

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.238/Chd/2014

निर्धारण वर्ष / Assessment Year : 2006-07

Sh.Rajinder Mittal, H.No.666, Sector 21, Panchkula.	बनाम	The D.C.I.T., Central Circle-II, Chandigarh.
स्थायी लेखा सं./PAN NO: ABJPM7932R		

निर्धारिती की ओर से/Assessee by: Shri Neeraj Jain, CA

राजस्व की ओर से/ Revenue by : Shri K.K. Mittal, CIT DR

सुनवाई की तारीख/Date of Hearing : 12.02.2019

उदघोषणा की तारीख/Date of Pronouncement: 29.03.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member

The present appeal has been preferred by the assessee against the order dated 9.10.2013 of the Commissioner of Income Tax (Appeals)(Central), Gurgaon [hereinafter referred to as CIT(A)], passed u/s 250(6) of the Income Tax Act,1961(hereinafter referred to as “Act”).

2. Briefly stated, search operation u/s 132(1) of the Act was carried out on the Mittal group of cases on 16.1.2009 in which the residential premises of the assessee was also covered. Thereafter notice u/s 153A of the Act was issued to the assessee in response to which return declaring income of Rs.2,08,940/- was filed by the assessee. Notices were issued

thereafter for assessing the income of the assessee u/s 142(1) and 143(2) of the Act alongwith detailed questionnaire. Meanwhile it was seen that the accounts of the group concern and the seized documents were complex in nature and hence in the interest of revenue the case of the group including the assessee was referred to the special auditor u/s 142(2A) of the Act. The audit report u/s 142(2A) was submitted by the assessee and thereafter the income was assessed at Rs.17,93,536/- after making additions u/s 68 of the Act on account of unexplained cash found deposited in two bank accounts of the assessee amounting to Rs.8,70,000/- and unexplained loan of Rs.5,00,000/- and additions u/s 69C on account of unexplained expenses emanating from certain documents found during search.

3. The matter was carried in appeal before the Ld.CIT(A) where the assessee contested only the additions made u/s 68 of the Act which were all upheld by the Ld.CIT(A) on merits holding that the assessee had been unable to explain the same .

4. Aggrieved by the same the assessee has come up in appeal before us, raising the following grounds of appeal:

- 1. That the order of Ld. Commissioner on Income (Appeal) (Central), Gurgaon is contrary to the facts of the case and legally incorrect and without any basis of proper justification.*
- 2. That the Ld. Commissioner on Income (Appeal) (Central), Gurgaon grossly erred and his action is unjustified and illegal in addition of Rs. 3,70,000/- on account of unexplained cash credit u/s 68 on the basis of Bank statement. As in replied by the assessee that section 68 did not apply to assessee, along with bank statement did not constitute any books of accounts, but Ld. CIT (A) ignored*

it. So, this addition is highly unjustified. Therefore, the addition of Rs. 3,70,000/- is prayed to be deleted.

3. *That the Ld. Commissioner on Income (Appeal) (Central), Gurgaon grossly erred and his action is unjustified and illegal in addition of Rs. 5,00,000/- on account of unexplained cash credit u/s 68 on the basis of Bank statement. As in replied by the assessee that section 68 did not apply to assessee, along with bank statement did not constitute any books of accounts and that the cash deposit in bank account by all three joint holders, but Ld. CIT (A) ignored it. So, this addition is highly unjustified. Therefore, the addition of Rs. 5,00,000/- is prayed to be deleted.*

4. *That the Ld. Commissioner on Income (Appeal) (Central), Gurgaon grossly erred and his action is unjustified and illegal in addition of Rs. 5,00,000/- on account of unexplained cash credit u/s 68 on the basis of Bank statement. As in replied by the assessee that section 68 did not apply to assessee, along with supporting documentary evidence, but Ld. CIT (A) ignored it. So, this addition is highly unjustified. Therefore, the addition of Rs.5,00,000/- is prayed to be deleted.*

5. *Charging interest under section 234 A, 234 B and 234 C are not warranted due to the facts of the case.*

5. The assessee has also raised additional ground before us which reads as under:

“That the Ld. CIT (A) is not justified in confirming the additions / disallowances in assessment made u/s. 153A (1) (b) r.w.s. 143 (3) of the I. T. Act, 1961 in the absence of incriminating material found during the course of Search as no assessment was pending for the A. Y. 2006-07 on the date of initiation of search.”

6. Vis a vis the same it was contended that since the issue raised in the additional ground was a legal issue and further since no new fresh facts were required to be considered for adjudicating the same, it may be admitted for adjudication. In support the assessee relied upon the decision of the Hon'ble Apex Court in the case of NTPC Limited Vs. CIT, 283 ITR 390.

7. The Ld. DR, on the other hand, filed his objections to the admission of the additional ground in writing stating that incriminating material were seized during search and,

therefore, there was no illegality in the assessment framed in the present case. It was pointed out that an document having notification marked A-2 was found and seized, pages 82 to 89 of which pertained to a sale deed in respect of land purchased by the assessee in village Dhakoli alongwith the other co-owners. The Ld. DR also pointed out that the assessee has made disclosure of Rs.1,63,400/- on account of the same.

8. Having heard the rival contentions, we agree with the Ld. counsel for assessee that the additional ground raised before us is a legal ground and since no fresh facts need to be considered for adjudication of the same, we have no hesitation to admit the same for adjudication. The objection of the Ld. DR is only an argument for the purpose of adjudicating the issue raised in the additional ground and, therefore, cannot be considered at the stage of admission of the additional ground. The objection of the Ld.DR is therefore, dismissed and the additional ground raised by the assessee is admitted for adjudication.

9. Since the additional ground raised challenges the validity of the addition made u/s 68 of the Act, we shall deal with the same first.

10. During the course of hearing before us, , the Ld. counsel for assessee pointed out that in the assessment framed subsequent to the search conducted on the assessee additions were made on account of unexplained cash deposits in the bank account of the assessee amounting to

Rs.3,70,000/- and Rs.5 lacs, in two separate bank accounts of the assessee and further on account of unexplained cash credit in the form of unsecured loan received from one Shri Devinder Singh of Rs.5 lacs and further on account of an document found during search pertaining to a sale deed in respect of purchase of land made by the assessee amounting to Rs.1,63,000/- and Rs.31,100/-.The Ld. counsel for assessee pointed out that it was not pressing against the addition made vis-à-vis documents seized during search. It was stated by the Ld. counsel for assessee that it was only contesting the addition made on account of unexplained cash in bank and unexplained cash credit and its solitary argument against the same was that no incriminating material relating to these additions was found during the course of search and that it was simply based on documents procured during the course of post search enquiry when the copies of bank accounts were submitted and it was noted therefrom that there were cash deposits and unsecured loans taken by the assessee in the bank accounts, the explanation of which was sought from the assessee and found to be unsatisfactory. The Ld.Counsel for the assessee thereafter pointed out that there was no pending assessment relating to the impugned year as on the date of search and, therefore, in view of the above facts and in view of various judicial decisions in this regard, no addition unconnected with any material seized during the course of search could have been made in the hands of the assessee. Our attention was drawn to paras 6, 7 and 8 of the assessment order

wherein the additions on account of cash deposits in the bank and unsecured loan found deposited in bank was discussed and made. The Ld. counsel for assessee also drew our attention to the fact that the assessment year involved in the impugned case was assessment year 2006-07 and statutorily specified period for issuing notice for initiating assessment proceedings u/s 143(2) of the Act expired on 31.3.2007 and no such notice was issued to the assessee. Therefore, there were no ongoing assessment proceedings when the search was conducted on the assessee on 16.1.2009, which would have abated for the purpose of framing assessment as per the provisions of section 153A of the Act.

11. The Ld. DR, on the other hand contended that though undeniably the bank books in which the cash credits entries were found and pertaining to which additions were made, were not found during the course of search but the fact of the matter was that the accounts of the group cases and the seized documents were complex in nature and, therefore, case of the group was referred for special audit u/s 142(2A) of the Act which was not objected to by the assessee also and it was in terms of the report submitted by the special auditors to whom no explanation of the cash deposits was furnished and on his recommendation the assessee was show caused as to why the impugned additions be not made and which resulted in the impugned additions. It was further pointed out that seized document were found during the

course of search relating to purchase of land which the assessee had contended that the payment was made out of the very same bank account in which there were unexplained cash deposits. In these facts and circumstances, therefore, the Ld. DR contended that the addition made on account of unexplained cash deposits in the bank could not be seen in isolation but were related to the investment found to have been made by the assessee from earlier undisclosed cash credits during the course of search and, therefore, it could not be said that the addition was not based on any incriminating material found during the course of search.

12. We have heard the rival contentions and perused the orders of the authorities below. The assessee, in its additional ground has challenged the addition made u/s 68 of the Act of unexplained cash deposited in bank and unexplained loan taken, on the ground that the material on which the addition was based was not found during search, in other words the addition was not based on any incriminating material found during search.

13. Vis a Vis the proposition of law that in assessments made pursuant to search conducted in cases where earlier assessment was completed, addition can be made only on the basis of incriminating material found during search there is no dispute. In fact courts have time and again in the cases of CIT Vs. Continental Warehousing Corporation in ITA No. 523 of 2013 reported in (2015) 279 CTR 0389 (Bombay), CIT Vs. Kabul Chawla, 234 Taxman 300 (Delhi). Principal CIT Vs.

MeetaGutgutia Prop M/s Ferns 'N' Petals", ITA 306/2017 and others (Delhi) held that if no incriminating material is found during the search action, the addition in the case of already concluded assessment cannot be made while framing assessment u/s 153A of the Act.

The only dispute is whether the addition made u/s 68 of the Act was based on any incriminating material or not.

14. The fact that the information relating to the impugned additions emanated from bank accounts and bank book of the assessee is not disputed. Further we find that the assessment order does not mention the same having been found during search, nor has the Ld.DR been able to establish the said fact before us. In fact the Ld.DR has admitted that the said documents were not found during search but the information was obtained in the course of special audit conducted u/s 142(2A) of the Act.

15. In the light of the above facts we find merit in the contention of the Ld.Counsel for the assessee that the addition u/s 68 of Rs13,70,000/-was not based on any incriminating material found during search and since admittedly the assessment for the impugned year had not abated, no addition therefore could have been made on account of the same.

16. We do not find any merit in the argument of the Ld.DR that that the addition made on account of unexplained cash deposits in the bank could not be seen in isolation but were

related to the investment found to have been made by the assessee during the course of search and which were from earlier undisclosed cash credits. The Ld.DR has not substantiated his contention that the investment was from undisclosed cash credit, with any cogent evidence. No nexus has been shown to us by the Ld.DR between the unexplained cash deposited in bank and the investment made for purchase of land, documents pertaining to which were found during search. In the absence of any link having been established by the Ld.DR between the unexplained cash deposits and the investments found to have been by the assessee during search, we see no reason to view the two documents together to hold that the documents pertaining to the cash credits were incriminating documents found during search for the purpose of making addition u/s 153A of the Act, as argued by the Ld.DR. We therefore dismiss the contention of the Ld.DR.

17. In view of the above we hold that the addition u/s 68 of the Act on account of unexplained cash deposit in Bank of Rs.3,70,000/- & Rs.5,00,000/- and unexplained loan taken of Rs. 5,00,000/- was not based on any incriminating material found during search and could not be made u/s 153A of the Act. The addition so made is therefore directed to be deleted.

The additional ground raised by the assessee is therefore allowed.

18. Since the addition has been deleted on the legal ground raised as above ,the grounds raised challenging the addition on merits are merely academic in nature and are therefore not being dealt with by us.

19. In the result, the appeal of the assessee is therefore allowed in above terms.

Order pronounced in the Open Court.

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायकि सदस्य/Judicial Member

Sd/-
अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/Accountant Member

दिनांक /Dated: 29th March, 2019

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar