

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.5364/Del./2017
Assessment Year 2014-2015

The ACIT, Central Circle-15, Room No.353, E-2, ARA Centre, Civic Centre, New Delhi. PIN – 110 002.	vs.,	Mr. Rajesh Gupta, B-393, New Friends Colony, New Delhi – 110025 PAN AAAPG7884Q
(Appellant)		(Respondent)

For Revenue :	Shri Sushma Singh, CIT-DR
For Assessee :	Shri Salil Agarwal, Advocate And Shri Shailesh Gupta, C.A.

Date of Hearing :	26.02.2020
Date of Pronouncement :	28.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of Ld. CIT(A)-25, Delhi, Dated 24.03.2017, for the A.Y. 2014-15, challenging the deletion of addition of Rs.1.90 crores on account of undisclosed interest receipts.

2. We have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

3. Briefly the facts of the case are that assessee is an individual and filed return of income declaring total income of Rs.11.39 crores, which was processed under section 143(1) of the I.T. Act, 1961. In this case action under section 132 of the I.T. Act was carried out on 17.12.2013 and various documents/books of account etc. were found and seized. The statement of the assessee was also recorded. The assessee has declared additional income of Rs.11.31 crores under the head "*Speculative income*". The A.O. issued statutory questionnaire in which documents found and seized during the course of search were also confronted to the assessee. During the year, the assessee has declared income from business and profit from partnership firm, income from salary, income from house property, capital gains and income from other sources etc. The A.O. issued show cause notice as to why Rs.1.90 crores should not be treated as his unaccounted interest income.

The A.O. in the show cause notice brought to the notice of assessee the seized paper and sought explanation regarding receipt of interest amounting to Rs.1.90 crores paid to assessee by M/s. Allied Strips Limited ["ASL"]. The assessee submitted before the A.O. that it is an admitted fact that the alleged Laptop which contain entry of Rs.1.90 crores paid by ASL neither seized from the assessee nor it belong to the assessee. It was informed that statement of Shri Gaurav Aggarwal was recorded during the course of search wherein it was categorically stated by him that these in fact were the calculation of notional interest on the investment made by BDR group. It is notional figures only. It was also submitted that M/s Renu Realtech Pvt. Ltd, a Group Company is one of the collaborators in the Bahadurgarh project of the ASL group and its associates. The Investment of Rs.25.01 crores was explained above was made in the project in anticipation of the profits at the time of sale of project. There were no agreement to earn or receive any interest. The seized documents do not belong to the assessee. The A.O, however, did not accept the contention

of assessee because seized diary as Annexure-4, Party DA-6 has been written by Shri Ravinder Gupta one of the Directors of ASL Group companies and the impugned Laptop which contains the entry of Rs.1.90 crores shown to have been paid as interest to assessee through Shri Rajesh and Shri Vikram as also been operated by Shri Ravinder Gupta and secondly, when most of the entries in the said Diary have been explained by collaborating documents including the Company, then, how the entries in the Laptop do not belong to the assessee. Further explanation of assessee was called for in which assessee reiterated the same facts and denied to have receive any interest from ASL Group. It was also explained that statement of Shri Gaurav Aggarwal of ASL group was also recorded during the course of search in which he has denied the entries. The assessee, therefore, submitted that since the maker of the entry do not support the case of the Revenue and assessee did not receive any interest, therefore, no addition could be made against the assessee. The assessee relied upon Judgment of the Hon'ble Bombay High Court in the case of Addl. CIT vs.,

Miss Lata Mangeshkar [1974] 97 ITR 696 (Bom.) It was submitted that since Author of the seized document himself denied to have given any interest, therefore, no addition could be made. The A.O, however, did not accept the contention of assessee and made the addition of Rs.1.90 crores on account of interest paid by the aforesaid parties to the assessee.

4. The assessee challenged the addition before the Ld. CIT(A). It is noted in the impugned order that A.O. taxed the amount of Rs.1.90 crores as unaccounted interest paid to assessee on the basis of entries in the Laptop and documents seized during the course of search operation in the case of M/s. Allied Strips Limited ["ASL"]. Such entries were found in Diary and Laptop of Shri Ravinder Gupta, one of the Directors of ASL. The assessee reiterated the submissions before the Ld. CIT(A) and it was submitted that assessee was also a collaborator with the project by purchasing the land at Bahadurgarh, therefore, there is no question of charging any interest and there was no agreement to charge interest. The Author of the Laptop and

Diary denied to have paid any interest to the assessee. The name of the assessee is not appearing in the seized paper taken from the Laptop. Shri Ravinder Gupta and Shri Gaurav Aggarwal in their statements have denied to have made any payment on account of interest to the assessee. He has submitted that no corroborative evidence was found during the course of search so as to make the addition. The Ld. CIT(A) discussed this issue in detail in the impugned order and deleted the addition. The operative portion of the Order of the Ld. CIT(A) in paras 8.22 to 9 are reproduced as under :

“8.22. It is observed that the Appellant had brought to the knowledge of the Assessing Officer, various issues relating to the specific facts of the instant case, particularly in the reply dated 28.03.16, relevant portion of which has been reproduced by the Assessing Officer in the Assessment Order, but all such issues have simply been brushed aside by the Assessing Officer without any discussion or

adverse comment. The Assessing Officer failed to address various issues, prominent being that there was no Agreement to earn or receive any Interest and that investment had been made by the Appellant and a Company of his Group, in the purchase of Land as a Collaborator in the Bahadurgarh Real Estate Project of M/s Allied Strips Ltd. in anticipation of the profit at the time of sale of the project, and that there was no question of any receiving or earning of Interest on the investment made in the Bahadurgarh Real Estate Project. Also, no discussion or any comment was made on the Statement u/s 132(4) of Sh. Gaurav Aggarwal, MD, who stated that the calculation of Interest was only on notional basis for negotiation purposes. The Assessing Officer recorded Statement u/s 131 of Sh. Ravinder Gupta, Author of the entries, who also confirmed that the entries were on notional basis, the relevant

contents of such statement were confronted to the Assessing Officer by the Assessee in the reply dated 28.03.16, but the Assessing Officer though reproduced the reply dated 28.03.16 of the Assessee, failed to rebut the claims made and simply brushed aside all the facts of the case without any reasoning or discussion.

8.23. *In view of the above discussion, it is clear that the Assessing Officer has failed to rebut the claims of Sh. Gaurav Aggarwal, MD of M/s Allied Strips Ltd. in the statement u/s 132(4), and the claims of Sh. Ravinder Gupta, Author of the entries in the statement u/s 131 and also the facts of the case brought out by Sh. Rajesh Gupta, the Appellant. In such a situation, there is no justification for any conclusion regarding any payment or accrual of Interest. Accordingly, the addition of Rs.1,90,00,000/- made by the Assessing*

Officer as Undisclosed Interest Income is hereby deleted.

8.24. *In view of the finding that there was no payment or accrual of Interest of Rs.1,90,00,000/-, the adjudication of the various legal issues raised by the Appellant, and also the other Grounds of Appeal is not required.”*

5. The Ld. D.R. relied upon the order of the A.O. and submitted that since other entries in the seized paper were explained, therefore, adverse inference was correctly drawn against the assessee that assessee has received interest from ASL group. Therefore, addition was wrongly deleted by the Ld. CIT(A).

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and filed copies of the seized paper on record and submitted that the same did not contain name of the assessee. Mr. Ravinder Gupta and Mr. Gaurav

Aggarwal of ASL group in their statements recorded under section 132(4) in case of search in their cases denied to have given any interest to the assessee. The laptop and seized diary did not belong to the assessee as it belongs to Mr Ravinder Gupta who has denied to have made any payment of interest to the assessee. No corroborative evidence was found during the course of search. Therefore, there was no justification to make any addition against the assessee. The Learned Counsel for the Assessee has relied upon the following decisions.

6.1. Judgment of the Hon'ble Delhi High Court in the case of CIT (Central)-1, New Delhi vs., Ved Prakash Choudhary [2008] 305 ITR 245 (Del.) in which in paras 12 to 15 the Hon'ble Delhi High Court held as under :

“12. Insofar as the present case is concerned, the Assessee had stated that in fact there was no transfer of money between him and Ravi Talwar and Madhu Talwar. On the other hand, Ravi Talwar and Madhu Talwar had denied receipt of

any money from the assessee. In the fact of these denials, there ought to have been corroborative evidence to show that there was in fact such a transfer of money. Both the Commissioner as well as the Tribunal have come to the conclusion that there was no such material on record.

13. *The Assessing Officer relied on certain other transactions entered into by the assessee with Ravi Talwar and Madhu Talwar for drawing a presumption in respect of the transfer of money, but the Tribunal rightly held that those were independent transactions and had nothing to do with the MoUs, which were the subject-matter of discussion. Even if there was something wrong with some other transactions entered into, that would not give rise to an adverse inference insofar as the subject MoUs are concerned.*
14. *In our opinion, no substantial question of law arises.*
15. *Dismissed.”*

6.2. The Hon'ble Supreme Court in the case of Common Cause (A Registered Society) vs., Union of India [2017] 394 ITR 220 (SC) held as under :

“Investigation could not have been directed in case of high public functionaries on basis of legally inadmissible evidence in form of loose papers.”

6.3. The Hon'ble Gujarat High Court in the case of DCIT vs., Mahendra Ambalal Patel [2010] 40 DTR 243 (Guj.) held as under :

“Addition in the hands of the assessee having been made merely on the basis of a bald statement of a third party without there being any corroborative evidence, the Tribunal was justified in deleting the addition particularly when the assessee was not allowed opportunity to cross-examine the persons who made such a statement.”

6.4. We have considered the rival submissions and perused the material on record. The Learned Counsel for

the Assessee has placed on record copy of the seized paper which was found from the laptop of Mr. Ravinder Gupta Director of ASL group of cases. In the seized paper name of the assessee is not mentioned. It is stated cash paid to BDR through Mr. Rajesh and Mr. Vikram. No statement of Mr. Rajesh and Mr. Vikram, if any, have been mentioned in the assessment order. It is not clear whether any interest have been paid to the assessee or not. Since the laptop and seized Diary belong to Shri Ravinder Gupta and his statement was recorded under section 132(4) of the I.T. Act in the course of search in their ASL Group of cases and he denied in his statement to have made any interest payment to assessee, therefore, no liability could be fasten on assessee to prove that assessee received any interest. Similarly statement of Shri Gaurav Aggarwal was recorded under section 132(4) of the I.T. Act in the case of search in their group of cases who has also denied payment of any interest. Therefore, there is no evidence on record to prove if any interest payment is made to the assessee. The assessee also denied to have received any interest payment from any

of these parties. These facts, therefore, show that no corroborative evidence was found during the course of search to support the findings of the A.O. No agreement has been brought on record if there was any understanding between the parties to charge the interest. Therefore, in the absence of any evidence connecting the assessee with the receipt of interest, the Ld. CIT(A) rightly came to the conclusion that it is not a case of making addition against the assessee. The above decisions relied upon by Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case and supports the finding of fact recorded by the Ld. CIT(A) that it is not a case of making any addition against the assessee. It appears from the findings of the A.O. that A.O. on the basis of the seized paper which were explained by ASL Group of cases partly presumed that assessee has received some interest from ASL Group of cases. However, it is well settled Law that presumption whatsoever strong may be cannot take place on legal proof. In the absence of any cogent and relatable evidence on record, we do not find any justification to

interfere with the Order of the Ld. CIT(A) in deleting the addition. The Department appeal fails and is dismissed

7. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 28th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "F" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.