

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.-2984/Del/2016
Assessment Year: 2008-09**

ACIT Central Circle-07, R.No. 330, ARA Centre, Jhandewalan Exten., New Delhi	Vs.	Sh. Rajiv Gupta R/o A-1, CC Colony Opp. Rana Pratap Bagh, New Delhi PAN : AFEPG3221J
Appellant		Respondent

Assessee by : Sh. S.B.Gupta, CA
Revenue by : Ms Pramita M. Biswas, CIT-DR

ORDER

PER ANADEE NATH MISSHRA, A.M.:

This appeal is preferred by Revenue against impugned appellate order dated 21.03.2016 passed by the Ld. CIT (Appeals)-24, New Delhi for assessment year 2008-09. Following grounds of appeal have been raised in this appeal :

- “1. The order of Id. CIT(A) is not correct in law and on facts.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 30,000/- as unaccounted expenditure.
3. On the facts and circumstances of the

case, the CIT(A) has erred in holding that once the receiving company has admitted the unaccounted income, it is automatically explained in the hands of the giver i.e. assessee.

4. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,85,88,600/- as unaccounted expenditure.

5. On the facts and circumstances of the case, the CIT(A) has erred in holding that once the source of receipts are explained, it is not to be taxed in the hands of the receiver.

6. On the facts and circumstances of the case, the CIT(A) has erred in holding that unexplained credits and unaccounted receipts are one and the same.

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

2. Search action u/s 132 of IT Act was carried out on M/s. Satya Prakash & Brothers Pvt. Ltd. group of cases on 28.10.2010. The assessee's premises were also searched u/s 132 of IT Act as part of aforesaid search action. Assessment order u/s 153A read with section 143(3) of IT Act was passed on 28.03.2013 wherein additions of Rs. 1,85,88,600/- and Rs. 30,000/- (totaling Rs. 1,86,18,600/-) were made. The aforesaid addition of Rs. 1,85,88,600/- was made on the basis of seized records (Party CN, Annexure A-72 page 16 to 20). The aforesaid addition of Rs. 30,000/- was made on the basis of seized records (party CN, Annexure A-72 page 133). The assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated

21.03.2016 of the Ld. CIT(A) both the aforesaid additions of Rs. 1,85,88,600/- and Rs. 30,000/- were deleted. The relevant portion of the aforesaid impugned appellate order dated 21.03.2016 is reproduced as under :-

4.2.8 In the next issue that arise is whether the entries in the documents relied upon by the A.O. in the appellant's case have been covered in the computation of the undisclosed income of M/s Satya Prakash & Brothers Pvt. Ltd. These documents are identified as Party CN, Annexure A-72, Page 16 to 20 and page 133 are actually pages of a handwritten ledger book identified as Bundle No. A-72. The appellant's ledger account appears at page 32 to 34 and 133 of this ledger book. This ledger account book pertains to the F.Y. 2007-08. The examination of the working computation shows that entries appearing in the name of the appellant have been factored into the computation of undisclosed income filed before the Hon'ble Settlement Commission. The following is conclusion of the Hon'ble Settlement Commission in this regard:-

"12. Finding the huge discrepancy between what has been proposed by CIT and what has been stated by the applicants, and after hearing both the parties, we directed both the A.O. and the applicants to undertake an exercise of verification of working of the undisclosed income shown in the settlement application viz-a-viz the seized material under the supervision of Director of

Income-tax (Inv.). The Department was represented by the concerned ACIT Shri Pukini Lokho, ACIT, Central Circle-12, New Delhi, who had prepared 245D(3) report and Shri Rajesh Joshi, Inspector of Income-tax. The applicants were represented by Shri Niraj Jain, CA and Shri S.B. Gupta, CA

DIT(Inv), ITSC submitted the report after due verification has been completed and the same has been signed by all the parties concerned.

Relevant portion of the report is reproduced as under:

"applicants stated that the working of undisclosed income is based on the seized records mainly 11 (eleven) registers showing the recorded and unrecorded documents. It is also stated that the transactions amounting to Rs. 20,97,62,725/- were not belonging to the applicant company, but owned by the other two co-applicants i.e. Shri Satya Prakash Gupta, Director of the applicant company and Smt. Abha Gupta, wife of Shri Ghanshyam Gupta, who is also director of the company. The A.O. has verified the transactions recorded in the seized material with the working out undisclosed income shown in the SOP of the applicant company and no discrepancy was noticed/pointed out. The A.O. also verified transactions not belonging to the applicant company and found that the same are reflected in the applications filed by the other two co-applicants. These transactions are taken into account for working out undisclosed income in the hands of the other two co-applicants. It is further seen that some of the entries in the registers are reflected in the regular books of account and the transactions not recorded are covered in the SOF of the applicant company".

From the perusal of the verification report which has been signed by the representatives of the Department as also the applicant's representatives and the Director of Investigation of the Settlement Commission and after hearing

the arguments from both sides and the various reports filed from time to time, we come to the following findings:

(i) Neither Rule 9 Report nor the Report under 245D(3) has produced any clinching evidence or concrete reasoning to back the estimation of profit proposed by the Department, the same being estimated at abnormally high percentage.

(ii) No concrete evidence has been produced to support the claim that the applicant has made huge profits.

(iii) It was also brought to our notice that in the years prior to the settlement period, the Department under scrutiny assessment has computed the applicant's income at less than 5%. It was also brought to our notice that post settlement period similar rate of profit of 5% has been returned by the applicants.

(iv) The alleged illegal payments pointed out by the I.T. Department have been owned up by the applicant and have been offered for taxation in the Settlement application of the Company."

Thus the Hon'ble Settlement Commission has given a finding that these impugned entries are reflected in the Settlement applications. Thus it is seen that the Hon'ble Settlement Commission has given the finding that entry in these documents have been owned up by the applicant M/s Satya Prakash & Brothers Pvt. Ltd., Sh SP Gupta and Smt Abha Gupta and offered for taxation in the settlement applicant. Verification of the computation sheet also shows that the amounts in the ledger

account are incorporated therein. Under these circumstances, no further amount appearing in these documents remains for being considered as addition in the hands of the appellant. I, therefore, delete the additions made. This ground of appeal succeeds.

4.2.9 The addition of Rs.30,000/- made on account of ledger account at Party CN, Annexure A-72, page 133 has been discussed above at para 4.2.7 and has been directed to be deleted. Hence Ground no. 5 is infructuous, and is dismissed.

(2.1) This present appeal has been filed by Revenue against the aforesaid impugned appellate order dated 21.03.2016 of the Ld. CIT(A). At the time of hearing before us, both sides were in agreement that the entries in the aforesaid seized documents vide (Party CN, Annexure A-72 page 16 to 20) and (party CN, Annexure A-72 page 133) have been owned up before Settlement Commission by M/s. Satya Prakash & Brothers Pvt. Ltd., Sh. Satya Prakash Gupta and Smt. Abha Gupta and offered for taxation in the settlement applications. However, neither side (neither Revenue nor the Assessee) has filed copy of final order(s) passed by Settlement Commission u/s 245D(4) of Income Tax Act in the cases of aforesaid M/s. Satya Prakash & Brothers Pvt. Ltd., Sh. Satya Prakash Gupta and Smt. Abha Gupta. Consequently, the outcome of the aforesaid M/s. Satya Prakash & Brothers Pvt. Ltd. Sh. Satya Prakash Gupta and Smt. Abha Gupta owning up the entries in the aforesaid seized documents (Party CN, Annexure A-72 page 16 to 20) and (party CN, Annexure A-72 page 133) is not available in

the records of ITAT. Thus, information is not available as to the extent to which income has been eventually taxed in the hands of the aforesaid persons as a result of order(s) of Settlement Commission u/s 245D(4) of I.T.Act. It is also not known from perusal of records of ITAT, whether order(s) of Settlement Commission u/s 245D(4) of I.T.Act in the case of aforesaid persons has attained finality having regard to proceedings, if any, in High Court or Supreme Court and having regard to statutory provisions, such as S. 245D(6), S. 245D(6B), S. 245D(7), S. 245E of I.T.Act. Moreover, on perusal of the impugned appellate order dated 21.03.2016 of the Ld. CIT(A), we find that although the Ld. CIT(A), in paragraph 4.2.5 of his impugned appellate order has stated, "No reply has been received from A.O."; the order of the Ld. CIT(A) is silent on how much opportunity was given by the Ld. CIT(A) to the Assessing Officer, after admission of additional evidences under Rule 46A of Income Tax Rules having regard to Rule 46A (3) of Income Tax Rules whereby the Ld. CIT(A) was duty bound to allow a reasonable opportunity to the Assessing Officer (a) to examine the evidence or document or to cross examine the witness produced by the appellant, or (b) to produce any evidence or document or any witness in rebuttable of the additional evidence produced by the appellant. In view of foregoing; and after perusal of materials on record, and moreover after hearing both sides we set aside the impugned appellate order dated 21.03.2016 of the Ld. CIT(A) and restore all the disputed issues to the file of the Assessing Officer with the

direction to pass fresh assessment order as per law, after providing due opportunity to the assessee, and taking due consideration of the order(s) passed by Settlement Commission u/s 245D(4) of I.T.Act in the cases of aforesaid M/s. Satya Prakash & Brothers Pvt. Ltd., Sh. Satya Prakash Gupta and Smt. Abha Gupta. We further direct the Assessing Officer to ensure that double addition of same income is avoided; and also that income assessed and taxed in the hands of the aforesaid M/s. Satya Prakash & Brothers Pvt. Ltd., Sh. Satya Prakash Gupta and Smt. Abha Gupta, in consequence of order(s) of Settlement Commission u/s 245D(4) of I.T.Act in their cases, is not taxed again in the hands of the assessee if 877777the orders of Settlement Commission in the cases of aforesaid M/s. Satya Prakash & Brothers Pvt. Ltd., Sh. Satya Prakash Gupta and Smt. Abha Gupta have attained finality.

(3) The appeal is partly allowed, for statistical purposes.

Order pronounced in the open court on 31/01/2020.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

BR

Dated: 31/01/2020

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	31.01.2020
Date on which the typed draft is placed before the dictating Member	31.01.2020
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	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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	