

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री इंटूरी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND
SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.1468, 1469 & 1470/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2011-12 to 2013-14)

The Asst. Commissioner of
Income Tax,
Corporate Circle – 21),
Chennai.

Vs **Shri Arvinda Nandagopal,**
No.6, 6th Street, Rutland Gate,
Chennai – 600 006.

(अपीलार्थी/Appellant)

PAN: AAFPA6259G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Srinivasa Rao, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri K.M. Mohandass, CA

सुनवाई की तारीख/Date of hearing : 23.01.2020

घोषणा की तारीख /Date of Pronouncement : 13.03.2020

आदेश /O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

These appeals are filed by the Revenue directed against the common order of the Commissioner of Income Tax (Appeals)-18, Chennai, (in short 'CIT(A)') dated 25.01.2018 for the Assessment Years 2010-11 to 2012-13. Since common issues involved in these appeals, we heard all the appeals together and disposing the same vide this common order.

2. The brief facts of the case are as under:

The respondent assessee namely Shri Aravind Nandagopal is an individual and Director in M/s. Sagar Sugars and Allied Products Ltd., and M/s. Mohan Breweries and Distilleries Ltd and he derives income under the head 'income from salaries' and 'income from other sources'. The return of income for the assessment years 2010-11, 2011-12 & 2012-13 were filed on 27.07.2010, 29.07.2011 & 18.05.2012 disclosing income of Rs.36,04,585/-, Rs.34,44,300/- & Rs.35,59,40,700/- respectively.

3. The search and seizure operations were conducted in the residential premises of one Shri L.S. Vishnu Prasad. During the course of search in the case of said person, cash of Rs.35 crores was found and seized. The said Shri L.S.Vishnu Prasad stated that the money belonged to his brother-in-law namely Shri Arvind Nandagopal, who is respondent assessee before us. Based on this statement, search and seizure action U/s.132 of the Income Tax Act, 1961 (in short 'the Act') was conducted in the residential premises of the respondent assessee on the very same day i.e., 12.05.2012. During the course of search, the respondent assessee had accepted and owned up the cash found in the case of Shri L.S. Vishnu Prasad.

A statement U/s.132(4) of the Act was made by the respondent assessee before DDIT (Inv.) disclosing income of Rs.200 crores out of which Rs.100 crores was offered in his individual hands as under:-

<i>Sl.No.</i>	<i>Asst. Year</i>	<i>Amount in Rs.</i>
1.	2010-11	20,00,00,000
2.	2011-12	45,00,00,000
3.	2012-13	35,00,00,000
	<i>Total</i>	<i>100,00,00,000</i>

and another sum of Rs.100 crores was offered in the hands of the company. This was the tentative offer. During the course of search, certain loose sheets were seized vide annexure ANN/VJ/AN/LS-1 and annexure ANN/VJ/AN/LS-2. Among other loose sheets, two loose sheets page numbered 11 and 12 were also seized. Finally, the disclosure was reduced to Rs.150 crores, out of which Rs.100 crores was admitted in the individual hands of the respondent assessee and the balance of Rs.50 crores was offered in the hands of M/s.Mohan Breweries and Distilleries Limited.

“3.4.2. *The balance Rs.50 Crores was offered across two assessment years in the hands of M/s. Mohan Breweries and Distilleries Ltd. It is tabulated below:*

<i>Sl.No.</i>	<i>Asst. Year</i>	<i>Amount in Rs.</i>
1.	2009-10	31,86,68,650
2.	2010-11	18,13,31,350

	<i>Total</i>	<i>50,00,00,000</i>
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The assessee also disclosed the manner and the source of deriving the undisclosed income which was explained by stating that the undisclosed income was derived by way of commission received on purchase of bottles. The amount of undisclosed income was calculated vide Para 3.2 of the assessment order.

3.1 The Assessing Officer had categorically given finding vide para 3.6 of the assessment order that except the admission made by the respondent assessee, there was no incriminating material found suggesting the existence of undisclosed income of Rs.100 crores in individual hands.

