

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 4074/Del/2014
Assessment Year: 2011-12**

D.C.I.T. Central Circle 10, New Delhi. (Appellant)	vs.	Rahul Sharma, A-713, Sushant Lok, Phase-1, Gurgaon. PAN-ALOPS2831A (Respondent)
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Appellant by	Sh. Sanjeet Singh, CIT/DR
Respondent by	Sh. Ved Jain, Advocate

Date of Hearing	18.07.2018
Date of Pronouncement	31.07.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of Id. CIT(A)-XXXII, New Delhi dated 29.04.2014 for the assessment year 2011-12 on the following grounds :

"1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.1,87,04,166/- made by the A.O. on account of income from undisclosed sources.

2(a). The order of the CIT(A) is erroneous and not tenable in law and on facts."

2. The brief facts of the case are that a search and seizure operation u/s. 132 was carried out at Micromax Group of cases on 10.02.2011. The assessee, being a member of this group, search was also conducted on the assessee's premises on 10.02.2011. The assessee filed return of income on 18.03.2012

declaring total income at Rs.63,80,29,550/-. In the assessment proceedings, the Assessing Officer noticed that a loose paper identified as MA-6/Annexure-A-2/page 37-38 was seized from the residence of the assessee during the search operation. The Assessing Officer has given the image of that loose paper in the assessment order. The assessee was asked vide notice u/s 142(1) of the Act dated 28.12.2012 to explain the nature and contents of the document. In response, the assessee submitted that the impugned paper, written by Rahul Sharma, contained the brief summary of future funds flow position of Rahul Sharma. It was explained that on left side of the page, tentative figures of inflow of funds in the shape of dividend, capital gains etc. have been written which were expected to be received/earned by Rahul Sharma at that point of time and on right side of the page, outflow of funds is mentioned. Some of the entries mentioned as outflow of funds were actually materialized whereas some of them were not. It was also explained that this page is basically some planning done by Rahul Sharma regarding his financial estimates. During the year the assessee had earned dividend of Rs. 1.71 Crores around other than from M/s Micromax Informatics Ltd. and also earned capital gain of Rs. 51.00 Crores around. It was also contended that out of expected outflow of funds mentioned on right side of the page most of the transactions, as mentioned in the impugned order, were materialized, and recorded in the books of account, duly verifiable there from. It was also explained that a bare glance on the paper would reveal that it was nothing but entries of financial planning of Rahul Sharma. On one side of the paper expected income by way of dividend and capital gain has been mentioned and on the other side utilization of funds by the way of payments to be done or already done has been mentioned. Thus, this paper could, in no way be treated as actual receipts and payments made by the assessee. The Assessing Officer

was not satisfied by the above reply of the assessee and treating the above transactions as actual receipts and payments by the assessee, added a sum of Rs.1,87,04,166/- to the total income of the assessee as income from undisclosed sources, observing as under :

"6. The assessee's reply is duly considered. However, this contention of the assessee is not acceptable that transactions recorded in the document are some kind of planning and summary of future funds flow position of the assessee. In fact, actual transactions of receipts and payments are recorded on the page in question. As per this page, Rs. 1,71,04,166/- was received by the assessee and after payments of Rs.1,40,00,000/- balance of Rs. 31,04,166/- was left to be given. Further amount of Rs. 25,00,000/- by Micromax Technology and Rs.20,00,000/- [written as 2,00,000/- but appearing in the assessee's bank account as Rs. 20,00,000/-] were paid by the assessee. This brought balance to be received at Rs. 13,95,834/- (45,00,000-31,04,166). Assessee further paid S. Tax of Rs. 5,00,000/- and balance came to Rs. 18,95,834/- as mentioned on the document. On the left side of the document further payment of Rs. 10,00,000/- and receipt of Rs. 8,00,000/- are mentioned bringing the balance receivable to Rs. 16,95,834/- as mentioned on the page. On the back of the page, another amount of Rs. 8,00,000/- is deducted from the amount receivable bringing the balance to Rs. 8,95,834/-. Thus, it is clear that the assessee has recorded amounts received and payments made by him on the seized document. Though some of the payments are reflected in the assessee's bank account but assessee could not be able to explain that amounts received by him are also recorded in his books of accounts and income in this regard is duly considered for tax. In view of this, it is concluded that these are assessee's unaccounted receipts and represent his undisclosed income. Assessee has received total amount of Rs.1,87,04,166/- (1,71,04,166+8,00,000+8,00,000) as detailed above. Therefore, Rs. 1,87,04,166/- is added to the assessee's income on account of assessee's income from undisclosed sources."

3. In appeal, the ld. CIT(A) deleted the addition after considering the detailed reply of assessee and relying on various decisions. The observations made by the ld. CIT(A) read as under :

"8. I have gone through facts of the case, written submissions of the appellant and the findings of the Assessing Officer and considered them. I

have also perused the case laws relied upon by the appellant. I find that in this case the Assessing Officer made the impugned addition on the basis of document found and seized during the course of search proceedings which was identified as MA-6/Anx. A-2/ pages 37 & 38. The Assessing Officer did not accept the appellant's contention that the transactions recorded on this document were rough notings of future planning of funds flow position of the appellant. According to the Assessing Officer the transactions recorded on these pages were the actual transactions of receipts and payments. I have perused the copies of these documents which were filed before me by the appellant during the course of appeal hearing. On perusal of the same it is seen that they did not establish any specific transaction with respect to receipt or payment that was made by the appellant. The notings on these papers appeared to be rough working indicating certain amounts which according to the Assessing Officer represented actual transactions of receipts and payments. The AR of the appellant in his written submissions stated that all the transactions mentioned on this document were mere future planning of appellant's funds flow position. According to the AR of the appellant all the transactions recorded on this document did not materialize and some of the transactions mentioned on this document which materialized were duly recorded in his books of accounts. The Assessing Officer did not bring on record any corroborative material to prove that the appellant received an amount of Rs.1.87 crores which he did not account for in his books of accounts. The Assessing Officer made the addition on surmises and conjectures, merely because certain figures were mentioned on a piece of paper seized during a course of search operation and could not be substantiated with evidence by the Assessing Officer to make addition as income of the appellant from undisclosed sources. There must be some material on record to show that the notings on the document were the real transactions or executed transactions. In view of all these facts, I am of the view that no addition is sustainable on the basis of notings on the loose sheets without bringing any corroborative evidence on record. Therefore, considering the facts of the circumstances of the case and respectfully following the case laws relied upon by the appellant, I see no justification for the impugned addition made by the Assessing Officer. Accordingly, the addition of Rs. 1,87,04,166/- made by the Assessing Officer on account of undisclosed income is deleted."

Aggrieved, the Revenue is in appeal before us.

4. During the course of hearing, the ld. DR submitted that once the assessee had admitted the impugned paper written by him and also admitted that some of the entries in the said paper are duly reflected in the books of account of assessee, there was no reason for the failure of assessee to verify the other entries of receipt and payment noted on the same paper. The assessee, thus, having failed to explain the contents of the document, the ld. CIT(A) was not justified to accept the contention of the assessee that the said document was reflecting certain future planning of fund flow of the appellant ignoring the fact that the onus that lay upon the assessee stood not discharged on its part. The ld. DR placing reliance on the presumption cast upon the assessee under section 132(4A) and sec. 292C of the Act, also relied on the following case laws :

- (i). CIT vs. Sonal Construction, (2012-TIOL-851-DEL. HC)
- (ii). CIT VS. Naresh Kumar Aggarwala, (2011) 9 taxmann.com 249 (Del.)
- (iii). Mahbir Prasad Rungta vs. CIT, 43 taxmann.com 328
- (iv) Bhagheerath Engg. Ltd. vs. ACIT, 79 taxmann.com 325
- (v). Ashok Kumar vs. CIT, 69 taxmann.com 129
- (vi). Baldev Raj vs. CIT, 2 taxmann.com 335.

5. On the other hand, the ld. AR of the assessee, reiterating the submissions made before the authorities below submitted that the addition made by the ld. Assessing Officer rests on the sole basis of document found and seized during the course of search operation thereby completely ignoring

the fact that the said document was a mere estimated calculation made by the assessee of future cash flows in his personal name and in the name of his company. It is submitted that out of the same, entries of few items, which were materialized are verifiable from the books. As also opined by the authorities below, most of the transactions appearing in the said paper were through proper banking channel and there was no undisclosed income in this respect. Certain details, which stood materialized were got verified and supporting documentary evidences were also placed. The assessee had submitted a detailed explanation as appearing at pages 11 and 12 with the supporting evidence at page 13 to 16 of the paper book. It was submitted that transaction appearing in the said paper of Rs. 1,40,00,000/- which actually materialized are through proper banking channel and assessee has got the same verified. The balance transactions of Rs. 31,04,166/- were only estimate and did not materialize as is evident where the words "to be given" is stated in the seized document. Regarding the entries of Rs. 8,00,000/- mentioned on the bottom of the page and Rs. 8,00,000/- on the back of the page, it was contended that the same do not represent the income of the assessee. These are the part of the overall calculation written on a rough page and by no stretch of imagination, the same can be considered to be the clandestine income of the assessee. It was contended that each and every figure written on a page does not become income of the assessee. The Ld. AR placed reliance on the following judgments:-

- (i). HABITAT ROYALE PROJECTS PVT. LTD Versus ACIT, CC-22, 2016
(11) TMI 1365-ITAT DELHI
- (ii). Vatika Landbase Pvt. Ltd. - [2016] 383 ITR 320 (Del)
- (iii). M7s Delco India Pvt. Ltd. (ITA No. 11672016) dated 10.2.2016

- (iv). Smt. KV. Lakshmi Savitri Devi Versus Assistant Commissioner of Income-tax 2013 (11) TMI 805 - ITAT HYDERABAD
- (v). Commissioner of Income Tax (Central), Patna Versus M/s Ranchi Medical Research & Development Foundation(P) Ltd., Ranchi 2012 (10) TMI 95 -JHARKHAND HIGH COURT
- (vi). Assistant Commissioner of Income-tax Versus Buldana Urban Co-operative Credit Society Ltd. 2013 (12) TMI 237 - ITAT NAGPUR
- (vii). Asst. Commissioner of Income-tax Versus Sri B. Srinivasa Rao, M/s. Prathima Educational 2013 (11) TMI 826 - ITAT HYDERABAD
- (viii). Deputy Commissioner of Income Tax, Central Circle-2, Versus M/s. Rising Buildestate Pvt. Ltd., 2012 (9) TMI 252 - ITAT. JAIPUR
- (ix). ACIT Versus Shri OP. Bhalla 2012 m TMI 584 - ITAT DELHI
- (x). COMMISSIONER OF INCOME TAX Versus GIRISH CHAUDHARY [2008] 296 ITR 619 (Delhi)

6. It was also submitted that there was no nexus between the right side and the left side of the notings on paper. The transactions on right side were meant for execution and those on the left side were estimates. The impugned paper nowhere depicts the receipts or payments, yet the appellant legitimately explained the entries. Therefore, the Assessing Officer was not justified to treat undisclosed receipts of assessee based on the impugned paper without having any corroborating material either available with the Assessing Officer or found on search. It was also submitted that the assessee in his personal capacity has no dealings of any kind with any concern naming C. Magix as mentioned in the impugned paper and hence, it is not proper to construe the entries on the paper as income of the assessee. Once, the assessee had explained the entries on the paper, the burden shifts on the

Revenue to prove by cogent material that the notings on the said paper pertain to the actual income of the assessee, which it failed to discharge. Such rough and estimated jottings on the paper without having any reference to the income of assessee cannot be read against the assessee. Therefore, the addition, based on surmises and conjectures cannot be sustained in the eye of law at all, as held by various authorities, relied by the Id. CIT(A) in the impugned order.

7. We have considered the rival submissions and have gone through the entire material available on record and the decisions relied by both the parties. The only issue, which needs adjudication in this appeal is with respect to the deletion of the addition of Rs. 1,87,04,166/- made by the AO on the basis of a seized document found during the course of the search. The AO has made the addition holding that the transactions of receipt and payment recorded on the page in question are actual transactions of the assessee. It has been alleged that the total of this page comprises of payment of Rs. 1,40,00,000/- and to be given Rs.31,04,156/-. It has been further alleged that on the left side of the document a further receipt of 8,00,000/- Rupees are mentioned and on the back of this page another amount of Rs. 8,00,000/- is deduced from the amount receivable. On the basis of this, the AO had made addition of the entire aggregate amount of Rs. 1,87,04,166/-. The CIT(A) had deleted the same accepting the contention of the appellant that all the transactions recorded on this document did not materialize and some of the transactions mentioned on this document which were materialized, were duly recorded in the books of accounts. The CIT(A) further held that the AO did not bring any corroborative material to support the allegation that the figure written on the seized document represent the income of the appellant.

7.1 Having given our anxious thoughts to the contentions of both the parties and the detailed explanation of the assessee placed at page 11 & 12 of the paper book, we note that assessee has candidly admitted the fact that the impugned seized document was written by himself. It has been also stated by the assessee that in the letter filed before the AO that this page contains a brief summary of future fund flow position. Thereafter, the assessee has also given explanation about the transactions stated therein. Now, in these circumstances, this document cannot be considered to be a dumb document, as considered by the first appellate authority while deleting the entire addition made by the Assessing Officer. To that extent, the contention of the Ld. DR and the reliance placed on the various judgments is correct.

7.2 Now, the question arises whether the document represents the undisclosed income of the assessee. Ongoing through this document, we note that this document has three parts. The first part is of Rs.1,40,00,000/- whereby it has been written that the same has been "given already", which denotes the payments made by the assessee. The transaction mentioned therein has also been explained by the assessee as recorded in the books of accounts. In this regard the assessee has placed before us copy of the ledger account in the Paper Book. Thus, the contention of the Ld. DR that assessee has failed to discharge its onus that the transactions are accounted for in the books of accounts, is not correct. When such transactions have been recorded in the books of accounts, there is no justification for making addition of the same in the hands of the assessee. The Id. CIT(A) has correctly deleted the addition of Rs.1.40 crore.

7.3 As regards the balance of Rs. 31,04,166/- though, it is stated in the document 'to be given' but assessee has not filed any explanation other than saying that it was a future planning. Once, the assessee had explained part of the transactions and got them verified from the books of account, it was for the assessee to explain the nature of other entries/transactions noted on the said paper which the assessee failed to explain. The CIT(A) should not delete this addition. The Id. Counsel for the assessee rightly contended that there was no nexus between right side and left side of the notings on the paper. The left side entries have no meaning, as it merely says 'from C-magix', which has no meaning. The entries on the right side of paper have been explained by the assessee with reference to the entries in the books of account. Further on left side of the paper, it is mentioned 'paid 10 L', 'Recd. 8L', 'balance 1695835'. At the end of the page it is written $1695835 - 800000 = 8,95,835$. These figures are contradictory and lead to nowhere. If the amounts paid and received are taken together, it would be lesser amount and there would be a double addition of Rs.8,00,000/-. Therefore, these entries have been correctly ignored by the Id. CIT(A). Further the left side entries on this paper are not corroborated by any evidence. Therefore, the Id. CIT(A) correctly did not take into account the entries contained in the left side of the paper. The said paper, however, itself depicts the nature of amounts aggregating to Rs.32.00 lakhs (Rs.25.00 lacs, Rs.2.00 lacs and Rs.5.00 lacs as given/paid to MMTL, Aeroplast and towards S. Tax respectively as noted on the paper). These amounts of Rs.25.00 lakhs and Rs.2.00 lakhs should, therefore, be considered as payment by the assessee, as also explained before us with reference to PB 32 and Rs.5.00 lakhs is accepted by the Assessing Officer itself as explained. Taking all the above figures into account, in our considered opinion, it would be justified to sustain the addition to the extent of Rs. 31,04,166/- Accordingly, the

addition made by the Assessing Officer deserves to be restricted to Rs.31,04,166/- and the ld. CIT(A) was not justified in deleting the entire addition made by the Assessing Officer. As a result, the appeal of the Revenue deserves to be allowed in part by restricting the addition to Rs.31,04,166/- as against Rs.1,87,04,166/- made by the Assessing Officer.

8. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 31st July, 2018.

Sd/-
(Bhavnes Saini)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 31st July, 2018

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*