

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

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 4241/Del/2014 : Asstt. Year : 2005-06

ITA No. 4242/Del/2014 : Asstt. Year : 2006-07

ITA No. 4243/Del/2014 : Asstt. Year : 2007-08

Dy. Commissioner of Income Tax, Central Circle-11, New Delhi	Vs	Rajesh Kumar Kanodia, C-175, Pushpanjali Enclave, Pitampura, New Delhi-110034
(APPELLANT)		(RESPONDENT)
PAN No. AIHPR1170A		

ITA No. 3670/Del/2014 : Asstt. Year : 2005-06

ITA No. 3671/Del/2014 : Asstt. Year : 2006-07

ITA No. 3672/Del/2014 : Asstt. Year : 2007-08

Rajesh Kumar Kanodia, C-175, Pushpanjali Enclave, Pitampura, New Delhi-110034	Vs	Dy. Commissioner of Income Tax, Central Circle-11, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AIHPR1170A		

Assessee by : Sh. Ved Jian, Adv. &

Sh. Ashish Goel, CA

Revenue by : Smt. Paramita Tripathy, CIT DR

Date of Hearing : 20.06.2017	Date of Pronouncement : 28.07.2017
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ORDER

Per Bench:

These Cross appeals by the department and the assessee are directed against the separate orders each dated 09.05.2014 for the assessment years 2005-06 to 2007-08 passed by the Id. CIT(A)-XXXI, New Delhi

2. Since the appeals pertaining to the same assessee were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal of the department in ITA No. 4241/Del/2014. The only effective ground raised in this appeal, reads as under:

“On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.55,77,999/- made by the Assessing Officer on account of GP rate of 0.2% of total turnover of Rs.278,89,99,500/- as against a GP rate at 0.01% which appears to be at lower side, since the assessee was making total sales in cash and no details of parties to whom sales were made furnished and the profit shown by the assessee was not verifiable.”

4. From the above ground, it is gathered that only grievance of the department relates to the deletion of addition of Rs.55,77,999/- made by the AO by enhancing the GP rate.

5. Facts of the case in brief are that the assessee is a proprietor of M/s Vasudeva Jewellers, Jaipur. A search and seizure operation u/s 132(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted at the residential premises as well as the business premises of the assessee and his group concerns/companies/family members on

28.03.2011. The AO issued notice u/s 153A of the Act on 01.02.2012. The assessee filed the return of income on 04.12.2012 declaring an income of Rs.4,79,044/-. During the course of assessment proceedings, the AO noticed that as per the documents seized during the course of search, there were certain vouchers regarding cash deposited in various bank accounts of the group amounting to Rs.514,63,72,449/-. The AO asked the assessee to furnish source of cash deposited in various banks. In response, the assessee submitted as under:

“We are in receipt of notice from your goodself requiring us to furnish information regarding source and purpose of cash deposit of Rs.514 crores in various bank accounts of the group assessee as mentioned in vouchers seized during the course of search on 28.03.2011 vide Annexure A-1 to A-8 (except Annexure A-3). In this regard, it is important to mention that, as explained earlier, the assessee is mainly engaged in the business of Manufacturing, fabricate, import, export, trading and otherwise dealing in Silver, Gold and Diamond Jewellery, precious and semi precious stones. Due to the nature of items and its significant valuation, the turnover and consequently the cash deposit runs in hundreds of crores of rupees.

At this stage, it is worthwhile to mention that we have already placed on record documents such as VA T Returns, bank statements, day wise sale details etc which are sufficient to substantiate the figures of cash sales and its genuineness, however, in order to further

co-operate in the assessment proceedings, we have made an effort to provide you the assessee wise, year wise and bank wise details in such a manner that your goodself feels satisfied about the explanation of voucher seized. Though proper care has been taken to place on record the information and the manner in which they are desired, however, on account of paucity of time and volume involved, the possibility of certain clerical mistakes cannot be ruled out, therefore such clerical mistakes be read as such and no adverse inference thereof be taken. Apart from that we are once again enclosing the copies of audited balance sheet alongwith copies of VAT Returns for your ready reference.

In view of the above we hope that the information so furnished including the similar information furnished in earlier submissions would fulfill your requirement and in case, your goodself require any further clarification in any matter or is of different view, then being expressed therein, kindly furnish the basis thereof with an opportunity.”

6. The AO noted from the aforesaid reply of the assessee as under:

“i) The perusal of details furnished by the assessee shows that the assessee group has deposited cash in - various bank account during Assessment Year 2005-06 to 2011-12.

ii) The assessee has furnished details regarding purchase of gold from bank/MMTC and other details in support of opening stock, sales, closing stock and cash deposits in bank accounts.

iii) The assessee has filed copy of VAT return in support of sales made during the Assessment Year 2005-06 to 2011-12.”

7. The AO also observed that the assessee had adopted the *modus operandi* for bullion trading as under:

“i) The assessee purchases the gold from government agencies like, MMTC, and Banks authorized to sell gold bars through the banking channels;

ii) The bullions bars (in denomination of 1 kg or 2 kg) are sold to the customers in cash through the cash vouchers;

iii) This cash is deposited in the bank account of the assessee and is either transferred to other bank account for purchase of gold from that bank or pay order is made in favor of MMTC/Bank.”

8. The AO in order to ascertain the actual profit earned in the above said transaction, asked the assessee to furnish the details of date wise purchase/sale, market rate of purchase/sale, market rate of respective date in respect of all the transactions/bullions of gold. In response, the assessee vide letter dated 04.03.2013 submitted as under:

“In the recent hearing on 27.02.2013 your goodself has required us to furnish date wise purchase/sales, rate of purchase and market rate of gold on the respective date in the relevant Assessment Year, in this regard, it is submitted that though detailed

submission has already been made containing all the required details, the matter is being explained again as under-Kindly refer the hearings in the captioned matter already held and material already on record read with material on record as an outcome of search on the business and other premises. In this connection reference is respectfully drawn to followings:-

- i) The Search proceedings u/s 132 of IT Act, 1961;*
- ii) Genuineness evident from material already on record;*

In continuation thereof as desired by your goodself in connection with mode and manner trading activities of sale and purchase of gold, bullions etc made by us, it is respectfully submitted as under:-

Purchases

As communicated earlier read with documentary evidences on record, it is evident that:-

- (a) The entire purchases have been made from suppliers on national and international repute and big organization like MMTC etc;*
- (b) That entire such purchases are made for account payee cheques;*
- (c) That the purchases so made is duly supported with bills issued by the suppliers;*
- (d) That the bills so issued by the suppliers clearly state the quantity, quality and amounts charged by them, that II such bills are duly recorded in books of accounts and stock maintained in normal course.*
- (e) Even during the course of search:
 - 1. Not even a single purchase was found to be made in cash;**

2. *Not even a single document found to suggest that the assessee ever engaged in sales outside book;*

3. *No purchase was found that was not properly recorded in books;*

4. *None of the purchase was found to be made from undisclosed sources or sources other than from disclosed bank accounts.*

5. *It was consistently observed during search, post search and later during assessment proceedings that the entire creditors/debtors are not only arising out of corresponding transactions of purchases and sales recorded in books are identifiable, confirmed and liability due to them/due from them is ascertained;*

6. *The documents found during search were duly explained. In this connection reference be drawn to reconciliation in the matter submitted from time to time as well as similar matter raised in other group cases.*

(f) at this stage, it is important to mention that we have already placed on record the purchase bills, VAT Returns, bank statement alongwith detailed workings depicting stock situation on every sale etc which are sufficient to substantiate the figures of purchases, sales etc. as appearing in the audited accounts of the company. Sales executed during the year.

Prior we proceed to explain the sales executed, we take this opportunity to draw your kind attention to various factors affecting sales and peculiarities of business dealt by us. Peculiarities of business and trade

(a) wholesale market vs. retail trade

it is no secret that the kind of trading i.e. wholesale or retail has a telling effect on impact of profitability. In wholesale market the emphasis is on bulk sales at lower rates contrary to emphasis in retail market.

(b) Volatile market and frequent variation in rates

The business of the assessee group consist of a market prone to and known for varying rates of gold on day to day basis and control of the gold rates by the international market. Even the rates are also subjected to change substantial intra-day. Such rates are not under the control of any person. The fluctuations are unprecedented, cannot be predicted.

There is thus possibility of situation and in fact this occurs frequently where the quoted price falls on a daily basis but we are forced to sell the goods to our customers at the prices agreed when the orders were received from them i.e. resulting in unenviable loss situation.

(c) Competition

The business and the commodities being traded in are subjected to stiff completions from all quarters like persons business houses having big names likes MMTC, Bank and other big investment companies

selling gold and gold bonds etc. once the authorized agencies (banks) have started selling gold to retailers and consumers, the gap between the wholesale and retail level has narrowed down, a tough competition has already lead to substantial drop in margins and prices benefiting consumers and as such sometimes we have forced to even constrained to sell the goods at cost or below so as to retain our share in the market and competitions.

(d) Sales prices subjected to bargain

The prices are subjected to huge bargain and negotiation at all levels. There can be as such no benchmark/yardstick, criteria, scientific/commercial method to fix prices.

(e) Customers prefer cash sales only

For reasons prevalent in the market that the customers prefer cash sales only. This is one of prime reasons of even existence of gold and bullions dealers like us. It is not a secret in the market that the commodities sold is normally purchased from big business houses and government merchandize organizations. These primary suppliers of the commodity discourse sales in cash as such the customers willing to buy commodity through us in cash only approach us and that too notwithstanding the fact that the commodity will be supplied upon receipt of same from business house known the customers and that too after such time lapse it may take.”

9. The AO after considering the replies of the assessee observed that the sales made by the assessee were at lesser

price than the market rate on the respective dates on various occasions and that the reasons for difference in sale rate as well as market rate had not been found convincing as the assessee was making all the sales in cash. He further observed that date and timing of sale of gold could not have been said with certainty and the price of sale considered by the assessee in the cash vouchers could not be verified in the absence of details of buyers and the cash vouchers. He further observed that during the period under consideration the prices of gold were in upward movement and any stock would have yielded good returns. Hence, the sale prices of the gold adopted by the assessee appear to have been manipulated and did not reflect the true profits. The AO observed that the assessee had done total turnover of Rs.278,89,99,500/- and shown net profit of Rs.3,00,489/- only. The AO also observed that the assessee had shown a GP rate at 0.001% which appears to be at lower side. He further observed that the GP rate in group cases of the assessee were not constant. The AO to cover up the leakage, made the addition by adopting the GP rate at 0.2%. Accordingly, the addition of Rs.55,77,999/- was made.

10. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the gross profit rate had been enhanced merely on the basis of doubts without bringing any

material or evidence to support the allegation that the assessee had received any amount over and above what was stated in the books of accounts.

11. The ld. CIT(A) after considering the submissions of the assessee observed that the facts of the present case were identical in all respect to the facts in the case of M/s Vasudeva Jewellers Pvt. Ltd. (assessee's group concern) for the assessment year 2005-06 (Appeal No. 449/13-14) wherein the GP addition made by the AO had been deleted. The ld. CIT(A) deleted the addition by following the order in the case of M/s Vasudeva Jewellers Pvt. Ltd. (supra).

12. Now the department is in appeal. The ld. DR reiterated the observations made by the AO and strongly supported the assessment order dated 28.03.2013.

13. In his rival submissions the ld. Counsel for the assessee submitted that no incriminating material belonging to the assessee was found during the course of search and the AO applied the GP rate of 0.2% without being any adverse material and without pointing out any error in the books of accounts and even without rejecting the books of accounts. It was further submitted that the AO made the trading addition

without rejecting books of accounts of the assessee and that he had not tinker with the purchases, stock and expenses incurred by the assessee, he had only doubted the sales figures but had not been able to point out any inflated figure and suppressed sales. It was further submitted that there was no basis of estimation of the rate taken by the AO for enhancing the gross profit declared by the assessee and the addition had been made by indulging into surmises and conjectures.

14. The Id. Counsel for the assessee referred to page nos. 265 to 286 of the assessee's paper book which is the copy of the order passed by the Id. CIT(A) in the case of M/s Vasudeva Jewellers Pvt. Ltd. and relied upon the observations made in paras 4.8.6 to 4.8.9 and stated that the Id. CIT(A) had passed a well reasoned order while deleting the addition made by the AO. The reliance was placed on the following case laws:

- *Gondwana Enterprises Vs ITO, Ward-30(1), New Delhi (2015) 7 TMI 207 (ITAT Del.)*
- *ITO, Ward-4(5), New Delhi Vs Sh. Mahesh Chand Sharma (2015) 5 TMI 846 (ITAT Del.)*
- *A.P. Processors, Delhi and Others Vs ACIT, Circle-30(1), New Delhi and Others (2015) 7 TMI 847 (ITAT Del.)*
- *ACIT Vs Sh. Vijay Kumar Aggarwal (2013) 7 TMI 41 (ITAT Del.)*

15. It was further submitted that the order of the ld. CIT(A) in the case of M/s Vasudeva Jewellers Pvt. Ltd. was challenged by the department before the ITAT Delhi Bench - SMC-III, New Delhi in ITA No. 4245/Del/2014 which has been dismissed vide order dated 12.07.2016.

16. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO accepted the opening stock, purchases, closing stock and cash deposits in the bank accounts which were recorded by the assessee in his books of accounts maintained in the regular course of business. The AO doubted the value of the sale for the reason that the date and timing of sale of gold could not have been said with certainty and that the price of sale considered by the assessee in the cash voucher could not be verified in the absence of any details of buyers, however, no inflated sale was pointed out. On the contrary, the sale was duly declared by the assessee in his VAT returns filed before the appropriate authorities (copies of which were furnished before the AO). In the present case, it is noticed that the AO applied GP rate of 0.2% on estimate basis and made the ad-hoc addition. However, no specific instance of inflated purchase or suppressed sale was pointed out and no specific defect was

pointed out in the books of accounts. The assessee furnished the books of account with purchase/sale details, ledger and day to day stock register with quantitative details, the same had been accepted by the AO. Therefore, the ad-hoc addition made by the AO, by applying the GP rate of 0.2% was not justified, particularly when no comparable case was brought on record wherein such a profit was earned. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the ld. CIT(A) rightly deleted the addition made by the AO by following his own order for the assessment year 2005-06 in the case of M/s Vasudeva Jewellers Pvt. Ltd. (supra), against which an appeal was filed by the department before the ITAT in ITA No. 4245/Del/2014 which has been dismissed vide order dated 12.07.2016. In that view of the matter, we do not see any merit in this appeal of the department.

17. In another appeals of the department for the assessment years 2006-07 and 2007-08, similar issues are involved having identical facts, the only difference is there in the amount involved. Therefore, our findings given in former part of this order in respect of assessment year 2005-06 shall apply with the same force for the assessment years 2006-07 and 2007-08. Accordingly, the appeals of the department are dismissed.

18. Now we will deal with the appeal of the assessee in ITA No. 3670/Del/2014 for the assessment year 2005-06. The assessee has raised the following grounds:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment framed by the AO is against the spirit of section 153A of the Act whereby the reassessment has to be confined to the additions and disallowances consequent to the material found and does not give

power to the AO to reappraise and review the completed assessments.

5(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.41,03,460/- and Rs.2,27,100/- made by the AO on the basis of seized documents being pages 77-78 of Annexure I.

(ii) That the above said addition has been confirmed ignoring the fact that the transactions stated in the document do not pertain to the assessee and the AO has not been able to corroborate and co-relate the document and the facts and figures stated therein with the assessee.

(iii) That the addition has been confirmed by arbitrarily rejecting the detailed explanation and evidences submitted by the assessee in support of its contention.

6. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

19. The grievance of the assessee vide Ground Nos. 5(i) to (iii) relates to the confirmation of addition of Rs.41,03,460/- and Rs.2,27,100/- made by the AO on the basis of seized documents being pages 77-78 of Annexure-I.

20. The facts related to this issue in brief are that during the course of search operation documents marked as Annexure A-1 page 77 & 78 was found and seized from the residential

premises of the assessee on 28.03.2011. The AO alleged that the description given on the said documents indicated that the assessee had deposited cash to the tune of Rs.26,75,000/- on different dates (28.02.04 Rs.6,00,000/-, 17.02.04 Rs.9,35,000/- and 23.06.04 Rs.11,40,000/-). The AO also presumed that the interest on the said amount had been charged @ 17% which worked out to Rs.14,28,460/-. The AO asked the assessee to furnish the explanation regarding the cash deposit of Rs.26,75,000/- and interest of Rs.14,28,460/-, total amounting to Rs.41,03,460/-. In response, the assessee submitted as under:

“We are in receipt of a notice from your goodself requiring us to furnish source of cash deposit of Rs.26,75,000/-, payment of Rs.20,00,000/- on interest to Mr. Malik, payment of Rs.15,00,000/-, Rs.3,50,000/-, Rs.10,00,000/- on interest to Mr. Badani and other interest received mentioned in the documents seized during the course of search vide annexure A page 77 and 78. In this regard, it is submitted that none of the above document or transaction pertain to the undersigned, his relative or any of his business concern. At this stage, it is important to mention that the undersigned does not have any connection with Mr. Malik and Mr. Badani etc. as mentioned in the seized documents. Since the assessee is extremely social person, many people visit assessee's place to discuss their problems. The captioned documents appear to be left over by some persons. As per the knowledge and belief of the

undersigned, most probably, these transactions pertain to Mr. Laxman Chauhan who kept on visiting assessee's place due to his business relation with the assessee. Though currently the assessee is not in touch with the said person, however, his last available address is W-87, Anupam Garden, Sainik Farms, New Delhi. In case, your goodself so desire, you are requested to kindly make the independent inquiry directly from the concerned person.”

21. The AO was not satisfied from the reply of the assessee and observed that the assessee had neither discharged his onus by satisfactorily explaining the transaction appearing in documents nor offered any information or material evidence. He, therefore, made the addition of Rs.41,03,460/- in the hands of the assessee. The AO also noticed that the documents marked as page 77 of Annexure A-1 found and seized during the course of search operation from the residential premises of the assessee, revealed that the transaction of cash payment was before 31.03.2004, but there were some calculation of interest on the amount so advanced which worked out to Rs.2,27,010/- and the assessee had not furnished any convincing explanation for the same. Therefore, the said amount was added to the income of the assessee.

22. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the AO ignored the contents of the

document which was self-speaking and that the assessee had provided the address of the person concerned to whom those transactions pertained, therefore, it was not justified for the AO to draw any adverse inference against the assessee. It was pointed out that as per the this document, there was a deposit in State Bank of Mysore in the account pertaining to Mr. Ram Chauhan and the said fact became more than evident from the other seized document i.e. page 8 to page 10 which was a sanction letter from State Bank of Mysore whereby the car loan had been sanctioned in the name of M/s Universal Ornaments, a proprietary concern of Mr. Ram Chauhan. It was stated that the AO had drawn adverse inference on the basis of seized documents i.e. pages 77-78 but did not consider the pages 75 and 76 of the seized documents which were a car loan installment amount paid to State Bank of Mysore, on page 73 of the seized document was garment exports account whereby various details of the business of the garment export were mentioned and the said business pertained to the said person, Mr. Ram Chauhan. Therefore, the AO was not justified in drawing an adverse inference against the assessee merely on the basis of only those two papers i.e. page nos. 77-78 but without considering other papers which were part of the seized documents and threw light about the nature of the transactions.

It was further submitted that the presumption u/s 132(4A) of the Act was to be drawn firstly on the entire reading of document seized and not in isolation and secondly it was a rebuttable presumption. It was stated that if the entire seized documents were read it would be clear that those transactions were not that of the assessee.

23. The ld. CIT(A), however, did not find merit in the submission of the assessee and sustained the addition by observing in para 4.8.3 of the impugned order which read as under:

“4.8.3 I have considered the submission of the AR, the seized documents and the assessment order. I am not in agreement with the AR. The appellant has not been able to provide any valid explanation for the contents of the seized documents. He has not been able to prove that the document did not belong to the appellant. The AO has rightly added the amounts including the interest mentioned in the seized documents. The arguments of the AR that the documents do not belong to the appellant are without any substance. Mere submission of the name and address of some person to be the probable owner of the documents does not discharge him of the burden of rebutting the presumption contained in section 132(4A) of the Act, 1961. Therefore I have no hesitation to upholding the addition made by the AO. The ground on the issue is therefore rejected.”

24. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that in the documents relied by the AO, certain accounts with certain entries were mentioned, a reference was made to page no. 34 of the assessee's paper book which contained the details of repayment of loan of State Bank of Mysore and amount paid to Mr. Malik for purchase of property. It was further submitted that in answer to a query raised by the AO, the assessee replied that the document did not pertain to him, as such he could not explain those entries and no such addition could have been made in his hands. It was also submitted that the assessee stated before the AO that the aforesaid documents were related to Mr. Ram Chauhan, who was an acquaintance. It was stated that in order to interpret the seized documents, the bunch of papers Annexure A-1 was to be read as a whole. It was further stated that the addition has been made only on the basis of page nos. 76-78, but the another documents placed at page nos. 42 to 43 which was a copy of the sanction letter from State bank of Mysore whereby the car loan had been sanctioned in the name of M/s Universal Ornaments (a proprietorship concern of Sh. Ram Chauhan) had been ignored. It was further stated that page nos. 44 to 46 are the copies of the account of M/s Universal

Ornaments and the entries mentioned at page no. 46 tallied to the entries at page no. 76 of Annexure A-1, which proved that the account and the seized paper were related to Mr. Ram Chauhan. It was submitted that entries at page no. 47 onwards of the assessee's paper book are the copies of bank statement of M/s Universal Ornaments in Allahabad Bank which can be tallied with the entries at page 76 of Annexure A-1. Therefore, all the evidences go to prove that the bunch of seized documents belonged to Mr. Ram Chauhan and the assessee has nothing to do with it. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified.

25. As regards to the addition in respect of interest on the advances amounting to Rs.2,27,010/-, the Id. Counsel for the assessee stated that since the entries did not belong to the assessee, the interest in relation to those advances could not have been added in the hands of the assessee. The reliance was placed on the following case laws:

- *M/s Habitat Royale Projects Pvt. Ltd. Vs ACIT, CC-22, (2016) 11 TMI 1365 (ITAT Del.)*
- *Vatika Landbase Pvt. Ltd. in ITA No. 670/2014 dated 26.02.2016*
- *M/s Delco India Pvt. Ltd. in ITA No. 116/2016 dated 10.02.2016*
- *Smt. KV Lakshmi Savitri Devi Vs ACIT (2013) 11 TMI 805 (ITAT Hyd.)*

- *CIT (Central), Patan Vs M/s Ranchi Medical Research & Development Foundation (P) Ltd. (2012) 10 TMI 95 (Jhar)*
- *ACIT Vs Buldana Urban Co-operative Credit Society Ltd. (2013) 12 TMI 237 (ITAT Nag)*
- *ACIT Vs Sri B. Srinivasa Rao, M/s Prathima Educational (2013) 11 TMI 826 (ITAT Hyd)*
- *DCIT, CC-2 Vs M/s Rising Buildestate Pvt. Ltd. (2012) 9 TMI 252 (ITAT Jaipur)*
- *ACIT Vs Shri OP Bhalla (2012) 7 TMI 584 (ITAT Del.)*
- *CIT Vs Girish Chaudhary (2008) 296 ITR 619 (Del.)*

26. In his rival submissions the ld. DR strongly supported the orders of the authorities below and reiterated the observations made in the said orders. It was further submitted that the documents were found from the residential premises of the assessee and no satisfactory explanation was given. Therefore, the addition was rightly made by the AO and the ld. CIT(A) was fully justified in sustaining the same.

27. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the addition has been made by the AO on the basis of the documents found during the course of search. The AO made the impugned addition for the reason that there were deposits in the bank account as mentioned at page 76 to 78 of Annexure A-1 found

during the course of search, copy of the said documents is placed at page no. 34 of the assessee's paper book and revealed that on 28.01.2004 and 17.02.2004 cash amounting to Rs.6,00,000/- and 9,35,000/- respectively were deposited and another amount of Rs.11,40,000/- was deposited on 23.06.2004. The interest has been charged on 30.06.2006 amounting to Rs.14,28,460/-. From the aforesaid documents, it would be clear that cash deposited on 28.01.2004 and 17.02.2004 falls in the financial year 2003-04 pertaining to the assessment year 2004-05 and not to the assessment year under consideration i.e. assessment year 2005-06. The interest is also charged on 30.06.2006 which also does not fall in the year under consideration. Therefore, the addition for the aforesaid amounts made by the AO for the year under consideration was factually incorrect. The claim of the assessee from the very beginning was that those documents belonged to Mr. Ram Chauhan and the assessee provided his address and requested the AO to call Sh. Ram Chauhan, however, the AO opted not to call Mr. Ram Chauhan. In the present case, it is not in dispute that the loan repayment had been made to State Bank of Mysore and that during the course of search a sanction letter of car loan was found (copy of which is placed at page no. 41 of the assessee's paper book), the said letter dated 1st May,

2003 had been written to M/s Universal Ornaments, Kailash Colony, New Delhi stating therein that credit facilities has been sanctioned. The contention of the assessee that the said firm M/s Universal Ornaments is a proprietorship concern of Sh. Ram Chauhan has not been rebutted. Therefore, the explanation of the assessee that the repayment of loan as mentioned at page no. 34 was made by Mr. Ram Chauhan and not by the assessee is plausible. It is also noticed that the entries mentioned at page 34 tallies with the statement of account of M/s Universal Ornaments, cash deposits of Rs.11,40,000/- on 23.06.2004 is also mentioned at page no. 45 which is the copy of statement of account of M/s Universal Ornament with State Bank of Mysore and the same amount of Rs.11,40,000 has been shown as a deposit by cash on 23.06.2004. Therefore, it is clear that the entries mentioned at page no. 34 are the same as were mentioned in the statement of account of M/s Universal Ornaments (a proprietorship concern of Mr. Ram Chauhan) and the assessee has no link with those repayments. As such the addition made by the AO and sustained by the Id. CIT(A) in the hands of the assessee was not justified, particularly when the entries mentioned in the said documents belonged to Mr. Ram Chauhan, accordingly the same is deleted.

28. As regards to the another addition of Rs.2,27,000/- alleged to be interest on the advances, it is noticed that nothing is brought on record that the assessee earned the interest or the advances were made by the assessee. Therefore, the said addition was not justified, particularly when it was not proved that the assessee had given the advances mentioned at page nos. 76 to 78 of Annexure A-1. In that view of the matter, we do not see any justification on the part of the AO in making the addition in the hands of the assessee and the ld. CIT(A) without appreciating the facts in right perspective was not justified in sustaining the addition made by the AO. Accordingly, the same is deleted.

29. For the assessment years 2006-07 and 2007-08, similar additions have been made. Therefore, our findings given in respect of assessment year 2005-06 shall apply with the same force for those assessment years. Accordingly, the similar additions on the basis of same documents for the assessment years 2006-07 and 2007-08 are also directed to be deleted.

30. The another issue relating to addition made in the assessment year 2007-08, amounting to Rs.11,00,000/- has been challenged by the assessee vide ground nos. 6(i) and 6(ii) in ITA No. 3672/Del/2014.

31. The facts related to this issue in brief are that during the course of search operation document marked as Annexure A-1, page 7 was found and seized. On this paper there were details of payments made to Aukaf Board Shahbad, Marchanda, total amount paid was at Rs.20,00,000/-, out of which Rs.11,00,000/- were paid in cash. During the course of assessment proceedings, the AO asked the assessee to furnish source of cash payment with documentary evidence. In response, the assessee submitted as under:

“This payment was made by Kumkum Kanodia and duly accounted for in her records. In support, copy of ledger account of “Haryana Aukaf Board” in the records of Kumkum Kanodia.”

32. The AO after considering the submissions of the assessee observed that the balance sheet of Mrs. Kumkum Kanodia for the assessment year 2007-08 revealed that she had made payment of Rs.1,75,000/- only and in the said document, the following payments were mentioned:

*“01.03.2007 Cash Rs.4,00,000/-
Sh. Rajesh Kumar Kanodia Rs.1,75,000/- Cheque no. 75565
Nitika Kanodia Rs.1,75,000/- Cheque no. 088537
Rajat Kanodia Rs.1,75,000/- Cheque no. 088497
Kumkum Kanodia Rs.1,75,000/- Cheque no. 088106
31.03.2007 Cash Rs.7,00,000/-”*

33. The AO on the basis of above entries observed that the family members who had made payment of Rs.1,75,000/- each through cheques had duly disclosed in their respective balance sheet but the cash payment of Rs.11,00,000/- had not been shown in the balance sheet of the assessee and family members. Therefore, the same remained unexplained. The AO held that the assessee had neither discharged his onus of satisfactorily explaining the transaction appearing in the document nor offered any material or evidence. He, therefore, added Rs.11,00,000/- in the hands of the assessee.

34. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the assessee furnished the reply dated 04.03.2013 to the AO whereby it was stated that this payment made by Mrs. Kumkum Kanodia had been duly accounted for in her record. In support of the above contention, copy of ledger account of Haryana Aukaf Board in the books of Mrs. Kumkum Kanodia was also furnished. It was further stated that Mrs. Kumkum Kanodia was assessed to income tax and she was also subjected to search. The assessee furnished the copies of Income Tax Returns and the computation of income in the case of Mrs. Kumkum Kanodia and stated that the documents found at the premises which pertained to both the assessee and Mrs. Kumkum Kanodia who

had given an explanation alongwith the evidences in support thereof which the AO rejected arbitrarily. Therefore, the addition made by the AO was not sustainable. The reliance was placed on the following case laws:

- *CIT Vs Ved Prakash Chaudhary (2008) 305 ITR 245 (Del.)*
- *CIT Vs S.M.S. Investment Corporation (P) Ltd. (1994) 207 ITR 364 (Raj.)*
- *CIT Vs Raj Pal Singh Ram Avtar (2007) 288 ITR 498 (Ald.)*

35. The ld. CIT(A), however, did not find merit in the submissions of the assessee and confirmed the addition by observing in paras 4.4.3 and 4.4.4. of the impugned order which read as under:

“4.4.3 I have considered the submission of the AR, the assessment order and the seized document. It is noted that the assessee has made cash payment of this Rs.11,00,000/- in addition to the payment made by cheque. The contention of the assessee is that these payments were made by his wife, Mrs. KumKum Kanodia and have been duly accounted for in her books of account. On going through the ledger account submitted by the assessee, it is noted that a payment of Rs.4,00,000/- has been shown to have been made on 1st March, 2007 and received back on 5th March, 2007. Similarly payment of Rs.7,00,000/- has been shown to have been made on 31st March, 2007 and also received back on 31st March, 2007 itself. As against this, in the seized document there is no mention of any amount being received back. On

the contrary there are two payments of Rs.4,00,000/- and Rs.7,00,000/-. That the assessee received the payment back of Rs.4,00,000/- as is stated in the account filed by the assessee on 5th March, 2007, the same fact would have been stated in the seized document also. It is highly improbable that the amount of Rs.7,00,000/- has been paid on 31^s March, 2007 and has been received back on 31st March, 2007.

4.4.4 In view of these I am of the view that the explanation given by the assessee is not proper and hence I uphold the action of the AO in making the addition of Rs.11,00,000/- and this ground of appeal is rejected.”

36. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the impugned payment was made by Mrs. Kumkum Kanodia who had accounted for the same in her record. A reference was made to page no. 137 of the assessee's paper book which is the copy of account of M/s Haryana Aukaf Board in the books of Mrs. Kumkum Kanodia wherein payments amounting to Rs.11,00,000/- had been shown. It was stated that Mrs. Kumkum Kanodia is assessed to Income Tax and was also subjected to search, copy of her Income Tax Return and computation of income was furnished before the AO. A reference was made to page nos. 134 to 136 of the assessee's paper book. It was submitted that the Id.

CIT(A) was not justified in sustaining the addition made by the AO arbitrarily.

37. In his rival submissions the ld. DR strongly supported the orders of the authorities below and reiterated the observations made by the ld. CIT(A) in para 4.4.3 of the impugned order. It was further submitted that the evidences produced by the assessee were not adequate, therefore, the addition made by the AO and sustained by the ld. CIT(A) was justified.

38. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the impugned addition has been made by the AO on the basis of document A-1 page 7 found during the course of search. In the said document certain entries were mentioned, there were four entries of Rs.1,75,000/- each paid through cheques. The AO accepted the said i.e. the payments made by the assessee, Ms. Nitika Kanodia, Sh. Rajesh Kumar Kanodia and Mrs. Kumkum Kanodia. There were two more entries reflecting the payment in cash i.e. Rs.4,00,000/- on 01.03.2007 and Rs.7,00,000/- on 31.03.2007. The AO considered those entries as unexplained payments made by the assessee. The explanation of the assessee was that those payments were made by Mrs. Kumkum

Kanodia to Haryana Aukaf Board which was also evident from page no. 137 of the assessee's paper books which is the copy of Ledger Account of Haryana Aukaf Board in the books of Mrs. Kumkum Kanodia and read as under:

Haryana Aukaf Board
Ledger Account
1 Apr 2006 to 31 Mar 2007

<i>Date</i>		<i>Particulars</i>	<i>Vch. Type</i>	<i>Vch. No.</i>	<i>Debit</i>	<i>Credit</i>
4.3.2007	To	Allahabad Bank- 211185	Payment		1,75,000.00	
	To	Cash	Payment		4,00,000.00	
5.3.2007	By	Cash	Receipt			4,00,000.00
31.3.2007	To	Cash	Payment		7,00,000.00	
	By	Cash	Receipt			7,00,000.00
					12,75,000.00	11,00,000.00
	By	Closing Balance				1,75,000.00
					12,75,000.00	12,75,000.00

39. The aforesaid account of Haryana Aukaf Board from 01.04.2006 to 31.03.2007 was in the books of Mrs. Kumkum Kanodia which is assessed to tax and filing the return of income which is evident from page nos. 134 to 136 of the assessee's paper book which are the copies of acknowledgment of return of income and computation of income for the assessment year 2007-08. In the present case, it is not in dispute that search was conducted at the business premises of the assessee and his family member. Simultaneously, the search was also conducted at the residential premises of Mrs. Kumkum Kanodia whose name was also appearing in Annexure

A-1 page 7. The explanation of the assessee relating to the cash payments amounting to Rs.11,00,000/- was that those related to Mrs. Kumkum Kanodia and were the payments made to Haryana Aukaf Board. The said explanation was not rebutted. We, therefore, considering the totality of the facts, are of the view that the AO wrongly considered the said payments as unexplained in the hands of the assessee, particularly when the name of other persons of the assessee's family were also mentioned in the same document and nowhere it was stated that those cash payments were made by the assessee. Moreover, in the ledger account maintained by Mrs. Kumkum Kanodia, the said payments were reflected in the account of Haryana Aukaf Board and the explanation of the assessee was also that the said payments had been made by Mrs. Kumkum Kanodia. We, therefore, considering the totality of the facts, are of the considered view that the addition of Rs.11,00,000/- made by the AO and sustained by the Id. CIT(A) in the hands of the assessee was not justified. Accordingly, the same is deleted.

40. The another legal issues raised by the assessee were not argued, therefore, no finding has been given for the same.

41. In the result, appeals of the department are dismissed and that of the assessee are partly allowed.

(Order Pronounced in the Court on 28/07/2017)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/07/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR