

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-4075/Del/2014
(Assessment Year: 2009-10)**

DCIT Central Circle-16 New Delhi	Vs.	Vikas Jain B-1/118, 2 nd Floor, Paschim Vihar New Delhi PAN : AAGPJ3118G
Appellant		Respondent

**Assessee by : Sh. Ved Jain, Adv, Miss Umang Luthra, Adv.
Ms. Surbhi Goyal, CA
Revenue by : Shri J.K.Mishra, CIT-DR**

Date of Hearing	09.01.2019
Date of Pronouncement	19.03.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal is filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals) {CIT (A)} vide dated 29.04.2014 and challenges the deletion of addition of Rs. 2,09,50,000/- made by the Assessing Officer (AO) on account of unexplained investment.

2.0 The brief facts of the case are that in this case a search and seizure operation was carried out on the assessee on

10.02.2011. Consequent, to that the Assessing Officer issued notice u/s 153A of the Income Tax Act, 1961 (hereinafter called 'the Act'). The Assessing Officer required the assessee to explain the document identified as 'MA-7/Annx-A-12/Page 104 and 103' found and seized from the premises 697, Udyog Vihar, Phase – V, Gurgaon, Haryana. The Assessing Officer was of the view that the transaction recorded in the seized document was related to the purchase of property B-1/238, GF & FF, Paschim Vihar, New Delhi from M/s Chawla Buildwell P. Ltd. As against this, the contention of the assessee was that he had not entered into any such transaction and further that in the seized document there was no identity of the person to whom the alleged payment/s were stated to have been made by the assessee and that there were no details of the property for which the payment was alleged to have been made. It was also the contention of the assessee that there no sale consideration was stated in the said seized document and further that there is was neither any signature of the buyer/seller nor signature/s of any witness/es on the said document. The Assessing Officer, however, was not satisfied with the submissions of the assessee and proceeded to make an addition of Rs.2,09,50,000/- as unexplained investment by holding that the property transaction was executed for a total amount of Rs.

2,60,00,000/- out of which Rs. 49,50,000/- was paid in cheque and the balance i.e. Rs. 2,09,50,000/- was paid in cash which he treated as unexplained investment.

2.1 Aggrieved by the order of the AO, the assessee filed appeal before the Ld. CIT (A). The contention of the assessee before the Ld. CIT (A) was that the addition made by the AO was unsustainable both in law and on facts as the seized document was not found during the course of search in the assessee's premises and, hence, the same could not be the subject matter of any addition for the year under consideration as assessment for the year was not abated. It was further contended by the assessee that the addition had been made by AO without bringing any corroborative material on record. It was also contended that the Assessing Officer had made assumptions and drawn inferences without carrying out any investigation or verification from the alleged seller.

2.2 The Ld. CIT (A) rejected the legal contention of the assessee that in the absence of any incriminating material found in the course of search on the assessee, the addition made by the AO was untenable. However, on facts the Ld. CIT (A) deleted the addition by holding that assessee had filed his explanation and the

AO had rejected the same without bringing on record some corroborative evidence to substantiate his allegation.

2.3 Aggrieved, the Revenue is now in appeal before the ITAT and has raised the following grounds of appeal:

“1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting addition of Rs. 2,09,50,000/- made by A.O. on account of unexplained investment.

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

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3.0 It was submitted by the Ld. DR that the Ld. CIT (A) was wrong in deleting the addition. It was submitted that the AO had given detailed reasons for making the addition. It was submitted that the document was seized during the course of the search and was clearly relatable to the transaction entered into by the assessee. The Ld. DR submitted that although the assessee had tried to disown the document, but the fact remained that this was a case of a purchase of property where a substantial portion of the transaction amount had been paid in cash. It was submitted that provisions of section 132(4A) of the Act read with section 292C of

the Act were applicable in this case and onus was on the assessee to rebut the presumption of section 132(4A) as this document had been found from the possession of the assessee. The Ld. DR also place reliance on the following judicial precedents in support of the contentions of the Revenue as under:-

1. CIT Vs. Sonal Construction [2012-TIOL-851-HC-DEL-IT] (Delhi)
2. CIT Vs. Naresh Kumar Aggarwala [2011] 9 taxmann.com 249 (Delhi)/[2011] 198 Taxman 194 (Delhi)/[2011] 331 ITR 510 (Delhi)
3. Mahabir Prasad Rungta Vs. CIT [2014] 43 taxmann.com 328 (Jharkhand)/[2014] 266 CTR 175 (Jharkhand)
4. Bhagheeratha Engineering Ltd. Vs. ACIT [2017] 79 taxmann.com 325 (Kerala)/[2015] 379 ITR 244 (Kerala)/[2016] 282 CTR 209 (Kerala)
5. Ashok Kumar Vs. CIT [2016] 69 taxmann.com 129 (Patna)/[2016] 239 Taxman 436 (Patna)/[2016] 386 ITR 342 (Patna)/[2016] 290 CTR 450 (Patna)
6. Baldev Raj Vs. CIT [2010] 2 taxmann.com 335 (Punjab & Haryana)

4.0 In response, the Ld. AR submitted that the addition *per se* was untenable in law as this document was not found during the course of the search carried out in the premises of the assessee as was evident from the assessment order wherein the Assessing Officer, on page 2 of the assessment order itself has stated that this document was found from the premises 697,

Udyog Vihar, Phase-V, Gurgaon, Haryana. The Ld. AR submitted that the search on the assessee as per the *Panchnamas* (placed in paper book 4) was at B-1/118, IInd Floor, Pashim Vihar, New Delhi, (paper book page 9), at locker no.286 at Dena Bank, Pashcim Vihar, (paper book page 13), at locker no.297, Dena Bank, Paschim Vihar (paper book page 17) and at Locker no.20, ING Vaysya Bank, Punjabi Bagh, New Delhi. It was submitted that, thus, the Ld. CIT (A) was not correct in rejecting the contention of the assessee that in absence of any incriminating material being found during the course of the search on the assessee, the AO had no jurisdiction to make such addition.

4.1 Further, on merits, it was contended by the Ld. AR that the addition has been rightly deleted by the Ld. CIT (A) as the Assessing Officer, instead of conducting any investigation or verification, had made the impugned addition by indulging into surmises and conjectures. The Ld. AR invited our attention to the seized document placed at paper book pages 23 to 2 and submitted that on these pages there was no mention of any property number and no mention of any buyer except having some details with the name 'Chawlaji'. The Ld. AR submitted that the Assessing Officer, by indulging into surmises, has held that the impugned transaction was the same which was related to the

purchase of property by Mrs. Aroma Jain and by Mr. Vikas Jain from Chawla Buildwell P. Ltd. The Ld. AR emphasized that the Assessing Officer had not carried out any verification from M/s Chawla Buildwell P. Ltd. The Ld. AR submitted that on going through the assessment order, it was very much evident that no verification had been carried out from the seller and further that there was no statement of the seller against the assessee. The Ld. AR submitted that the Ld. CIT (A) was correct in holding that no corroborative evidences had been brought on record by the AO. It was also pointed out by the Ld. AR that no corresponding addition had been made in the hands of the seller nor any action had been initiated against the seller.

4.2 The Ld. AR also submitted that the contention of the Ld. DR on section 132(4A) was not tenable. It was submitted that the presumption under section 132(4A) read with section 292C was not applicable as this document was not found in the possession or control of the assessee. The Ld. AR submitted that for applying this presumption, it was an essential condition that the document found was in the possession or control of such person and further that this being a deeming fiction it has to be strictly construed and cannot be expanded so as to apply it to a document which has not been found in possession or control of such person. The Ld. AR

reiterated that this document was not found in the course of the search on the assessee as was evident from the assessment order whereby it has been clearly stated that this document was found from premises 697, Udyog Vihar, Phase-V, Gurgaon and not from the residence of the assessee where the search was carried out.

4.4 The Ld. AR further submitted that the AO had not considered the sale deed on the basis of which a correlation is being made out. It was submitted that this sale deed stands in joint name/s and that in case the Assessing Officer was to draw an adverse inference, he should have looked at the sale deed which is in two names, namely Mrs. Aroma Jain and Mr. Vikas Jain. It was submitted that in view of these facts the entire addition could not have been made in the hands of the assessee. It was also submitted by the Ld. AR that the AO had failed to bring on record any cogent material to establish that the payment had been made by the assessee. It was submitted that no statements were recorded either in the case of the assessee or in the case of Mrs. Aroma Jain which could substantiate the view of the AO. The Ld. AR submitted that, therefore, in absence of any corroborative material, it was incorrect on the part of the AO to assume that the entire payment had been made by the assessee.

5.0 We have heard the rival submissions and have also perused the record. On going through the same, we note that the AO has drawn an adverse inference on a document found and seized from the premises 697, Udyog Vihar, Phase-V, Gurgaon. The AO has held that the document seized is relatable to a property purchased by the assessee along with Mrs. Aroma Jain. The AO, on the basis of the seized document, has made out a case that the assessee had purchased a property for Rs. 2,60,00,000/- and had paid only Rs. 49,50,000/- through cheque and the balance amount had been paid in cash. The Ld CIT (A) has deleted the addition by observing that the inference drawn by the AO is without any corroborative evidence. Now, in the appeal before us, the Ld. DR has placed reliance on the provisions of section 132(4A) read with section 292C wherein there is a presumption that the document belongs to the person from whose possession and control the document was found and further that the contents of the document are correct. As against this, the contention of the Ld. AR is that this presumption is not applicable as this document was not found in possession and control of the assessee. It is also the contention of the Ld. AR that this document, not having been found in the course of the search on the assessee, which was, admittedly, at 697, Udyog Vihar, Phase-V, Gurgaon, which is

different from the place where the search on assessee had taken place i.e. at B-1/118, IInd Floor, Paschim Vihar, New Delhi as per the *Panchnama* placed at paper book page 4 and, therefore, the addition *per se* is beyond jurisdiction. It is also the contention of the Ld. AR that no enquiry had been made from the seller and that the figures have been worked out on surmises without carrying out any verification and further that in any case the addition of the entire amount in the hands of the assessee was unsustainable as the property had been purchased by two persons.

5.1 We have perused the said seized document and on going through this document we do find that there are certain figures stated therein and that the name 'Chawla Ji' is also stated therein. It is also a matter of record that the assessee, along with Mrs. Aroma Jain, has purchased a property from M/s Chawla Buildwell Pvt. Ltd. Thus, there can indeed be an inference as to that what is recorded in the seized document may be relatable to property purchased. However, to reach such a conclusion, one needs to undertake verification, which, unfortunately, has not been done in this case. We also note from this document that it is not clear as to how the AO worked out the figure of Rs. 2,60,00,000/- as being the value of total consideration. It is equally surprising that the AO did not make any enquiry from the seller. Nor any action

apparently has been taken against the seller. We are also in agreement with alternative contention of the Ld. AR that this property has been purchased in joint-names and, therefore, the entire addition cannot be made in the hands of the assessee unless the AO is able to bring on record any material to substantiate that the entire 'money' was paid by the assessee. All these issues were required to be examined by the lower authorities which both the AO and the Ld. CIT (A) has failed to consider. At the same time, we also note that the contention of the Ld. AR that the presumption under section 132(4A) read with section 292C is available only against the person from whose possession or control such document is found is also correct. From the facts stated hereinabove, apparently, it appears that the seized document was found at a place other than the place where the search on the assessee has been carried out. Thus, in these circumstances, it cannot be said that this document was found in possession or control of the assessee. If that be so, then the presumption under section 132(4A) will not be available. Further, in case such document was not found in the course of the search on the assessee then the same cannot be the subject matter for addition in assessment proceeding under section 153A of the Act. Since, the facts on record are not clear and all the issues as stated

hereinabove have not been taken into due consideration by the lower authorities, we deem it fit to set aside the order passed by the authorities below to the file of the AO with a direction to examine each of the above issues and, thereafter, frame a fresh assessment order in accordance with law. Needless to say, the AO will give adequate opportunity to the assessee before passing the fresh assessment order.

6.0 In the final result, the appeal of the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on 19.03.2019.

**Sd/-
(G.D.AGRawal)
VICE PRESIDENT**

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 19.03.2019
BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	Dictated on dragon
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	19/03/2019
Date on which the fair order comes back to the Sr. PS/PS	19/03/2019
Date on which the final order is uploaded on the website of ITAT	19/03/2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	