

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI.**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
DR. M.L. MEENA, ACCOUNTANT MEMBER**

**ITA No.5952/Del./2017
(ASSESSMENT YEAR : 2010-11)**

**ITA No.5953/Del./2017
(ASSESSMENT YEAR : 2011-12)**

**ITA No.5954/Del./2017
(ASSESSMENT YEAR : 2012-13)**

**ITA No.5955/Del./2017
(ASSESSMENT YEAR : 2013-14)**

**ITA No.5956/Del./2017
(ASSESSMENT YEAR : 2014-15)**

Shri Neeraj Goel,
C – 355, Saraswati Vihar,
Pitampura,
New Delhi – 110 034.

vs. ACIT,
Central Circle 28,
New Delhi.

(PAN : AEPPG5267E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.K. Aggarwal, AR
Ms. Shweta Bansal, CA
REVENUE BY : None

Date of Hearing : 14.02.2019

Date of Order : 28.02.2019

ORDER

PER BENCH :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant, Shri Neeraj Goel (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders all dated 21.08.2017 passed by Ld. CIT (Appeals)-XXVI, New Delhi qua the Assessment Years 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 on the identical grounds inter alia that :-

"1. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the order passed by the Ld. AO which is illegal being against the principles of natural justice and against the provisions of IT Act, 1961.

2. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition (Rs.5,31,217/- each in AYs 2010-11, 2011-12, 2012-13 & 2013-14 and Rs.3,09,876/- in AY 2014-15) on account of alleged interest income on the basis of a seized document which is dumb/bald.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition by invoking section 292C in spite of the fact that the document was not found either in the possession or control of the appellant.

4. The Ld. CIT(A) has grossly erred on facts as well as in law in holding that the appellant has not discharged the onus of offering suitable explanation."

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : During the search & seizure operation conducted under section 132 of the Income-tax Act, 1961 (for short 'the Act') on the Bindal Group of cases including the assessee,

various books of accounts/documents were found and seized and consequently notice u/s 153A and 142 (1) along with questionnaire were issued and in response thereto, assessee filed copy of return of his income u/s 153 of the Act declaring an income of Rs.15,63,930/-, Rs.18,02,020/-, Rs.17,02,670/-, Rs.20,17,480/- & Rs.17,51,610/- for AYs 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 respectively and additional income of Rs.10,500, Rs.42,000/- & Rs.5,067/- under the head 'income from the house property' For AYs 2010-11, 2011-12 & 2012-13 respectively which was claimed in the original return filed u/s 139 of the Act was filed. From the seized documents, AO noticed that assessee has given loan of Rs.12,00,000/- in FY 2000-01 at the interest rate of 18% per annum. Declining the contentions raised by the assessee that addition cannot be made on the basis of unsigned, unnamed & dumb document showing hypothetical figure for 13 years which has no relation with the assessee or his group, AO proceeded to conclude that from the seized document, it is proved that the assessee has given a loan of Rs.12,00,000/- in the FY 2000-01 and thus received the total amount of Rs.29,51,207/- and calculated the interest thereon @ 18% amounting to Rs.5,31,217/- each in AYs 2010-11, 2011-12, 2012-13 & 2013-14 and made addition thereof in the total income of the assessee. AO made

addition on account of undisclosed interest income of Rs.3,09,876/- @ 18% on principal amount of Rs.29,51,207/- in AY 2014-15. AO made addition of Rs.84,000/- each in AYs 2012-13 & 2013-14 on account of notional rent of one property @ 10% per month which the assessee has not disclosed.

4. Assessee carried the matter before the Id. CIT (A) by way of appeals who has confirmed the additions in AYs 2010-11, 2011-12 & 2014-15 by dismissing the appeals. However, in AYs 2012-13 & 2013-14, Id. CIT (A) partly allowed the appeals by deleting the addition made by the AO on account of notional rent. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. When the case was called none appeared on behalf of the Revenue rather an adjournment application has been moved by the Income-tax Officer that Id. CIT DR is on casual leave today. Keeping in view the facts and circumstances that the entire Board will crash, the adjournment request is rejected. However, Id. CIT DR has been given liberty to file written submissions, if any, within one week, which have been filed on 15.02.2019, which is part of the record.

6. We have heard the Id. Authorized Representative of the assessee, gone through the written submissions filed by the Id. DR

& documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, original returns filed by the assessee were processed u/s 143 (1) of the Act. It is also not in dispute that on the basis of search and seizure operation conducted u/s 132 of the Act at the premises of Bindal Group of cases including the assessee on 07.03.2014, one document was found and seized from the residence of the assessee which is extracted for ready perusal as under :-

31.10.01	12,00,000	-
31.10.02	2,16,000	14,16,000
31.10.03	2,54,880	16,70,880
31.10.04	3,00,758	19,71,638
31.10.05	3,54,895	23,26,533
31.10.07	4,18,775	27,45,308
31.10.08	4,94,155	32,39,463
31.10.09	5,83,103	38,22,566
31.10.10	6,88,061	45,10,627
31.10.11	8,11,912	53,22,539
31.10.12	9,58,057	62,80,696
31.10.13	11,30,525	74,11,221

8. It is also not in dispute that AO has invoked the provisions contained u/s 292C that there is a presumption that the contents of the documents are true. It is also not in dispute that AO on the

basis of aforesaid document seized during the search and seizure operation reached the conclusion that it appears that assessee has given a loan of Rs.12,00,000/- in FY 2000-01 at the interest of 18% per annum and has rejected the submissions made by the assessee that the document is unsigned, unnamed and dumb showing some hypothetical interest calculation and had no relation with the assessee or his group, proceeded to hold that the said document depicts that assessee has given loan of Rs.12,00,000/- in FY 2000-01 and calculated the interest thereon from FYs 2001-02 to 2012-13 every year on 31st October till 31.03.2007 @ 18% per annum for the purpose of assessment. Thus, the assessee has received the amount of Rs.29,51,207/- and thereby made addition of Rs.5,31,217/- on account of undisclosed interest income @ 18% per annum on principal amount of Rs.29,51,207/- for AYs 2010-11, 2011-12, 2012-13 & 2013-14 and Rs.3,09,876/- in AY 2014-15.

9. The Id. AR for the assessee challenging the impugned order contended that the document in question cannot be relied upon for making any addition being a bald document and relied upon the decision rendered by the coordinate Bench of the Tribunal in assessee's own case in ITA No.5950/Del/2017 for AY 2008-09

order dated 21.03.2018, available at pages 88 to 96 of the paper book.

10. To repel the arguments addressed by the Id. AR for the assessee, Id. DR for the Revenue contended by way of written submissions that the assessee was confronted during the assessment proceedings by the AO to explain the document in question and the case of the assessee falls within the deeming provisions of section 292C of the Act as the assessee has not denied the seizure of document from his residence and further contended that the AO/CIT (A) have rightly held that even this rate of interest of 18% is commensurate with the prevailing market rate and have relied upon the decision of Hon'ble High Courts in *Dayachand vs. CIT – (2001) 117 taxmann 438 (Delhi)*, *CIT vs. Nagesh Kumar Aggarwal - (2011) 9 taxmann.com 249 (Delhi)*, *Mahabir Prasad Rungta vs. CIT (2014) 43 taxmann.com 328 & Bhagheeratha Engineering Ltd. vs. ACIT – (2017) 79 taxmann.com 325 (Kerala)*.

11. Bare perusal of the document in question marked as A-1, extracted in the preceding paras, found and seized from the residence of the assessee apparently goes to prove that the document is unnamed, unsigned, vague & ambiguous one and it is not proved on record also that if the same is in the handwriting of

the assessee. Nor the same bears the signatures of the assessee nor it bears the name of some other person. No doubt, the presumption arises u/s 292C in case of such document but the presumption is rebuttable one.

12. It is the case of the assessee that he is Director in one of the Bindal group of companies, namely, Neeraj Papers Marketing Ltd. and numerous persons keep visiting his residence and he was having no control on the visitors and the documents they carry and seized document was not found from the control and possession of the assessee. Moreover, no money, bullion or investment was found during the search and seizure operation to corroborate the document in question.

13. No doubt, date and amount has been jotted down in the seized document with one year gap but it is beyond imagination as to how the amount written has been attributed to the assessee having been given as loan to someone because there is neither name of the assessee nor the name of the loanee. The entire findings have been arrived at on the basis of presumptions and assumption that the amount of Rs.12,00,000/- attracts the interest @ 18% because when we examine para 5.4, the AO has tabulated the presumptive figure of interest calculated @ 18% on the

principal amount of Rs.12,00,000/- but after 31.03.2007 till 31.10.2013 interest figures continued the same i.e. Rs.5,31,217/-.

14. The coordinate Bench of the Tribunal in *assessee's own case in AY 2008-09* (supra) has deleted the addition for AY 2008-09 made on the basis of same seized document A-1 on the ground that alleged interest income cannot be attributed to the assessee on the basis of dumb document.

15. In view of what has been discussed above, we are of the considered view that addition made on the basis of unnamed, unsigned, undated, vague and ambiguous document without any further corroboration is not sustainable in the eyes of law. Moreover, AO has not brought on record any material to prove that the assessee was in conscious possession of document in question.

16. Furthermore, the assessee has also categorically denied that the seized document belongs to him. So, when the seized document does not bear the name of the assessee nor it is in the handwriting of the assessee nor does it explain the purpose of making and receiving the payment, rather it is silent as to the names of payers and payees qua the amount mentioned therein nor does it disclose that the payment was made by cheque or cash, addition cannot be made merely by invoking the deeming provisions without collecting any corroborative evidence. So

presumption attached to the seized document, A-1, stands rebutted. Consequently, additions made by the AO and confirmed by the Id. CIT (A) is not sustainable, hence ordered to be deleted. Resultantly, all the appeals filed by the assessee are allowed.

Order pronounced in open court on this 28th day of February, 2019.

**Sd/-
(DR. M.L. MEENA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of February, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**