3.2 It is further stated that the undisclosed income was offered to tax on receipt basis over period of three assessment years namely 2010-11, 2011-12 & 2012-13. This submission of the assessee is disputed by the Assessing Officer by taking note of the fact that the respondent assessee took over charge as Director of M/s. Mohan Breweries and Distilleries Ltd. only on 01.10.2011, and therefore, the AO drew inference that there was no possibility of earning income

prior to that date and therefore he proceeded with assessment on the basis that the entire amount disclosed should be assessed to tax for the assessment year 2012-13. During the course of assessment proceedings, the AO found that the respondent assessee made the following investments, which are disclosed in the books of account:-

<i>Sl.No.</i>	<i>Investment</i>	<i>Amount</i>	<i>Assessment year</i>
1	<i>Nandha Energy Limited</i>	<i>14,36,99,472</i>	<i>2011-12</i>
2	<i>Share Application money with Mother Mira Industries Limited</i>	<i>5,66,64,054*</i>	<i>2012-13</i>
3	<i>Loan to Mother Mira Industries Ltd through Sintex</i>	<i>17,02,00,000</i>	<i>2012-13</i>
4	<i>Jewellery</i>	<i>1,13,20,485</i>	<i>2012-13</i>
	<i>Total</i>	<i>38,18,84,011</i>	

**Though the assessee claimed that he invested Rs.5,66,64,054 in Mother Mira Industries Ltd. On verification of details forwarded by the DCIT Central Circle 2(2), Chennai it was found that the assessee had deposited Rs.7,32,18,000 by cash in the Bank Account of State Bank of Patiala (A/c No.55101563915) of M/s. Mother Mira Industries Limited.*

The AO had called upon the assessee to explain the source for the above investments, in response to which the assessee submitted that the above investments were made out of the undisclosed income declared U/s.132(4) of the Act. The AO had not accepted the above explanation and proceeded with framing the assessment by assessing the entire undisclosed income of Rs.100 crores for the assessment year 2012-13. Further, the AO made additions of the

above investments holding that the sources of the above investments remain undisclosed in the respective assessment years. The AO also made addition on the income offered by the assessee for the assessment years 2010-11 and 2011-12 on protective basis.

4. Being aggrieved by the above assessment order, an appeal was preferred before the CIT(A), who vide impugned order upheld the addition of amount Rs.65 crores for the assessment year 2012-13 by holding that there was no evidence found as a result of search action except the statement made by the assessee. However, the Ld.CIT(A) confirmed the protective addition made for the assessment years 2010-11 and 2011-12 on substantive basis. The CIT(A) also deleted the additions of unexplained investments by holding that sufficient cash was available to make those investments and the Department had failed to examine persons with whom the undisclosed income was lying.

5. Being aggrieved by the decision of the Ld.CIT(A), the Revenue is in appeals before us challenging the correctness of decision of the Ld.CIT(A). The Ld.DR vehemently contented that the Ld.CIT(A) ought not have held that the respondent assessee earned

undisclosed income prior to the assessment year 2012-13, CIT(A) ought not have deleted the addition made towards explained investments, in as much as, the investments were made prior to the assessment year 2012-13, placing reliance on the statements of the assessee and the seized material found in page 11 & 12. Thus, it is argued that cash of Rs.100 crores was available as on 31.03.2012. The sum and substance of the arguments of the Ld.CIT DR is that when the cash generated out of undisclosed income was available as on 31.03.2012 with the assessee, the benefit of telescoping the addition of undisclosed income against the addition towards unexplained investment cannot be granted. He had also taken us through the seized material which is extracted below:

Sl.No.	Date	Party's Name	Amount (Rs.)	Remarks
1	21.03.12	JBA	10000000	
2		RA	10000000	
3		Devendran	10000000	
4		A&A	10000000	
5		Sujai	10000000	
6		R.S. Export	1000000	
7		Mrs. Chairman	466000	
8	22.03.12	MBDL HO	2000000	MMIL SBI-SBP
9		MMIL	1500000	SBP-MBDL Glass
10		Mahalingapuram	50000000	
11	23.03.12	Mira	10000000	
12		G Tech	20500000	
13		RTC	10000000	
14		Umidiyar	50000000	
15		RA	10500000	

16	24.03.12	Sai	10000000	
17		Mira	8500000	
18		Sivakumar RTC	1000000	24% Interest
19		MMIL	1500000	SBP-MBDL Glass
20		Sujai	10000000	
21	26.03.12	Sivakumar RTC	1500000	24% Interest
22		Said	10000000	
23		Chola	300000000	20+25-15
24		A&A	10500000	
25	27.03.12	Devendran	10000000	
26	28.03.12	Golden vat	10000000	
27		MMIL	2500000	SBP-MBDL Glass
28		Vepery	20000000	
29		A&A	10250000	
30		RA	10000000	
31	29.03.12	Vepery	40000000	
32		SNJ	30000000	
33		Vepery	30000000	
34	30.03.12	Vepery	70000000	
35		MMIL	2400000	Paid 16L
36		Vepery	40000000	
37	31.03.12	Vepery	50000000	
38		Mahalingapuram	50000000	
39				
		Total	943116000	
		Balance	56884000	
			1000000000	

Breakup			
	Box-5 Nos	50000000	
	Loose Box-1	3435500	Mrs. Chairman
	Loose Box-2	3282000	Chairman's room
	Shortage	102000	
	Shortage	64500	
		56884000	

The Ld.DR further submitted that when the statement recorded U/s.132(4) of the Act is read with the seized material numbered as 11 & 12, it clearly clinches that the cash of Rs.100 crores was available with the assessee on 31.03.2012.

6. On the other hand, the Ld.AR submitted that the entire addition was made by the AO based on the statement recorded U/s.132(4) of the Act. He further contented that no addition can be made merely based on the loose sheets in the absence of any corroborative material. In support of this proposition, he placed reliance on the order of the Hon'ble Supreme Court in the case of Shri V.C. Shukla & Others, (1998) 3 SCC 410 and the decision of the Tribunal in the case of S.P. Goyal vs. Deputy Commissioner of Income Tax, [2002] 82 ITD 85 (Mum), Satnam Singh Chhabra vs. Deputy Commissioner of Income Tax, [2002] 74 TTJ (LKW) 976, S.K. Gupta vs. Deputy Commissioner of Income Tax [1999] 63 TTJ (Del) 532, Prarthana Constructions Pvt. Ltd., vs. Deputy Commissioner of Income Tax, [2001] 70 ITJ (Ahd.) 122.

7. We heard the rival submissions and perused the material available on record. The issues in these group of appeals relates to

determination of the year in which the undisclosed income disclosed by the assessee U/s.132(4) of the Act, should be assessed to tax i.e., in the assessment year 2012-13 or to be spread over a period of three years, viz., assessment years 2010-11, 2011-12 & 2012-13 as disclosed by the assessee and the second issue revolves around whether or not benefit of telescoping can be allowed in respect of addition of undisclosed income against addition towards unexplained investments which are duly recorded in the books of account.

8. Now, we shall deal with the first issue. Admittedly, no evidence was found suggesting existence of undisclosed income of Rs.100 crores. It is solely based on the admission made by the assessee before DDIT(Inv.) that undisclosed income of Rs.100 crores was assessed to tax for the assessment year 2012-13. It is apparent from the perusal of the assessment order that the assessee also disclosed the manner in which he derived the undisclosed income. It is the contention of the assessee that this undisclosed income was earned over a period of 3 years i.e., during the previous year relevant to the assessment years 2010-11, 2011-12 & 2012-13. The assessee also made a statement that this Rs.100 crores was left with certain parties for safe custody. The contents of seized material

numbered as page 11 & 12, worthy of consideration in this context. It is settled position of law that no addition can be made merely based on the contents of loose sheets in the absence of any corroborative evidence. Had this question been open before us, we would have proceeded further and decided the issue. The Department had chosen not to examine those parties, with whom the undisclosed income was kept, to find out whether the money was available with them as on date of search nor seized the entire cash of Rs.100 crores except Rs.35 crores in hands of Shri L.S.Vishnu Prasad. Thus, it is evident that there was no corroborative material evidence in support of the existence of undisclosed income except assessee's own sworn statement U/s.132(4) of the Act, there was no further evidence available with the Department.

8.1 When the AO had chosen to make addition based solely on the statement made by the assessee, he cannot pick and chose some part of the statement to suit his convenience for the purpose of making addition. It is settled position of law that the statement made U/s.132(4) of the Act, which is in the nature of admissions should be considered in its entirety. Thus, in the light of the above facts and legal position, the AO was not justified in assessing the entire

disclosed undisclosed income of Rs.100 crores in the assessment year 2012-13 alone. Though, the Ld.CIT(A) had not given cogent reasons in support of conclusion that undisclosed income should be spread over a period of three assessment years, in view of the above discussion given by us, we are of the considered opinion that the disclosed, undisclosed income should be assessed over a period of 3 years 2010-11, 2011-12 and 2012-13 as offered by the assessee.

9. Now, we shall deal with the next aspect, whether or not the disclosed, undisclosed income can be telescoped with the addition towards unexplained investments recorded in the books of account. The contention of the Ld.CIT DR is that in Annexure 11 & 12, which is extracted herein above vide Para No.5 read with the statement recorded U/s.132(4) of the Act, clearly indicates that the undisclosed income was available with the assessee on 31.03.2012. Therefore, according to the Ld.CIT DR, the benefit of telescoping of addition disclosed, undisclosed income against the additions made towards unexplained investments cannot be granted. Therefore, it is crucial to analyze the contents of the seized material contained in pages 11 & 12 and also the statements made by the respondent assessee U/s.132(4) of the Act. On perusal of the seized material, page No.11

& 12, it only indicates abbreviated names of certain people, dates and amount. It does not really suggest that the money belonging to the assessee were lying with those people as on the dates mentioned therein. Even the statement made U/s.132(4) of the Act, the respondent assessee had only stated that the cash generated out of the undisclosed income was kept with certain people for safe custody, but nowhere stated that the cash generated out of undisclosed income was lying either with him or with other persons as on the date of search or as on 31.03.2012.

9.1 Thus on the conjoint reading of the statement made U/s.132(4) of the Act, and the seized material annexed in pages 11 & 12, one cannot come to the conclusion that the cash generated out of undisclosed income was physically lying with those people or with him. No doubt, if we were to hold that the cash generated out of undisclosed investments was physically available with assessee or other people as on 31.03.2012, as on date of search then the benefit of telescoping cannot be granted to the assessee.

9.2 Furthermore, it is an admitted fact that the Department had chosen not to examine those parties nor the author of the loose

sheets. Thus no corroborative evidence was brought on record by the Department. In the absence of any corroborative evidence, the contents in the loose sheets cannot be relied upon as held by numerous decisions. For example, the Hon'ble Madras High Court in the case of CIT vs. P.V. Kalyana Sundaram reported in 282 ITR 259, which is confirmed by the Hon'ble Supreme Court in the case of CIT vs. P.V. Kalyana Sundaram reported in 294 ITR 49 and the Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash Choudhary reported in 305 ITR 245 and the Hon'ble Allahabad High Court in the case of Ajay Gupta vs. CIT reported in 185 DTR 217 following his earlier decision in CIT vs. Shadiram Ganga Prasad reported in (2010) UPTC 840. The Hon'ble Delhi High Court in the case of CIT vs. SM Agarwal reported in 293 ITR 43 held that no adverse inference can be drawn unless the author of the document was examined.

9.3 In the light of the above settled position of law, in our considered opinion the seized material of page 11 & 12 does not have any evidentiary value. Further as observed by us, even the sworn statement made by the respondent assessee U/s.132(4) of the Act, it was nowhere mentioned that this money was lying with him or

other people as on 31.03.2012 or as on the date of search. The fact that only the amount of Rs.35 Crores was seized would also makes us believe that the undisclosed income was not lying with assessee or any other person on the date of search. Therefore, on conjoint reading of the statements made U/s.132(4) of the Act and the contents of the loose sheet page 11 & 12, we cannot come to the conclusion that the cash generated out of the undisclosed income was lying with the assessee or his people with whom the money was stated to have been kept for safe custody as on date of search on 31.03.2012. It is a settled position of law that in any of the facts and circumstances of the case and evidences, if two views are possible, the view in favour of the assessee should be preferred. Reliance in regard can be placed on the decision of the Hon'ble Rajasthan High Court in the case of Escorts Heart Institute & Research Centre Ltd., vs. DCIT reported in 404 ITR 344. Therefore, it can be safely concluded that cash generated out of undisclosed income was not available as on 31.03.2012 or as on date of search either with assessee or with other people.

9.4 It is settled position of law that unless otherwise proved to the contrary in a case where concealed income was disclosed, the

same should be deemed to be available for any subsequent investment. In view of the settled position of law, it is always open to the assessee to prove that the investments came from concealed disclosed income. It is based on the salutary principles of law that one addition can always be telescoped with another addition as enunciated by the Hon'ble Supreme Court in the case of CIT vs. S. Nellaippan reported in 66 ITR 722, CIT vs. Devi Prasad Vishwanath Prasad reported in 72 ITR 194 and Anantharaman Veerasinghaiah & Co. vs. CIT reported in 123 ITR 457. In the present case, the Revenue had not discharged the onus of proving that the money generated out of concealed income was not available with the assessee for the purpose of making the investments subsequently. Therefore, keeping in view of the principles discussed above, we have no hesitation to hold that the assessee should be given the benefit of telescoping the addition of disclosed, undisclosed income against the addition towards unexplained investments made in the subsequent years.

9.5 We are fortified in taking this view, in view of the fact that the bonafide of assessee cannot be doubted, in as much as, the assessee had disclosed the undisclosed income and paid tax

thereon and also the manner in which the undisclosed income was derived.

9.6 There is yet another reason as to why we are in conformity with the order of CIT(A). It is an admitted fact that the investments are duly recorded in the books of account and there was no material found as result of search and seizure action indicating that there was no known source of income for investments made and the investments are liable to be assessed as unexplained investment U/s.69 of the Act. It is well settled position of law that in the absence of incriminating material found as a result of search and seizure, no addition can be made in the assessment made U/s.143(3) r.w.s. 153A of the Act. Similar view was taken by the numerous High Courts namely Pr.CIT v. Meeta Gutgutia [2018] 96 taxmann.com 468/257 Taxman 441 (SC) ; ii) Pr. CIT v. Saumya Construction (P.) Ltd. [2016] 387 ITR 529/[2017] 81 taxmann.com 292 (Guj); iii) Pr. CIT v. Devangi [2017] 88 taxmann.com 610/394 ITR 184 (Guj.) iv) Pr. CIT v. Jay Infrastructure and Properties (P.) Ltd. [Tax Appeal No. 740 of 2016, dated 10-10-2016] and CIT v. Kabul Chawla [2015] 61 taxmann.com 412/234 Taxman 300/[2016] 380 ITR 573 (Delhi), CIT vs. Murali Agro Products, 49 taxmann.com 172. The cash credits or

investments disclosed cannot be subject matter of addition as held by the Hon'ble Delhi High Court in PCIT vs. Ankush Saluja 419 ITR 431. Thus, the very addition made towards unexplained investment cannot be sustained in the eye of law.

9.7 Thus viewed from any angle, the assessee cannot be denied the benefit of telescoping the addition of disclosed undisclosed income against the addition made towards unexplained investment and the CIT(A) has rightly allowed the benefit and we do not find any reason to interfere with the order of the CIT(A). In the light of these facts, the appeals filed by the Revenue stand dismissed.

10. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the court on 13th March, 2020 at Chennai.

Sd/-

(धुव्वुरु आर एल रेड्डी)

(Duvvuru R.L Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 13th March, 2020.

Sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य /Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |