Brij Mohan Gupta, during the course of assessment proceedings, surrendered unaccounted commission earned by him on account of such advances to various parties. The AO was of the opinion that since the assessee's name appeared in the seized documents/books of accounts, the peak calculated at Rs. 20 lakh on the amount of Rs. 31 lakh alleged to have been advanced by the assessee was to be considered as belonging to the assessee and action u/s 153C of the Act was, accordingly,

initiated. Assessment u/s 153C was completed by making an addition of Rs. 20 lakh on peak basis as well as addition of Rs. 1,48,967/- was made on interest earned thereon. The Assessing Officer also noted that Smt. Abha Gupta was closely related to Shri Brij Mohan Gupta as her father Shri Ashish Gupta was the son of Shri Brij Mohan Gupta and ,therefore, the assessee was the granddaughter of Shri B.M. Gupta in whose case action u/s 132 of the Act was taken.

3. The assessee approached the first appellate authority who annulled the assessment holding that the documents seized did not belong to the assessee and, therefore, the Assessing Officer was not justified in initiating action u/s 153A of Act. The Ld. CIT (A) also observed that the Assessing Officer was free to take proper remedial action as provided in the statute.

4. Subsequently, a notice u/s 148 was issued to the assessee and since no compliance was made to the notice, the Assessing Officer proceeded to complete the assessment u/s 144 r.w.s. 148 of the Act by adding back Rs. 20 lakh u/s 69A of the Act. The Assessing Officer also brought to tax Rs. 1,48,967/- on account of interest earned on alleged advances.

5. Aggrieved, the assessee again approached the Ld. CIT (A) challenging the initiation of reassessment proceedings u/s 148 as well as challenging the additions on merits. However, the Ld. CIT (A) dismissed the assessee's appeal on both the grounds and now the assessee has approached the ITAT and has raised the following grounds of appeal: -

“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in

- a) *Holding that the order passed by the AO u/s 144/148 was valid.*
- b) *Holding that action u/s 148 has been legally taken and therefore was not correct in rejecting the submission taken by the AO in this regard summarily even without considering giving reasons for such rejecting.*
- c) *Holding that the name of Abha Gupta in the books as Brij Mohan in the name of the assessee who has given the amount of Rs. 20 Lakh on loan therefore Brij Mohan.*
- d) *Rejecting the affidavit filed by the assessee that she has not given any loan through Brij Mohan of Rs. 20 Lakh as alleged by the revenue even without confronting her and also without funding any incorrectness or wrong statement in the affidavit.*
- e) *Without prejudice to above on passing the appeal order without deciding all the grounds individually and respectfully.*
- f) *In holding that the action taken u/s 147/148 was valid.*
- g) *Confirming the addition of Rs. 20 Lakh incorrectly made by the AO.”*

6. Ld. AR submitted that the Assessing Officer was incorrect and unjustified in treating the amount of Rs. 20 lakh as the income of the assessee u/s 69 of the Act as the assessee had, inter alia, filed an affidavit before the Ld. CIT(A) that she had never given any amount to Shri Brij Mohan Gupta or for that matter to anybody else for any investment and that the name of Abha Gupta in Annexure A-5 of Para H-4 had no relation or connection whatsoever with her and that the said entry was not related to her. It was submitted that the Ld. CIT (A) had completely disregarded this affidavit and had confirmed the addition. It was further submitted that in a related case of Shri Rajeev Gupta s/o Shri Brij Mohan Gupta, where cash loans were allegedly advanced and interest earned, the Assessing Officer had made additions of Rs. 21 lakh in assessment year 2000-01 and Rs. 31 lakh in assessment year 2002-03 which were deleted by the Ld. CIT(A) and on revenue's appeal, ITAT Delhi Bench in ITA Nos. 1304 and 1305/Del/2009 vide order dated 9th October 2009, had held that the name in the seized paper was not that of Shri Rajiv Gupta because there might be several persons with the name of Shri Rajiv Gupta and since the assessee had taken specific objection regarding the identity before the Assessing

Officer, the Assessing Officer should have taken steps to establish his allegations that the name mentioned in the seized document was that of Shri Rajiv Gupta in that case. The Ld. AR placed reliance on this order of the ITAT and submitted that in the case of the assessee, it had been wrongly inferred from the seized material (being ledger books, containing the names of the parties, who had advanced cash loans through Shri Brij Mohan Gupta and the names included the name of Shri Rajiv Gupta, Shri Ankit Gupta and Smt. Abha Gupta) that the assessee had advanced loans to Shri Brij Mohan Gupta and the assessee had specifically objected to such inference through an affidavit but the department, on the preponderance of probability, had rejected the affidavit filed by the assessee. It was submitted that in view of the order of the ITAT in the case of another assessee, Shri Rajiv Gupta, falling within the same group of cases, the impugned addition should be deleted.

7. Ld. DR placed reliance on the orders of the Assessing Officer as well as the Ld. CIT (A) and vehemently argued that the addition be upheld.

8. We have heard the rival submissions and have perused the relevant material on record. A perusal of the orders of the ITAT

in the case of Shri Rajiv Gupta for assessment years 2000-01 and 2002-03 in ITA Nos. 1304 & 1305/Del/09 shows that identical issue was before the ITAT Delhi 'E' Bench in that case. It is undisputed that the assessee also belongs to Shri B.M. Gupta group of cases in which the search was carried out on 15.12.2004. In the said order the relevant findings of the ITAT are found in Para 8 and 9 which are being reproduced here-in-under for a ready reference:-

“We feel that before deciding as to whether the seized documents belongs to this assessee also or not, we should decide as to whether the name of “Rajiv Gupta” appearing in the seized papers is of the assessee or not. For this purpose, we have examined in detail all the statements of the assessee and of Shri BM Gupta and of the Accountant Shri RA Singhal and in their statements there is no question asked about the identity of “Rajiv Gupta”, whose name is appearing in the seized paper. Before the Assessing Officer, the assessee has taken specific objection that this is not his name but in spite of this, the Assessing Officer has not taken any action to find out the truth. He could have recorded the statement of the assessee and could have asked to point out the person whose name is appearing in the seized papers because some documents are in his hand writing also or he could have recorded statement of Shri BM Gupta and/or Shri RA Singhal to enquire about the identity of "Rajiv Gupta", whose name is appearing in the seized paper. The Assessing Officer has done nothing to establish that this name of "Rajiv Gupta" appearing in the seized paper is of the assessee. He has decided the issue on presumption only that since the name is tallying with the name of the assessee, the name mentioned in the seized paper is of the assessee. Under these facts, we cannot give a finding that the name in seized paper is of the assessee only because there may be

several persons by the name of "Rajiv Gupta" and since the assessee has taken specific objection before the Assessing Officer, the Assessing Officer should have taken action to establish his allegation that the name mentioned in the seized document is of the assessee. Before us also, Ld DR of the revenue could not point out any basis for holding that the name mentioned in the seized paper is of the assessee only particularly when the assessee is objecting the same and this possibility cannot be ruled out that this name may be of some other person because there may be several persons by name of "Rajiv Gupta". Under these facts, we are of the considered opinion that it cannot be held that the name appearing in the seized document is of the assessee only. No purpose will be served even if we restore this matter back to the Assessing Officer since much time has elapsed. Under these facts, the addition may by the Assessing Officer cannot be sustained because the Assessing Officer could not establish that the name appearing in the seized papers is of the assessee only.

9. In view of our finding that the name mentioned in the seized paper cannot be held to be of the assessee, we feel that no adjudication is called for on the first aspect of the matter as to whether the seized documents can be said to be belonging to the assessee or not because even if it is found and held that seized documents are belonging to the assessee, the addition made by the Assessing Officer cannot be sustained for the reasons that the name found in the seized paper is not established to be that of the assessee. We, therefore, do not decide this aspect of the matter as to whether the seized document belonged to the assessee or not because it is of academic interest only. In view of our above discussion, we confirm the order of Ld CIT(A) in both the years although for different reasons."

9. On the factual matrix of the case, we are of the considered opinion that the assessee's case is also squarely covered by the ratio of decision of the co-ordinate Bench of the ITAT in the case

of Shri Rajiv Gupta (supra). We also have on record copy of the ITAT order in ITA No. 43 and 44/Del/2010 in the case of the assessee for assessment years 2002-03 and 2003-04, wherein the ITAT vide order dated 10.06.2011 has dismissed the department's appeal challenging the action of the Ld. CIT (A) in holding that the documents on the basis of which proceedings u/s 153C of the Act had been initiated in the case of the assessee did not belong to the assessee. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to delete the impugned additions.

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

Order pronounced in the Open Court on 31st May, 2017.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31st MAY, 2017

'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR

Following grounds have been preferred by the assessee:-