

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “D” NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.4131/DEL/2014
Assessment Year: 2009-10

ACIT, Central Circle-23, New Delhi.	v.	Shri Vinay Kumar Kurele, 15M/20, Dabauli, Kanpur.
TAN/PAN: ADKPK9621Q		
(Appellant)		(Respondent)

Appellant by:	Shri Amit Jain, Sr.D.R.		
Respondent by:	Shri Sanjay Kumar, CA.		
Date of hearing:	23	07	2018
Date of pronouncement:	25	07	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 26.02.2014, passed by Ld. CIT (Appeals)-XXXIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2009-10. In the grounds of appeal, the Revenue has raised the following grounds:-

“On the facts and circumstances of the case, the ld. CIT(A) has erred in law and on facts in directing the Assessing Officer to verify and allow those expenses which have been incurred in cash and are recorded in the books of account without taking into account the provisions of section 40A(3) of the Income Tax Act, 1961.”

2. The facts in brief are that the assessee is an individual deriving income from salary as Director of M/s. Gahoi Builwell Ltd. (now V3S Infrastructure Ltd.); share from a partnership firm, M/s. K4U Services, rental income, etc. A search and seizure action u/s.132 was carried out on 19.01.2009 in Kurele Group and also at the residential premises of the assessee. The main dispute in the Revenue's appeal is with regard to the addition of Rs.88,98,712/- on account of two loose papers found during the course of search at the residential premises of the assessee. The said loose papers numbered as pages 144 and 145 of Annexure A-3, gives the description of receipts and utilization of fund during the year which has been tabulated by the Assessing Officer in the impugned assessment order which can be summarized hereunder:-

(i)	51,16,912	<i>For loose paper no. 145/Ann. A-3 solely for the reason that there is excess payment of funds [90,86,912 – 39,70,000] when the availability of funds as reflected in books of account with the assessee is computed; and</i>
(ii)	37,81,800	<i>For loose paper no. 144/Ann. A-3 by adding up all the figures mentioned therein [21,58,600 + 14,53,600 + 1,69,600] as unexplained misc. expenses.</i>
	88,98,712	<i>Total</i>

3. The assessee's contention before the Assessing Officer with regard to the aforesaid loose papers was as under:

- *“page 145 are the noting of various transactions of assessee, as appearing in various accounts of M/s K4U Services, wherein*

assessee is partner and the related ledger accounts in the books of said firm were enclosed; and

- *page 144 are the noting/summery of various transactions relating to Indrapuram Project of GBL wherein assessee is one of the director and does not relates to the assessee.”*

4. Learned Assessing Officer held that there is an excess payment of funds of Rs.51,16,912/- and Rs.37,81,800/- as unexplained misc. expenses which has been treated by him as unexplained expenditure out of undisclosed sources.

5. Before the Id. CIT (A), it was submitted that all the transactions recorded in the seized loose paper stood reflected in the books of M/s. K4U services, wherein the assessee was one of the partner which is also evident from the ledger account of the said firm despite that addition has been made in the individual hands of the assessee by the Assessing Officer in the following manner:-

<i>Receipts of funds during the year</i>	
<i>(as per page 2 of assessee order)</i>	<i>Rs.39,70,000</i>
<i>Deduct:</i>	
<i>Utilization of funds during the year</i>	
<i>(as per page 2-3 of assessment order)</i>	<i><u>Rs.90,86,912</u></i>
<i>Excess payment of funds</i>	<i><u>Rs.51,16,912</u></i>

It was submitted that all the transactions mentioned in the seized document were found to be recorded in the books of account in the normal course of business and therefore, no such addition of excess funds could have been made in the individual hands of the assessee. Apart from that, certain

clarification with regard to the miscellaneous expenditure was given which were as under:-

(i) inclusion of figure of Rs.1,69,600 in the impugned addition is wholly erroneous as the same represents the sum of various expenses

63,000+26,000+1,600+3,000+11,000+20,000+1,000+4,000+25,000+15,000) marked.

(ii) On a reading of said loose paper, it is evident that there as receipts of Rs.21,58,600 and expenditure of Rs.14,53,600 and balance shown is Rs.7,05,000 whereas the addition has been made by adding up the receipts of Rs.21,58,600 as well as expenditure of Rs.14,53,600 and further adding one stray figure of Rs.1,69,600 in an utmost arbitrary manner without having due regard to the noting/working made on the said loose paper.”

Further, it was brought on record before the Assessing Officer that the seized loose paper relates to summary of transaction relating to 'Indrapuram Project' of Gahoi Buildwell Ltd., wherein the assessee was one of the directors which fact has not been disputed or rebutted by the Assessing Officer. It was also brought on record that in the case of M/s. Gahoi Buildwell Ltd., the same document has been inventorised and specific query was raised by the Assessing Officer in the case of the said company and Assessing Officer after detailed scrutiny and examination found that entries appearing in the loose paper were tallying with records maintained by the said company. Based on these findings, Assessing Officer first of all noted the assessee's reply with regard to both seized documents as under:-

6.	PX-2/Annexure A-3 page 144	Noting/summary of transactions relating to Indrapuram Project of GBL	Gahoi Buildwell Ltd.	This does not relates to me
7.	PX-2/Annexure-3 page 145	Noting of various transaction of Vinay Kumar Kurele	Vinay Kurele	These transactions are appearing in the various accounts of K4U Services wherein Vinay Kurele is partner, copy of a/c enclosed.

6. Ld. CIT (A) after considering the submissions of the assessee and on perusal of the entire material placed on record deleted the addition after observing and holding as under:-

"I have considered entire arguments of Ld. AR. Apparently Ld. assessing officer has not considered the submission of the appellant that these papers are related to the concerns where he is a director or a partner, I direct the assessing officer to verify whether entries claimed to belong to M/s Gahoi Buildwell Ltd. was explained in that case & no addition was made as copy of seized the page no. 144 was found from the premise of M/s Gahoi Buildwell Ltd. on page 114/A-10. In that case, addition made in appellant's case may be deleted. The appellant has explained during the assessment proceedings the entries on page 145 belonging to M/s K4U Services where he is a partner, therefore, the assessing officer should examine whether the contents of this page is reflected in the Books of K4U on the basis of accounts of K4U filed during the assessment proceedings. In case, the content of page 145 is reflected in the books of K4U, the assessing officer is

directed to delete the addition. These grounds of appeal partly allowed.”

7. After considering the rival submissions and on perusal of the impugned order and material referred to before us at the time of hearing, we find that in the grounds of appeal, the Revenue has raised that the ld. CIT (A) has erred in directing the Assessing Officer to allow the expenses which has been incurred in cash and are recorded in the books of account without taking into account the provision of Section 40A (3). The said ground raised first of all is completely divorced from the finding given in the impugned orders, because the addition has been made as unexplained expenditure/payment outside books of account for which addition has been made by the Assessing Officer. There is no such disallowance made u/s 40A (3) made by the Assessing Officer which has been claimed by the assessee as an expenditure out of the income disclosed by him. Thus, the very basis on which the ground has been raised is erroneous as application of Section 40A (3) was never a dispute. Be that as it may be, it has been clearly brought on record by the assessee that not only during the course of assessment proceedings but also during the course of appellate proceedings, the entries in the said loose papers were, first of all shown to be belonging to M/s. Gahoi Builwell Ltd., in whose case during scrutiny proceedings, exactly the same documents have been examined and verified and no addition has been made in the case of the said company; and

secondly, the contents noted in the loose paper, page no.145 were reflected in the books of K4U. Once these facts are undisputed, ostensibly these additions could not have been made in the hands of the assessee at all. The ld. CIT (A) was thus correct on facts in directing the Assessing Officer to verify these facts and delete the additions. Hence, we do not find any infirmity in the order of the ld. CIT (A) and accordingly, the grounds raised by the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25th July, 2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 25th July, 2018

PKK: