

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

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

**ITA No. 4221/Del/2012
Assessment Year: 2008-09**

**Virender Nehra,
A-1/84, Chanakya Place,
New Delhi-110059
(PAN: ACFPN8347Q)
(Appellant)**

vs

**Addl. CIT,
Range 26,
New Delhi.**

(Respondent)

**Appellant by : Shri S.K. Kohli, CA
Respondent by : Shri Atiq Ahmad, Sr. DR**

**Date of Hearing: 03.07.2017
Date of Pronouncement: 26.09.2017**

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order passed by Ld. CIT(A)-XXIV, New Delhi vide order dated 07.06.2012 and pertains to AY 2008-09.

2. Following grounds have been raised by the assessee :-

"1. That the Ld. Authority below grossly erred in passing the order on erroneous ground & insufficient grounds.

2. The Ld. Add. CIT. made in additions of Rs. 225000/- being the cash component of rent not declared by the assessee while it has been confirmed by both i.e. tenant and landlord that no such cash rent has been given / taken. The confirmation had already been filed while filing the appeal at page no. 22. So, the fictitious addition should be deleted being against the facts of the case. However the Ld. CIT restricted the addition to 75% of the amount Rs. 118750/- being the shares of assessee.

3. That in any event the order passed is illegal unlawful and unjustified taking into consideration the facts of the case apparent on records.”

3. The facts of the case are that the assessee is running a business of export of readymade garments as a proprietor of M/s Delhi Fashion and Sports. The return of income was filed declaring taxable income of Rs. 28,28,660/-. The case was selected for scrutiny and during the pendency of assessment proceedings, the Assessing Officer received a report from ADIT(Inv) that a survey u/s 133A of the Income Tax Act, 1961 (hereinafter called the Act) was conducted at the business premises of the assessee on 2.2.2010 during the course of which certain incriminating material was found and impounded and was marked as Annexure A-1 to A-13. The documents impounded included an agreement to sale in respect of property no. B-53, B-1, Community Centre, Janakpuri, New Delhi which had been entered into on 14.1.2008 between the assessee on behalf of M/s Smriti Buildcon Pvt. Ltd., Shri Sanjay Parwal and Shri H.S. Saran. As per this agreement, total consideration for the aforesaid property was Rs. 12.95 crores and as per terms and conditions, an amount of Rs. 25 lakh in cash was received by the assessee from Shri H.S. Saran as token money. The statement of

the assessee was recorded under oath u/s 131 of the Act by the Assessing Officer and the amount of Rs. 25 lakh was added to his income as undisclosed commission received by him. The Assessing Officer further noticed that as per the impounded Annexure A-11, the assessee had rented out a particular property at a monthly rent of Rs. 1.75 lakh whereby Rs. 75,000 was to be received in cash and the balance of Rs. 1 lakh by cheque. As per the impounded material, it was indicated that the assessee had received Rs. 8.70 lakh in cash as rent deposit on 24.10.2007. The Assessing Officer came to a conclusion that these papers pertained to renting out of property No. F-1 and F-2, First Floor, Malik Plaza, Plot No. 5, Sector 4, Dwarka which was jointly owned by the assessee (75% share) and one Shri Johnson Benchanin (25% share) w.e.f. 1.1.2008. Accordingly, the Assessing Officer calculated cash component of rent at Rs. 2,25,000 for three months and added the same to the income of the assessee. Certain other additions were also made and the assessment was completed u/s 143(3) of the Act at a total income of Rs. 64,34,650/-.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) which was partly allowed and now the assessee is in

appeal before us and has raised the sole ground challenging the addition pertaining to cash component of rent not declared by the assessee.

5. The ground taken by the assessee reads as under:-

“2. The ld. Add. CIT made additions of Rs. 225000/- being the cash component of rent not declared by the assessee while it has been confirmed by both i.e. tenant and landlord that no such cash rent has been given/taken. The confirmation had already been filed while filing the appeal at page no. 22. So, the fictitious addition should be deleted being against the facts of the case. However, the ld. CIT restricted the addition to 75% of the amount Rs. 118750/- being the shares of assessee.”

6. Ld. AR submitted that the addition on account of alleged cash component of rent was based only on the documents impounded during the course of survey. It was further submitted that both the tenant as well as the co-owner have confirmed before the ld. CIT(A) that the rent did not have any cash component. It was also submitted that the paper impounded had no evidentiary value because the impounded documents were only pieces of paper whereas a formal rental agreement had been subsequently executed and the amount of rent as per the rental agreement was duly recorded in the books of the assessee as well as the tenant. It was also submitted that the department had

accepted the rental income shown by the assessee for the succeeding assessment year i.e. assessment year 2009-10 wherein vide order dated 30.11.2011 passed u/s 143(3) of the Act, no addition on this account had been made. Ld. AR also filed copy of the aforesaid assessment order in support of its contention.

7. Learned Departmental Representative placed heavy reliance on the orders of the authorities below and vehemently argued that the addition had been rightly made.

8. We have heard the rival submissions and carefully perused the relevant material placed on record. Ld. CIT(A) has discussed the issue at length in para 4.5 of the impugned order which is being reproduced hereunder for a ready reference:-

“4.5 In the next ground of appeal, the appellant has impugned the addition of the alleged non-existent cash portion of rent of Rs.75,000/- per month, which is supposed to have been received by the appellant from M/s. Somnath Buildtech, the tenant of the appellant. This addition was made by the AO on the basis of the documents impounded during the course of survey on the appellant, carried out by the Investigation Wing u/s. 133A of the Act on 02.02.2010 at his business premises A-1/84, Chanakya Place, New Delhi. Documents impounded as per Annexure A-11/page 2-4 indicated that Sh. Virender Nehra had rented out a particular property at a monthly rental of Rs. 1,75 lakhs on an understanding that Rs.75,000/- out of the same would be received by him in cash and the balance Rs.1 lac by cheque. The AO has mentioned in the assessment order

that page 2 of the Annexure clearly mentions that the appellant Sh. Virender Nehra received Rs.8.70 lakhs in cash as rent deposit on 24.10.2007. The signature of the appellant, Sh. Virender Nehra appears on this page and when the appellant was confronted with this document and was asked to explain the contents of the same during the course of recording his statement under oath u/s. 131 of the Act, the appellant could not give any satisfactory answer. The AO had mentioned that the rent was received by the appellant in respect of premises at F-1/F-2, First Floor, Malik Plaza, Plot No. 5, Sector-4, Dwarka, New Delhi-110075 which was rented out w.e.f. 01.01.2008 to M/s. Somnath Buildtech represented by Sh. Mayur Patel and Sh. Chhagan Bhai Patel. The AO has also mentioned that these premises admeasuring 1260.39 sq. ft. was owned by the appellant jointly with one Sh. Johnson Benchanin with the appellant being owner to the extent of 75% and Sh. Benchanin to the extent of 25%. Since the rent agreement was effective from 01.01.2008, and the cash portion of the rent amounted to Rs.75,000/- per month as per the impounded document, the AO made an addition of Rs.2.25,000/- to the income of the appellant as undisclosed rental income. In response, the appellant has denied having received any rental in cash. At the same time, while filing a rejoinder to the Remand Report, the appellant has submitted that he had filed a rectification application u/s. 154 to the Id. AO. A copy of this rectification application reveals that the appellant has claimed to be only 75% owner of the premise and has stated that if at all an addition has to be done in his hands on the basis of impounded documents, it should be only to the extent of 75 /o of Rs.2,25,000/-, i.e. a sum of Rs. 1,68,750/- only. I have carefully perused the arguments of both sides and I am of the considered opinion that the impounded documents, which were found in the business premises of the appellant and also bears his signatures clearly reveal that the appellant was receiving part of the rental income from his premises in Dwarka in cash. Therefore, the AO was fully justified in making addition of unaccounted rental income received in cash by the appellant. However, the

AO should have restricted the addition to the extent of 75% since he has himself given a finding that the appellant was owner of the premises to the extent of 75% only and the balance 25% was being owned by Shri Johnson Benchanin. Thus, the Assessing Officer is directed to restrict the addition on this account to a sum of Rs. 1,68,750/- only.”

9. We have also gone through the relevant seized documents which are at pages 9-10 and 11 of the paper book filed by the assessee. It is undisputed that these documents were found during the course of survey in the premises of the assessee and, therefore, the burden was on the assessee to disprove the documents which, in our opinion, he has failed to do. The cash receipt dated 24.10.2007 for Rs. 8,75,000/- is duly signed by the executant as well a witness. Ld. CIT(A) has also mentioned that while filing rejoinder to the remand report, the assessee had submitted that he had filed a rectification application u/s 154 to the Assessing Officer wherein the assessee had claimed to be only 75% owner of the premises and had also stated that if at all an addition had to be made in his hands on the basis of impounded documents, it should only be to the extent of 75% of Rs. 2,25,000/- i.e. a sum of Rs. 1,68,750/- only. Ld. CIT(A) has given proportionate relief to the assessee on this account by restricting the addition to Rs. 1,68,750/- only. As far as the assessment

order for the succeeding assessment year 2009-10 is concerned, it is seen that the income under the head house property has been accepted without any discussion by the Assessing Officer and it is not discernible from the assessment order as to how the income from house property was accepted without any inquiry. Under the circumstances, we do not find any reason to deviate from the findings and conclusions of the Id. CIT(A) and we, therefore, uphold his order and dismiss the appeal of the assessee.

10. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the Open Court on 26.09.2017.

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 26th SEPTEMBER, 2017

‘GS’

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR