

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.5572/Del/2016
Assessment Year: 2013-14

ACIT,
Central Circle-3,
ARA Centre, Jhandewalan Extn.,
New Delhi.

Vs. Akhil Kumar Sureka,
602, Chiranjiv Tower,
43, Nehru Place,
New Delhi.

PAN: ABKPS2301R

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Shri Ashish Chadha, CA
Revenue by	:	Shri Raghunath, Sr.DR
Date of Hearing	:	15.01.2019
Date of Pronouncement	:	24.01.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 24th August, 2016 of the CIT(A)-23, New Delhi relating to Assessment Year 2013-14.

2. The grounds raised by the Revenue are as under:-

01. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.3,00,00,000/- made by the A.O. on account of unexplained income u/s 69A of the Income Tax Act, 1961.

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.ö

3. The facts of the case, in brief, are that the assessee is an individual and derives income from salary and other sources. Search and seizure proceedings u/s 132 of the IT Act were conducted in the case of M/s Mauria Udyog Ltd. and its group concerns and residential/factory premises of partners/directors and proprietors of the group on 7th August, 2013. The premises of the assessee was also covered. In response to notice u/s 153A of the IT Act, the assessee filed a written submission requesting to treat the return for the assessment year 2013-14 filed on 20th June, 2013 declaring total income of Rs.15,47,630/- as return filed in response to notice u/s 153A of the IT Act. During the course of assessment proceedings, the Assessing Officer observed that the assessee has certain transactions with Amrapali group of companies. The documents found during the course of search depicted cash payment of Amrapali group to M/s Mauria Udyog Ltd. and M/s Jotindra Steel & Tubes Ltd. One such document was.xls file titled as amarpali sapphire details.xls as per Annexure-A2 Party P-17. The Assessing Officer reproduced the scanned copy of the document in the assessment order. He also referred to the statement recorded u/s 132(4) of Shri Rohtash Kumar, working as Accounts Manager in M/s Mauria Udyog Ltd. The Assessing Officer referred to the various questions put during the course of search to Mr. Rohtas Kumar and observed that he had admitted that the amounts mentioned in the .xls file are nothing but payments that have been made by different Amrapali group companies to Mauria group, namely, Mauria Udyog Ltd. and M/s Jotindra Steel & Tubes Ltd. The

A.O., therefore, asked the assessee to explain as to why the cash received by Mr. Akhil Kumar Sureka as per the details below should not be added to his income:-

Date	Amount	Through
16.02.2013	Rs.1,00,00,000/-	Shri Vaibhav Jain
14.03.2013	Rs.1,00,00,000/-	Shri Vaibhav Jain
21.02.2013	Rs.1,00,00,000/-	Himself
Total	Rs.3,00,00,000/-	

4. The assessee in his response submitted that he has not received or accepted the amount of Rs.2 crore in cash from Shri Vaibhav Jain and Rs.1 crore from M/s Amrapali group of companies. He further submitted that he is not responsible for any money which has never been received or accepted by him. The assessee stated that the same facts can be verified from the Amrapali group of companies by issuing summons to them. However, the Assessing Officer was not satisfied by the explanation given by the assessee. Invoking the provisions of section 69A of the IT Act, the Assessing Officer made addition of Rs.3 crore to the total income of the assessee.

5. In appeal, the Id.CIT(A) deleted the addition made by the Assessing Officer by relying upon the findings given by him in the case of Bihariji Ispat Udyog Ltd. for A.Y. 2013-14. For ready reference, the relevant observations of the CIT(A) are reproduced below:-

õ4. I have considered the submissions of the appellant and the assessment order.

4.1 At the outset it needs mention that the grounds of appeal taken by the appellant is too diffused and is more of a statement of fact rather than ground of appeal either on fact or law and lacks perspective in this context. Yet the only ground which emanate from Form-35 is relates to the addition of Rs.3,00 crore on account of alleged cash received from Amrapali group of companies by the Mauria group of companies/ individuals as per account found in the e-mail of Sh. Rohtash Kumar sent to Sh. Akhil Kumar Sureka, and added by the AO in the hand of the Mauria group companies/individuals including Rs.3.00 crore by the

appellant, Rs.1.00 crore each on 16.02.2013 and 14.02.2013 received by Sh. Vaibhav Jain, employee of Mauria Group, on behalf of the appellant and Rs.1.00 crore on 21.02.2013 by the appellant himself. The order of the AO is on similar lines as that of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 and based on the same seized documents. The matter has been considered by me in the appellate order of even date in the case of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 in Appeal No.23/16-17 wherein having dealt with the matter in detail I have deleted the addition so made in that case. Since the facts of the matter is similar in the case of the appellant as well, based on my decision in M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 the addition made in this case as well is deleted.

5. In the result, the appeal is allowed.ö
6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.
7. The ld. DR strongly challenged the order of the CIT(A) in deleting the addition of Rs.3 crore made by the Assessing Officer. Referring to para 5.10.2 of the assessment order, he submitted that Mr. Rohtash Kumar is a key employee of M/s Mauria Group who has tremendous control and knowledge about accounts of whole of the group. This fact came to knowledge during assessment proceedings as he was the only person who was found to be able to explain any queries related to accounting. Shri Rohtash Kumar, despite being employee of Mauria Group, not only during search & post search proceedings but also during assessment proceedings confirmed the cash received. Shri Rohtash Kumar used to send these details through emails to shri Navneet Kumar Sureka & Shri Akhil Kumar Sureka who are the two main persons of the group, on regular intervals. The excel file attached to email dated 12.07.2013 is updated upto 31.03.2012, similar e-mails have been sent by Shri Rohtash Kumar to Shri Navneet Kumar Sureka on 08.02.2011 & 01.01.2013 also. Same excel file which

is updated upto 30.01.2011 was also found from search & seizure operation on M/s Amrapali Group. This document was obtained from the hard disc seized from the corporate office of Amrapali Group as Annexure A-14 by search Party X-6. This is very important corroborative evidence in this regard. Therefore, as per presumption u/s 292C of the I.T. Act, 1961 which is very much applicable in the case of the assessee and in absence of any cogent and reasonable explanation given by the assessee cash received amounting to Rs.3,00,00,000/- has to be treated as the income of the assessee. So far as the decision in the case of M/s Bihariji Ispat Udyog Ltd. is concerned, he submitted that the appeal filed by the Revenue was dismissed by the ITAT due to low tax effect.

8. The ld. counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that that the cash receipts were actually meant for payment to land owners with whom land deals were to be negotiated by Bihariji Group on behalf of Amrapali Group. However, in cases where deals could not materialize, the cash was returned back to Amrapali Group. Further, in answer to Question No. 23, Rohtash Kumar had specifically replied that the cash payment to Vaibhav Jain was with regard to cash received from Amrapali Group for a land deal which never materialized and hence, the said money was returned back. This fact is further evident from the seized document enclosed at PB 23, wherein on the dates when the cash was received by the assessee, the said cash has been returned back, as the deals for which the cash was received could not materialize. He submitted that the assessee in this

regard also requested the AO to issue summons to the parties in order to verify the claim of the assessee. However, the Assessing Officer never summoned or called for any information from Amrapali Group and arbitrarily rejected the explanation of the assessee. Further, before the AO the assessee submitted complete justification with regard to transaction mentioned in the email, which is enclosed at PB 78 - 79. He submitted that a perusal of the seized documents at PB 15-23 clearly shows that one document indicates receipt of cash from Amrapali Group and the other seized document indicates return of the same amount of cash on the same dates to Amrapali Group. Documents seized on the basis of which addition has been made were not found from the assessee and were found at the search conducted on Rohtash Kumar at H No. 124, Gali No. 29D Badarpur, Delhi. The documents as per AO's allegation depicts payment by Amrapali Group to Mauria Udyog Ltd. and Jotindra Steels & Tubes Ltd. The AO admits the fact that from the statement it is clear that payments are vice-versa. These facts corroborated from the seized documents where on the same day cash is received and also paid back. This fact has been explained by Mr. Rohtash Kumar in his statement, quoted by the AO in Question 21 Pg 11 of the assessment order and answer to Question 23 pg 12 of the assessment order, where it is clearly stated that money was returned as deal was not materialized. The assessee's name and connection nowhere raised in any search or post search investigation. Further the assessee was never questioned and no connection or nature of transaction arising from the assessment order. The AO just issued a show cause notice to the assessee without

pointing out any logic. The assessee has categorically denied any connection quoted by the AO in para 5.9 pg 13 of the assessment order.

9. The ld. counsel for the assessee submitted that the allegation of section 69A quoted by the AO in para 5.10.1 of the order by no stretch is applicable since the assessee has never been found in possession of any cash, money, bullion etc. Section 292C is also not applicable as document was not found from the assessee. He submitted that presumption under section 292C is against the person from whom the document was found. Further searched person has never stated or made any allegation against the assessee. The contents of the documents nowhere shows that this is the income of the assessee. On the contrary the person explained the transactions stated in the documents fully. Such explanation has not been found to be false or untrue. It is not the case of the AO that what Mr. Rohtash Kumar stated is wrong. The AO has shifted the burden on the assessee without discharging the primary onus cast on him that these transactions are of the assessee. He submitted that the law is well settled that nobody can be asked to discharge a negative onus. The CIT(A) has rightly understood the facts and after appreciating the same has deleted the addition. It is also the settled law that a document cannot be utilized selectively against the assessee and portions of the document which are in favour of the assessee cannot be ignored just at the option of the Assessing Officer.

10. Referring to the decision of the co-ordinate Bench of the Tribunal in the case of ACIT vs. Navneet Kumar Sureka, ITA N.5513/Del/2016 for assessment year 2013-14

vide consolidated order dated 29.11.2018, he submitted that the Tribunal in the said order under identical circumstances has upheld the action of the CIT(A) in deleting the addition made by the Assessing Officer on the basis of the said search where additions were made and appeals filed by the Revenue has been dismissed. He accordingly submitted that this being a covered matter, the ground raised by the Revenue should be dismissed.

10.1 He also relied on the following decisions:-

- i) Mehta Parikh v. CIT [1956] 30 ITR 181 (SC);
- ii) CIT v. Vatika Township Pvt. Ltd. (ITA No. 1329/2010 dated 10.09.2010 ó Del HC);
- iii) Glass Lines Equipments Co. Ltd. v. CIT [2002] 253 ITR 454 (Guj);
- iv) Hissaria Brothers v. DCIT 126 TTJ 391 (ITAT, Jodhpur)
- v) ITAT Jaipur in the case of Om Prakash Agarwal v. ACIT in ITA Nos. 721 to 726/JP/2015 dated 23.01.2016 (ITAT, Jodhpur);
- vi) ITAT Amritsar in the case of Smt. Kantra Sproo v. ITO in ITA No. 199/Asr/2015 dated 28.04.2016;
- vii) ITAT Pune in the case of Dhanvarsha Builders & Developers (P) Ltd. v. DCIT [2006] 105 TTJ 376.

11. He accordingly submitted that in view of the facts of assessee's case and considering the judicial pronouncements in this regard, the addition made by the AO merely on the basis of surmises and conjectures ignoring the evidences on record, has been rightly deleted by the Ld. CIT(A) and thus, the order of Ld. CIT(A) be upheld.

12. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have also considered the various decisions cited before us. We find, on the basis of the documents found and seized during the course of search in the case of the assessee on 7th August, 2013, the Assessing Officer made addition of Rs.3 crores in the hands of the assessee u/s 69A of the Act on the ground that the cash transactions recorded in the seized documents is unexplained income of the assessee. We find the Id.CIT(A), relying upon his findings given in the case of Bihariji Ispat Udyog Ltd., for assessment year 2013-14, deleted the addition made by the Assessing Officer. A perusal of the order of the CIT(A) in the case of Bihiriji Ispat Udyog Ltd. shows that the Id.CIT(A) while deleting the addition in the hands of Bihariji Ispat Udyog Ltd., has held that the cash transactions were found recorded in the e-mail of employee of Mauria Group and cannot be said to be any money, bullion, jewellery or other valuable article found and, therefore, the provisions of Section 69A cannot be applied. Further, the money received by the Mauria Group from the Amrapali Group was returned to the latter as well and there was no question of any income in the hands of the persons of the Mauria Group including the assessee and least any undisclosed income. We find in the statement recorded u/s 132(4) of the IT Act, Shri Rohtash Kumar has stated that .xl sheets show payments/receipts by Mauria Group or Bihariji Group from or to Amrapali Group. Subsequently, in his statement dated 28th October, 2013, Shri Rohtash Kumar had submitted that the seized documents duly reflects the transfer of money against LC and it was a clerical mistake on his part to mention the heading as -amount transferred or withdrawn.ø A perusal of

page 23 of the paper book shows the details of cash returned back to Amrapali Group by Bijariji Group. We further find in his reply to question No.21 recorded u/s 132(4) of the IT Act, 1961 that Shri Rohtash Kumar had clarified that where the land deals could not be materialized, in such case, cash was returned back to Amrapali Group as it belongs to them. The relevant question and answer is being reproduced hereunder for the sake of clarity:-

Q.21 I am showing you page 4 of Annexure-AAA-1, Party-P-1 which was seized during search operation on Mauria Group. Kindly explain the heading "Cash returned back to Amrapali Group by Bihariji group."

Ans. As per my knowledge, Bihariji Group/Mauria Group has been purchasing land/other assets for Amrapali Group. The entries mentioned on this sheet are actually the cash returned back to Amrapali Group by Bihariji Group. The cash was actually meant for payment to various land owners with whom land deals were negotiated by Bihariji Group/Mauria Group on behalf of Amrapali Group. But in those cases where land deals could not materialized, in such cash was returned back to Amrapali Group as it belongs to them. This modus operandi can be elaborated through an example. If you refer to Amrapali Shapphire.xls, dated 31.01.2013 cash Rs.50 Lac was received by Sh. Sonu and Sh. Ravindra Adhana both field boy of M/s Mauria Udyog Ltd., from Amrapali Group for a land deal however it was returned back the same day to Amrapali Group."

13. Similarly, in his answer to question No.23, he has explained, the amount of Rs.1 crore. The relevant question and answer read as under:-

Q.23 Kindly refer to the documents mentioned in the Q.No.18. Kindly explain the entries on 16.02.2013 mentioned as cash Rs.1 Crore. Vaibhav Jain as per A.K. Sureka. Who is Vaibhav Jain and who is A.K. Sureka?"

Ans. I do not know who is Vaibhav Jain but A.K. Sureka stands for Akhil Kumar Sureka. However, this entry can be explained on the same lines i.e. Sh. Vaibhav Jain received Rs.1 crore from Amrapali Group for a land deal which never materialized and hence the same money was returned."

14. We find the assessee before the Assessing Officer had categorically submitted that the seized documents on the basis of which addition has been made were not found from the assessee and was found on the search conducted on Mr. Rohtash Kumar and when there were both payments received and cash returned back, the Assessing Officer cannot treat only one part as correct and the other part as incorrect. We find despite request made by the assessee, the Assessing Officer never made any effort to verify the facts from the Amrapali Group. We also found merit in the argument of the Id. counsel that presumption u/s 292C is against the person from whom the document was found. Further, the searched person has never made any allegation against the assessee. The contents of the documents nowhere shows that this is the income of the assessee. Further, the person has explained the transaction stated in the documents and his explanation has not been found to be false or untrue.

15. We find identical issue had come up before the Tribunal in the case of M/s Navneet Kumar Sureka where, on the basis of the same seized documents, addition was made by the Assessing Officer and, in appeal, the Id.CIT(A) deleted the addition. On further appeal by the Revenue, the Tribunal upheld the order of Id.CIT(A) and dismissed the appeal filed by the Revenue by observing as under:-

ø9. We have given thoughtful consideration to the orders of the authorities below. Before proceeding further, let us examine the provisions of section 69A of the Act which read as under:

øWhere in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no

explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.ö

10. A plain reading of the aforesaid section clearly shows that it is applicable in a case where the assessee is found to be owner of any money, bullion, jewellery or other valuable article. The facts of the case in hand show that the assessee was never found to be in possession of any real money. The addition having been made only on the strength of some notings found in some file extracted from the computer of Shri Rohtash, clearly establish that the provisions of section 69A of the Act do not apply. We agree with the contention of the Id. AR that the foundation itself is weak and the addition should not survive. However, the Assessing Officer made the addition on the strength of the statement of Shri Rohtash wherein he has admitted that Rs. 1 crore has been received. Exhibit 85 of the paper books reveals that on the date of receipt of the impugned amount, the same was returned back to Amrapali Group by M/s Bihariji group. The entries of Rs. 50 lakhs each on 11.12.2012 and 01.02.2013 can be seen from the said Exhibit 85 of the paper book. This means that the date on which the alleged Rs. 1 crore was received, on the very same day the same was returned back.

11. More importantly, there is no mention of the assessee's name in the impugned document. The Assessing Officer has simply assumed that the reference to the impugned amount is in relation to the assessee. In our understanding , no addition can be made on the basis of presumptions and surmises. Assuming, yet not accepting that the amounts were received by the assessee, the same were returned back on the very same date as per Exhibit 85 of the paper book. Even on this count, addition is uncalled for.

12. In the result, the appeal filed by the Revenue is dismissed.ö

16. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal, therefore, in view of our discussion in the preceding paras and respectfully following the decision of the Tribunal cited (supra), we uphold the order of the CIT(A) in deleting the addition made by the Assessing Officer. The ground raised by the Revenue is accordingly dismissed.

17. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 24.01.2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 24 January, 2019.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	17.01.2019
2.	Draft placed before the author	21.01.2019
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	25.01.2019
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	