

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.TA No.809,810 & 811/Kol/2014 A.Y 2009-10, 2010-11 & 2011-12		
D.C.I.T, Central Circle – XI, Kolkata	Vs.	Saurabh Mittal (PAN:AEAPM5901Q)
Appellant/Revenue		Respondent/Assessee

Date of Hearing	25.05.2017
Date of Pronouncement	14.07.2017

For the Revenue	Shri , G. Mallikarjuna, CIT. DR
For the Assessee	Shri A. K. Tulsyan, AR

ORDER

Per Shri A.T.Varkey, JM

These are revenue appeals against the common order of the CIT(A) central-1, Kolkata dated 25.02.2014 for AYs 2009-10 to 2011-12. Since grounds are common and facts are identical, we dispose of all the appeals by this common order for the sake of convenience.

2. The grounds of appeal are common for all the three assessment years. Therefore, the assessment year 2009-10 is taken as the lead case and the result of it will be followed in the other two assessment years.

3. The main grievance of the revenue is against the action Ld. CIT(A) deleting the addition of Rs.1,93,04,470/- which was made by the A.O on account of double digit suppression.

4. The brief facts of the case as noted by the Ld. CIT(A) and which is not disputed by the Ld. D.R are that in all the 3 appeals, the assessee has contested the finding of the AO that the seized document at page 4 of SPM/ 1 contains figures wherein two zeros have been suppressed. As the 3 appeals involve identical issues, they are being disposed by a single

combined order. The brief facts as they appear from the material placed on record are that search u/s 132 was conducted on 28-09-2010 at the residential and business premises of the assessee group. In response to the notices u/s 153A, the assessee filed his returns for the assessment years 2009-10 and 2010-11 declaring total income of Rs.27,59,350/- and Rs.1,02,93,300/-. The return for the assessment year 2011-12 was filed at total income of Rs.2,30,69,374/-. The assessment for the assessment years 2009-10, 2010-11 and 2011-12 was made u/s 153A / 143(3) on 25-03-2013 at total income of Rs.2,20,63,820/-, Rs.2,39,44,410/- and Rs.2,73,70,930/- respectively.

5. The seized documents marked SPM/ 1 was recovered from the residential premise of assessee's father Sri Shiv Prakash Mittal in Kolkata whereas the assessee resides at New Delhi. The AO noted in his assessment order that it was admitted by Sri Shiv Prakash Mittal in his statement u/s 132(4) that the document at page 4 of SPM/ 1 is the account of the assessee for the assessment years 2009-10, 2010-11 and 2011-12 in as much as it contains unaccounted income credited to the accounts of the assessee and also the withdrawals made by him. Sri Shiv Prakash Mittal (father of assessee) in his disclosure petition also offered the higher of the credits or withdrawals as the undisclosed income of the assessee for the said assessment years 2009-10, 2010-11 and 2011-12. In other words, Sri Shiv Prakash Mittal in his disclosure petition offered sum of Rs.1,94,994.64; Rs.1,37,890.00 and Rs.43,450.00 as the undisclosed income of the assessee for the assessment years 2009-10, 2010-11 and 2011-12 (which was also included by the assessee in his returns for the respective years). The AO summarised the disclosure in his assessment order as under:

Particulars of disclosure	Seized document	A Y	Appearing in seized document	Total
Opening balance (Rs.6488.08) plus total of withdrawals being greater than credits is treated as income	Page 4 of SPM/ I	2009-10	6,488.09 1,88,505.56	1,94,994.64
Total of credits being larger than withdrawals is treated as income	Page 4 of SPM/ 1	2010-11	99,960.00 3,930.00 34,000.00	1,37,890.00
Total of credits being larger than withdrawals is treated as income	Page 4 of SPM/ 1	2011-12	41,650.00 1,800.00	43,450.00

6. The AO noted in the assessment order that there was apparently double-digit suppression in the seized document at page 4 of SPM/ 1 which reflected certain transaction of assessee. The AO derived strength from the fact that double-digit suppression was admitted by father of assessee with reference to certain other documents seized in course of the search. For, accounts related to assessee's brother Sri Shobhan Mittal was found in the seized document at page 5 of SPM/ 1 wherein double-digit suppression was admitted and undisclosed income was also surrendered accordingly. Furthermore, Sri Shiv Prakash Mittal also admitted double-digit suppression in his accounts found in the seized document at page 6 & 7 of SPM/1. The AO also referred to the seized document JV/3 wherein double-digit suppression was admitted by the CFO Sri Venkatramani in his statement u/s 132(4). The AO, therefore, was of the view that the modus operandi of double-digit suppression was being followed by the assessee group and therefore the seized document at page 4 of SPM/ I should also invoice double-digit suppression. The assessee however denied at the assessment stage that there was any double-digit suppression in the seized document at page 4 of SPM/1. It was contended that the seized document contains actual figures of income and withdrawal; and, that the undisclosed income being the higher of income or withdrawal has been duly surrendered by the assessee.

7. The AO rejected the contentions of the assessee mainly on two grounds : first, that double-digit suppression was admitted by father of assessee in respect of certain other seized documents, namely, page 5, 6 & 7 of SPM/ 1 and in respect of JV/3 by CFO of the Group admitted of double digit suppression; and secondly, that the opening balance and the total withdrawals during the financial year 2008-09 was shown at Rs.6,488.08 and Rs.1,88,505.56 respectively in page 4 of SPM/ 1 which was not possible, as the coins of such denomination (1,2, 3 & 5 paisa) had long been withdrawn by the RBI. The AO also rejected the judicial decisions relied by the assessee on the ground that the undisclosed income was being computed on the basis of the seized material and not by presumption or guess work. Since the father and brother of assessee indulged in double digit suppression, the AO concluded that there was double-digit suppression in the seized document pertaining to assessee transaction noted at page 4 of SPM/1. The AO then computed on the

basis of such seized document the undisclosed income of the assessee for the assessment years 2009-10, 2010-11 and 2011-12 at Rs. 1,94,99,464/- Rs. 1,37,89,000/- and Rs.43,45,000/- respectively. Aggrieved by the aforesaid additions made by the AO the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the additions. Aggrieved by the said action of the Ld. CIT(A) the Revenue is before us.

8. We have heard rival submissions and perused the records carefully. We note that SPM-1 is bunch of loose sheets containing miscellaneous documents which were serially marked from pages 1 to 21 found during the course of search operation conducted u/s. 132(1) of the Act on 28.09.2010 and were seized. SPM-4 relates to the assessee which is found at page 15 of the paper book and which is reproduced as under:

A/C Mr. Saurabh Mittal

Date	Particulars	Debit	Credit	Balance
4.1.2008	Opening Balance			6488.08 Dr.
2008-09	Total credit as per syt Spm ji		99960.00	93471.92
2008-09	Credit against P. Expan Files		3730.00	97201.92
2008-09	Withdrawals	188505.56		91303.64
2009-10	Total credit as per syt Spm ji		99960.00	8656.36
2009-10	Credit against expenses		3930.00	12586.36
2009-10	Credit against Misc.		34000.00	46586.36
2009-10	Withdrawals	99419.33		52832.97
2010-11	Credit as per syt Spm ji		41650.00	11182.97
2010-11	Cash		1800.00	9382.97
2010-11	Withdrawals upto 07.05.2010	25278.96		34661.93 Dr.

9. From the perusal of the aforesaid noting on page 4 of SPM/1, the Ld. CIT(A) has rightly observed that it is apparent that these notings are annual summary of assessee's transactions in the records of some third party with whom he had financial transactions during the financial years 2008-09 to 2010-11. The Ld. CIT(A) has taken note of the fact that these transactions were not recorded in the regular books of the assessee. The Ld. CIT(A) has also taken into consideration from the submissions of the assessee that there is no clarity as to in whose books or records this account was maintained and that with whomsoever such account was maintained, but the fact was that it was not recorded in the assessee's regular books. The Ld. CIT(A) appreciated the fact that the noting at page 4 of SPM/ 1 did not record details of transactions conducted on day-to-day basis with the third party. We note that the nature and character of entries at page 4 of SPM/1 is different from

those found at pages 5, 6 & 7 of SPM/I. The Ld. CIT(A) after comparing the page 4 with pages 5, 6 & 7 of SPM/1 has rightly observed that unlike the notings on page 4 which contained annualized summary of assessee's transactions; the pages 5, 6 & 7 (which pertains to assessee's father and brother) contained receipts & payments of money on day-to-day basis. The notings on pages 5, 6 & 7 provided description of the payments received or payments made from day-to-day in the names of Shobhan Mittal or S P Mittal (brother and father respectively of assessee). Having regard to the graphic details of payments made and received on day-to-day basis, Sri Shobhan Mittal and Sri S P Mittal had admitted in their income tax returns that the notings contained on pages 5, 6 & 7 had two-digit suppression. We note that the AO was influenced by the fact that since pages 5, 6 & 7 were also seized from Sri S P Mittal and with regard to these pages 5, 6 & 7 the assessee's father and brother had admitted the suppression of two digits, the very same inference needs to be drawn to the notings on page 4. Moreover according to AO, in the statement recorded u/s 132(4), Sri S P Mittal had admitted the suppression of two digits. And the admission was followed by the disclosure made in the returns filed by Sri S P Mittal and Sri Shobhan Mittal led the AO to conclude that there was two-digit suppression in relation to page 4 as well. We have gone through the statement of Sri S P Mittal recorded u/s 132(4). We note that nowhere in his statement Sri S P Mittal had admitted that there was two-digit suppression in the notings made on page 4 of SPM/ 1. In the statement of Shri Shiv Prakash Mittal which was recorded u/s. 132(4) of the Act when enquired about page no. 4 of SPM-1 it was replied by Shri Shiv Prakash Mittal (father of the assessee) that this pertains to day to day expenses for personal use which is found annexed at page 20 of paper book. The AO concluded that the assessee has suppressed two zeros on the basis of the statement of the father Shri Shiv Prakash Mittal and the statement of Mr. Viswanath Venkatramani the CFO when confronted with documents marked JV-3. The AO notes that Mr. Shiv Prakash Mittal has duly disclosed the suppression of two zeros vide his disclosure petition dated 25.11.2010 which has been kept at pages 35 to 84 of the paper book. We note that the AO has made the assumption of suppression of two zeros in respect to the assessee Shri Saurabh Mittal only on the basis of the statement of the father in respect to papers which were maintained at pages 5, 6 and 7 of SPM-1 and which pertains to Shri Shiv Prakash Mittal, father of the assessee and Shri Shobhan Mittal (not the assessee). In

the disclosure petition filed by Shri Shiv Prakash Mittal datd 25.11.2010, we find at page 65 which shows that Shri Shiv Prakash Mittal has not come out with the theory in respect to the assessee of suppressing two zeros in respect of document at page 4 of SPM-1. Merely because the assessee's accounts have got .56 paise and .08 paise recorded on the loose sheet marked as page 4 of SPM-1, the AO taking note that .56paise and .08paise (coins) are not in circulation and therefore in the light of the clear admission made by the father of assessee, the assessee's transaction reflected at page 4 of SPM-1 also suppressed the two zeros and then he went ahead in making addition, which action of the AO we cannot approve for the simple reason that Shiv Prakash Mittal or CFO did not make any such admission that in assessee's page no. 4 there was double digit suppression. We note that the Ld. CIT(A) has taken into consideration all these facts and has passed a reasoned order. We note that the CFO Mr. Viswanath Venkatramani's statement has got no connection with page 4 of SPM-1 and the statement of Shri Shiv Prakash Mittal in no way touches upon the contents of page no.4 of the assessee in any manner to suggest suppression of two zeros and on the contrary the very same Shri Shiv Prakash Mittal has filed the disclosure petition dated 25.11.2010 on the basis of which return of income was filed by the assessee which goes on to prove that there is no suppression of double digit as wrongly presumed by the AO. The Ld. DR could not point out from the statement recorded u/s. 132(4) of the Act of Shri Shiv Prakash Mittal or from Mr. Viswanath Venkatramani in order to throw light of the fact that the transaction recorded at page 4 of SPM-1 also was done by suppressing two digits, without doing so, the AO's additions were based on no evidence and, therefore, perverse. The Ld. CIT(A) has clearly analysed the material on record and has given a reasoned order which does not warrant our interference. Therefore, we uphold the order of the Ld. CIT(A) and dismiss the grounds of appeal raised by the revenue in all the appeals.

10. In the result, all the appeals of revenue are dismissed.

Order is pronounced in the open court on 14.07.2017

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Central Circle-XI, Kolkata.
2. Respondent – Shri Saurabh Mittal, 66, Anand Lok, Khel Gaon Road, New Delhi-49.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secy