

आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2291/AHD/2017

अाधरण वष/Asstt. Year: 2013-2014

Shri Rajeshbhai Jivraj Desai, Prop. M/s.Rajiv Enterprise, 5 Ashoknagar Society, Radhanpur road, Mehsana. PAN: AAWPD3248B	Vs.	D.C.I.T., Central Circle-2(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divetia, A.R
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई का तारख/Date of Hearing : 24/10/2019

घोषणा का तारख /Date of Pronouncement: 21/01/2020

आदेश / O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-7, Ahmedabad dated 07/07/2017 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.31/03/2015 relevant to the Assessment Year 2013-2014.

The assessee has raised the following grounds of appeal.

1.1 *The order passed u/s.250 on 07.07.2017 for A.Y.2013-14 by GT(A)-7, Abad upholding the validity of proceedings u/s.153A of the Act as well as addition of Rs.2,02,56,330/- and Rs. 10 lakhs is wholly illegal, unlawful and against the principles of natural justice.*

1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.*

2.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the validity of proceedings as well as notice u/s.153A dated 19.11.2013 for A.Y.2013-14, though the conditions precedents were not fulfilled.*

2.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the validity of proceedings as well as notice u/s.153A dated 19.11.2013 for A.Y.2013-14.*

3.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the addition as alleged suppressed purchase price of Rs. 2,02,56,330/- in respect of lands at village: Makarba.*

3.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the addition u/s.69C as alleged suppressed purchase price of Rs. 2,02,56,330- .*

3.3 *The Ld.CIT(A) has grievously erred in law and on facts in upholding the addition of Rs.10 Lakhs u/s.69A.*

It is therefore, prayed that the addition of rs.2,02,56,330/- and Rs.10 Lakhs and validity u/s.153A(1) upheld by the CIT(A) may kindly be deleted.

2. The assessee in ground No. 1 and 2 has challenged the proceedings under section 153A of the Act, along with the addition of Rs. 2,02,56,330/- and Rs. 10 lacs made to the total income of the assessee.

3. At the outset we note that the assessee has challenged the validity of the notice issued under section 153A of the Act before the learned CIT (A). However, the learned CIT (A) rejected the contention of the assessee by observing that the assessment for the year under consideration was framed under section 143(3) of the Act, after issuing notice under section 143(2) and 142(1) of the Act.

3.1 The learned CIT (A) also observed in his order that there was no submission of the assessee qua the ground of appeal challenging the proceedings under section 153A of the Act. In view of the above, the learned CIT (A) was pleased to dismiss the ground of appeal raised by the assessee.

3.2 We further find that the assessee has also challenged the proceedings of the section 153A of the Act before us in the grounds of appeal as discussed above. Admittedly, the search was conducted dated 03-01-2013 i.e. in the financial year under consideration. Once a search is conducted under section 132 of the act, then the proceedings under section 153A of the Act, are initiated for immediate preceding 6 assessment years in which search was conducted. These 6 years are referred in clause (b) to section 153A(1) of the Act which reads as under:

153A. (1) Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), in the case of a person where a search is initiated under [section 132](#) or books of account, other documents or any assets are requisitioned under [section 132A](#) after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under [section 139](#);

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

3.3 As per the above clause the period of 6 years will be counted from immediately preceding the assessment year relevant to the previous year in which such search was conducted.

3.4 For example: if a search is conducted during the A.Y. 2010-11 then the A.Y. 2004-05 to 2009-10 will be subject to the proceedings under section 153A of the Act.

In view of the above stated discussion, we note that the assessment year under consideration does not fall within the period as specified in clause (b) to section 153A(1) of the Act.

3.5 In addition to the above, it is also pertinent to note that the assessment for the year under consideration was completed under section 143(3) of the Act. As such, there were no proceedings initiated under section 153A of the Act for the year under consideration. Accordingly, we hold that there is no merit in the ground of appeal raised by the assessee. Hence, the grounds of appeal of the assessee are dismissed.

4. The 2nd issue raised by the assessee in ground No. 3 is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 2,02,56,330/- and Rs.10 lakhs under the provisions of section 69C and 69A of the Act.

5. There was search and seizure operation carried out under section 132 of the Act, dated 03-01-2013 in the cases of Master Group. The premise of the assessee was also covered under search proceedings. During the search proceedings certain documents bearing page numbers 64 to 68 and cash of Rs. 10 lakhs were found which were seized from the residential premises of the assessee. on the confrontation by the AO, the assessee submitted as under:

a. Submission of the assessee regarding the seized documents

i. The assessee was confronted about the seized documents in the statement recorded under section 132(4) of the Act. The relevant extract of the question raised to the assessee and the answer thereto stands as under:

Q.18 Today, during the proceedings of the Income Tax, I found one loose paper file from your residence, which is attached in the inventories are Annexure-A, having page Nos.1 to 156 and I am showing the same to you. You see the same and read it and give explanation about each and every page of this paper file.

Ans. Page nos.64 to 68 are the kaccha estimate and I don't have any knowledge about the same.

- ii. The assessee during the assessment proceedings further submitted that
 1. His name is not appearing in the seized documents as discussed above. The assessee also claimed that seized documents are not in his handwriting.
 2. There was not any date or period mentioned in the seized documents suggesting that these documents pertain the particular year/s.
 3. There is also no clarity whether the amount mentioned in seized documents represents the income or the expenditures. As such there were no supporting vouchers, bills, or other documents found matching with the seized documents.
 4. He also claimed that he was not the owner of the properties/lands mentioned in the survey numbers contained in the seized documents.

b. Submission of the assessee regarding the seized cash

i. The assessee explained that the cash found during search represents cash on hand of the business which was kept at the residential premises. In this regard a detailed explanation has already been offered by his brother Shri Ramesh J. Desai who is managing the financial affairs of the entire group.

ii. However, the AO disagreed with the submission of the assessee by observing that the documents were seized at the premises of the assessee. Hence, under the provision of section 292C of the Act, he would be considered as the

owner of such documents. Therefore, the assessee is liable to explain the documents found during the course of search based on cogent materials/reasons.

iii. Similarly, the AO also disagreed with the submission of the assessee regarding the cash found during the search proceedings by observing that the onus lies on the assessee to explain the source of money not fully disclosed in the books of accounts as per the provisions of section 69A of the Act.

In view of the above the AO treated the sum of Rs. 2,02,56,330/- as unexplained expenditure under the provisions of section 69C of the Act and further treated the impugned cash of Rs. 10 lakhs as unexplained money under the provisions of section 69A of the Act.

Aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) regarding the seized documents submitted that that the noting found during the course of search is nothing but the rough estimate and have no evidentiary value. As per the assessee, the group has already incurred total expenditure of Rs. 10,57,37,490/- during the assessment year 2008-09 to 2013-14 which has been duly disclosed. These expenditures were incurred under various heads such as legal expenses, lawyer's fees, stamping charges, registration charges, conversion and tax expense etc.

6.1 Similarly, the assessee further claimed that the group has already incurred an expense of Rs. 4,06,97,474/- as land premium for conversion of land into non-agriculture land for the assessment years 2011-12 to 2013-14. Accordingly, the assessee claimed that the impugned expenditure has not been incurred outside the books of accounts as alleged by the AO. The assessee also reiterated the submissions as submitted before the AO during the assessment proceedings.

6.2 The assessee regarding the cash found during the search submitted that the impugned cash represents the cash available in the business of the group. The assessee in support of his contention filed a reconciliation statement which is reproduced as under:

	<i>Cash as per books of accounts</i>		<i>Rs.6844163/-</i>
(i)	<i>Cash found from Residence (38, Nirank Park)</i>	<i>Rs.1149000/-</i>	
(ii)	<i>Cash found from office (202, Darshak Complex)</i>	<i>Rs.1378040/-</i>	
(iii)	<i>Cash found from Surat (304, Mercury Tower)</i>	<i>Rs.302200/-</i>	
(iv)	<i>Cash lying atr mehsana Hotel, at construction site and at Surat office</i>	<i><u>Rs.2565560/-</u></i>	
			<i><u>Rs.5394800/-</u></i>
			<i>Rs.1449363/-</i>
<i>Less</i>	<i>Expenses incurred during the period up to which cash book written and up to date of search</i>		<i>Rs.1449363/-</i>
	<i>Difference</i>		<i>Nil</i>

6.3 The assessee also submitted that he has contended in the statement recorded under section 132(4) of the Act, the impugned cash of Rs. 10 lakhs belongs to him and his family members. As such the cash withdrawn from the office was kept at residential premises. Accordingly, the assessee claimed that the addition should not have been made by the AO without pointing out any defect in the reconciliation statement furnished during the assessment proceedings.

6.4 However, the learned CIT (A) rejected the contention of the assessee by observing as under:

8.1.1 I find that the appellant has himself given contradictory statements in his submission. At one place, he says that the figures pertain to some rough estimates of which he has no idea. At another place he claims that the entries in the loose papers under question pertain to expenditure incurred for land, legal expenses, drafting expenses, advocate fees, counseling expenses, consulting fees, NA expenses, litigation expenses, etc. At yet another part of the submission he states that the loose | papers do not belong to him. Thus it is evident that the appellant has no explanation to offer for the entries made in the seized loose papers referred to above. No documentary evidence has been furnished in support of his claim that the entries pertain to expenditure incurred on account of various expenses. It is a fact that the loose papers were found during the course of a search action at the appellant's residential premises. It is also a fact that he has stated that the entries pertain to expenses of various kinds. It is also seen that the appellant has not given any explanation or evidence for this expenditure. Considering

10. We have heard the rival contentions of both the parties and perused the materials available on record. The 1st issue in the present case relates whether the amount mention in the seized documents represents the unexplained expenditure incurred by the assessee.

10.1 Admittedly, the documents were found from the residential premise of the assessee and as per the provisions of section 292C of the Act it is presumed that such documents belong to the assessee. But the presumption under section 292C of the Act, is the rebuttable presumption. In this regard we draw guidance and support from the order of the Hon'ble Delhi High Court order in the case of PCIT vs. Delco India (P) Ltd. reported in 67 taxmann.com 357 relevant extract of order are as under:

Section 292C, inter alia, provides that where any books of account or other documents are found in possession or control of any person in the course of search under section 132 or survey under section 133A, it may be presumed that such books or documents belong to such person. Undisputedly, such presumption is rebuttable.

10.2 We further note that the AO in his show cause notice dated 06-01-2015 has observed as under:

"...(i) Certain incriminating documents seized as Sr. No.64 to 68 of Annexure A1 found and seized from the residence of Shri Rajeshbhai J. Desai. These papers indicate cash payments of rs.2,02,56,330/-. The noting on the said pages prima facie indicates payment of speed money/ bribe money relating to revenue authorities. For example at page number 66 of these lose papers reflects payment of rs.60,14,030/- made in connection with conversion of land from agriculture to NA and particular survey no. and name of village is also mentioned. These amounts appear to be in the nature speed money only.

10.3 From the above it is revealed that the AO has alleged that the assessee has incurred an expense of Rs. 60,14,030/- in connection with the conversion of land from agriculture to NA with respect to survey numbers. However, the AO without verifying the fact from the parties in whose name the survey number was registered has treated the expenditure as unexplained under section 69C of the Act. In our considered view, the AO was under the obligation to carry out the necessary verification before reaching to the conclusion that the assessee has incurred unexplained expenditure.

10.4 Besides the above, we also note that from the list of the expenditures as reproduced on pages 74 to 87 of the paper book, there were mentioned several survey numbers of the land but no enquiry was conducted by the authorities below. In this respect, we would like to discuss the judgment passed by the Hon'ble Delhi High Court in the matter of CIT, C-1-vs-Vatika Landbase Pvt. Ltd. In that matter, the Assessing Officer did not make any enquiry from the employee or from buyers of flats in respect of actual price paid by them. In that circumstances of the case the impugned addition made merely on the basis of unsigned and undated seized document has been held to be unsustainable in the eye of law. Thus, the proposition made by the revenue towards making addition on the basis of the figures mentioned on the said loose dumb document, thus, cannot be considered to be valid evidence in the absence of any enquiry made by the authorities which ought to have done in the manner as already dealt with us hereinabove. No authority acting judicially would have acted on the basis of a loose paper having no evidentiary value had there been minimum application of mind.

10.5 We also note that the information contained in the seized documents are just the information without any support and therefore no credentials can be given to such information until and unless it is based on some materials. As such, seized loose documents found during the search should be read in association with the other materials before reaching to the conclusion that such seized material represent the income of the assessee. We also note that in the case of *CBI v. V.C. Shukla* 1998 taxmann.com 2155 (SC), the Hon'ble Apex Court has observed that loose sheets have been ruled out as of any evidentiary value. Loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting it is not the record of the assessee. Even assuming such entries as correct and authentic they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an

inference about correctness of the entries still such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person.

10.6 Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.

10.7 The same view was also taken in the case of *CIT v. P.V. Kalyanasundaram* [2007] 164 Taxman 78/294 ITR 49 (SC) [decision of the Madras High Court in *CIT v. P.V. Kalyanasundaram* [2006] 155 Taxman 454/282 ITR 259 affirmed]: Assessee purchased certain land at a consideration as shown in sale deed executed. During a search operation, certain notes on loose sheets allegedly written by assessee were found and seized. When confronted, assessee contended that he could not remember as to why said nothings had been made but vendor admitted in his statements that he received substantial cash amount over and above sale deed amount. Though said statements were subsequently retracted by vendor, the A.O. adopted said enhanced figure admitted by vendor as actual sale consideration for purpose of assessment and made addition of difference as assessee's undisclosed income. The CIT (Appeals) deleted addition on ground that vendor's contradictory statements could not be relied upon. The Tribunal affirmed the decision of the CIT (Appeals) and the High Court dismissed revenue's appeal in limine on premise that no substantial questions of law were raised by revenue.

10.8 On appeal by the Department before the Supreme Court, it was held, that the fact as to actual sale price of property, implication of contradictory statements

made by the vendor or whether reliance could be placed on the loose sheets recovered in the course of the raid, were all questions of fact, and there was no infirmity in the order of High Court.

10.9 We also note that the lose paper found during the course of search did hold evidentiary value unless the same is supported by cogent material in regard we find guidance and support from order of the Hon'ble Supreme Court in the case of Common Cause (A Registered Society) Vs union of India reported in 394 ITR 220 the relevant extract of order are as under:

16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Account" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible.

17. It has further been laid down in V.C. Shukla (supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability

11. Regarding the seizure of cash amounting to ₹10 lakhs, we note that there was the reconciliation statement furnished by the assessee to justify the availability of cash found at his residence during the search proceedings. As such, there was no defect pointed out by the authorities below in the reconciliation statement furnished by the assessee. Therefore, we are of the view that such cash has been duly explained the assessee.

11.1 In view of the above, we hold that the documents seized during the search proceedings is nothing but representing the dumb documents and therefore no additions based on the same can be made in the hands of the assessee. Accordingly. We reverse the order of the authorities below and direct the AO to

delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

12. In the result, the appeal of the assessee is **allowed in part.**

Order pronounced in the Court on 21/01/2020 at Ahmedabad.

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

Ahmedabad; Dated 21/01/2020
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