



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.183/ALLD/2016
Assessment Year: 2012-13

ACIT Central Circle Allahabad	v.	Surendra Kumar Garg 5A/5, Maharshi Dayanand Marg Allahabad
		TAN/PAN:ABYPG6714A
(Appellant)		(Respondent)

C.O. No.21/ALLD/2016
[In ITA No.183/ALLD/2016]
Assessment Year: 2012-13

Surendra Kumar Garg 5A/5, Maharshi Dayanand Marg Allahabad	v.	ACIT Central Circle Allahabad
TAN/PAN:ABYPG6714A		
(Applicant)		(Respondent)

Department by:	Shri S. K. Madhuk, CIT (DR)		
Assessee by:	Shri Ashish Bansal, Advocate		
Date of hearing:	12	02	2020
Date of pronouncement:	19	03	2020

ORDER

PER A. D. JAIN, V.P.:

This is Revenue's appeal against the order of the ld. CIT(A)-III, Lucknow, dated 26/5/2016 for assessment year 2012-13, taking the following effective grounds:

1. That on the facts and in the circumstances of the case, ld. CIT(A) has erred in deleting the addition aggregating to Rs.1,85,24,000/- made by the Assessing Officer on account of unexplained and undisclosed investment

without appreciating the fact that the additions were made by the Assessing Officer on the basis of seized documents found during the search.

2. That the order of Id. CIT(A) deserves to be set aside and the assessment order passed by the Assessing Officer be restored.

2. As per the assessment order, during the search conducted on the assessee, on 29/5/2012, a number of documents as per Annexure A-1, A-2, A-3 and A-4, were found and seized. Annexure A-2, is note-book which contains numerous entries in the name of the assessee. The Assessing Officer has reproduced a scanned copy of the relevant page 5 of the said Annexure A-2, at page 3 of the assessment order. The Assessing Officer observed that the assessee submitted that these entries were the details of different investments; that neither the period to which the entries related, nor the date when the entries were themselves made, were disclosed by the assessee, and that the entries of Rs.70 lakhs and Rs.50 lakhs were not properly explained. The Assessing Officer observed that the assessee, in his reply dated 9/3/2015 had only stated that the entry of Rs.70 lakhs was an approximate maturity value of the concerned FDR dated 25/8/2011, for Rs.54,48,788/- of Bank of India, Civil Lines Branch, Allahabad, of the assessee; that the entry of Rs.50 lakhs also represented the estimated amount received/receivable on maturity of deposit under the Senior Citizen Saving Deposit Scheme, amounting to Rs.30,00,000/-, i.e., Rs.15 lakhs with State Bank of India Account No.31554506505 and Rs.15 lakhs with Post Office Account No.874000009; and that this was verifiable from the statement of the relevant bank account, copies, whereof were

stated to be enclosed with the reply. The Assessing Officer observed that the reply of the assessee was not satisfactory in view of the wide difference between the amount as per the seized document and the value of investments, or even its future maturity value stated in the explanation; that the assessee's explanation, as per his further reply (reproduced at page 5 of the assessment order) dated 9/3/2015, that the amount of Rs.70 lakhs represented the maturity amount of an original FDR of Rs.50 lakhs as on 19/4/2010, was not acceptable, because the search had been conducted on 29/5/2012, due to which, the entries of the investments must have been recorded on or before the said date, i.e., 29/5/2012; that however, the assessee could not show that the maturity value came even close to Rs.70 lakhs; that most of the entries in the seized documents had been accepted on the basis of the assessee's explanation, considering the maturity value on a future date; that besides, the assessee had also mentioned the exact value of the maturity of some of his investments, in the very same seized documents; that therefore, it could not be accepted that the entry of Rs.70 lakhs related to the FDR whose maturity value was of only Rs.63,04,249/-; and that thus, the assessee had failed to explain the entry of Rs.70 lakhs and had not disclosed it in his books.

3. Apropos the entry of Rs.50 lakhs, the Assessing Officer observed that the assessee's stand that this was the maturity amount of the Senior Citizen Saving Deposit Scheme, amounting to Rs.30 lakhs, i.e., Rs.15 lakhs each in the bank and post office, respectively, was not sustainable; that as per the documents filed by the assessee in support of this contention, along with reply dated 9/3/2015, it was evincible that the maturity value of the deposit scheme did not add up Rs.50 lakhs, even on the date of

maturity, i.e., 18/11/2015; that hence, it was clear that the amount of Rs.50 lakhs was not related to the maturity value of the Senior Citizen Saving Deposit Scheme; that the assessee himself having admitted the entries in the seized documents to be the investment details of the assessee, the figure of Rs.50 lakhs was to be treated as the assessee's investment, the source whereof remained unexplained; and that further, the assessee had not produced any evidence to rebut that the entries in the documents found were not the assessee's income. The amount of Rs.1,20,000/- (Rs.70 lakhs + Rs.50 lakhs) was thus treated as the unexplained and undisclosed investment of the assessee.

4. So far as regards the amount of Rs.65.24 lakhs, the Assessing Officer observed that this entry was contained on page 19 of the seized Annexure A-2. A scanned copy thereof has been reproduced at page 8 of the assessment order. The assessee, in his reply dated 19/2/2015, stated that 'No narration given on this page. This page shows the approximate value of total investments name (sic made) by Shri S. K. Garg and Smt. Bina Garg as on 27/1/2012.'

5. The Assessing Officer observed that he had made verification from the explanation given earlier by the assessee with regard to the entries of investment as per the other page of the seized Annexure A-2, and had found that the investment as per the entry of Rs.65,24,000/- did not stand either disclosed by the assessee in his books of account, or explained during the course of hearing; that as such, the assessee had been asked to state as to why the amount of Rs.65,24,000/- be not treated as undisclosed, since considering the assessee's earlier explanation, this amount still remained unexplained. The Assessing Officer further observed that in page 19 of the seized Annexure A-2,

there were entries which the assessee had been able to tally with the investments made by him, for which, these investments had been accepted as explained; and that the amount of Rs.65,24,000/-, thought, could not be matched with any investment, or its maturity value.

6. The assessee, in his reply dated 9/3/2015 (A.O, page 9 and 10), stated, giving details, that the figure of Rs.65.24 lakhs was the approximate maturity value of FDR No.700045110004350, dated 19/4/2010, for Rs.50 lakhs, which got renewed from time to time, as per the details given in the reply (table at page 9 of the assessment order).

7. The Assessing Officer observed that it was apparent that the amount of Rs.65.24 lakhs did not tally with any of the figures shown in the explanation furnished by the assessee; that as the entries in the seized documents stood admitted by the assessee himself, as being the investment details of the assessee, there was no reason as to why the figure of Rs.65.24 lakhs be not treated as the assessee's investment, the source whereof remained unexplained; and that further, the assessee had not adduced any rebuttal evidence that the entries made in the documents seized were not the assessee's income; and that thus, it was clear that the assessee had not explained the investment of Rs.65.24 lakhs specifically, and had failed to disclose it in his books, due to which, the amount of Rs.65.24 lakhs was being treated as unexplained and undisclosed and added to the assessee's income.

8. In this manner, the Assessing Officer made total addition of Rs.1,85,24,000/- (Rs.70,00,000/- + Rs.50,00,000/- + Rs.65,24,000/-), treating the same to be the unexplained and undisclosed investment of the assessee.

9. Before the Id. CIT(A), the assessee contended that there was no additional investment represented by the three figures of Rs.70,00,000, Rs.50,00,000 and Rs.65,24,000 and/or any of them; that these were simply the estimated figures receivable on maturity of FDRs, the details of which had duly been given before the Assessing Officer, about which, there was no dispute; that in any case, it being a search and seizure case, in the absence of tangible material or corroborative evidence in support of the alleged investment, the Assessing Officer went wrong in presuming that there exists such investment and that the source of such investments remained unexplained; that in the absence of any detail, description, particulars, etc., no such investment could be presumed; that these were just dumb figures, having no monetary effect, calling for any addition; that there was a categorical denial of any investment made by the assessee before the Assessing Officer, duly supported by full particulars of investment actually made by the assessee; that an affidavit, giving complete facts and figures, had been submitted by the assessee in the case of his wife, Mrs. Bina Garg, in whose case also, parallel proceedings under section 153C of the Act stood initiated; that in the said affidavit, the assessee had, in no uncertain terms, stated that all such investments, as made by the assessee and his wife, stood reflected in the personal balance sheets of both the assessees, as at 31/3/2012; that such balance sheets had been duly placed on record; that paras 10, 14, 16 and 18 of the affidavits were specific in this regard; that therein, it has been stated that in due course of time, the return of income for assessment year 2012-13 had been filed along with financials as on 31/3/2012, as per the information placed on record during the course of proceedings under section 153C of the Act, in the case of Mrs. Bina Garg and under section 153A in the case of the

assessee; that the details thereof extracted the statement of investments from the personal balance sheet as on 31/3/2012, in the case of both, the assessee and his wife, Mrs. Bina Garg (these details of investments have been tabulated in para 10 of the aforesaid affidavit and this table has been reproduced at pages 6 & 7 of the assessment order); that as such, the investment mentioned in A1/A2/A3/A4 did not exceed the investment reflected in the personal balance sheet of the assessee and his wife, as on 31/3/2012; that neither the search at the residence of the assessee, nor the simultaneous survey at the two offices of the assessee, led to recovery of any document/information over and above the disclosure made in the returns of income filed by the assessee and his wife; that the list of investments prepared by the officers authorized to conduct the search, had been verified by them and this list was found to be fully verifiable from the details available in the assessment records, pertaining to the period prior to the search, concerning the assessee and his wife; and that it was, as such, that no seizure was made. The assessee further contended before the Id. CIT(A) that in this manner, the assessee had fully discharged his onus; that the Assessing Officer had miserably failed to discharge the onus that stood shifted on to him; that no material in the shape of dates/description and other particulars going to identify any investment representing the amount of Rs.1,84,24,000/-, was brought on record by the Assessing Officer; that even during the pendency of the appeal before the Id. CIT(A), the assessee had made specific request to the Assessing Officer to make available to the assessee, the particulars of any investment which, according to the Assessing Officer, represented the amount of Rs.1,84,24,000/-; that this request had been made vide letter dated 28/10/2016; that however, the Assessing Officer had failed

to identify any such investment; and that therefore, the only emerging conclusion was that no lawful addition, qua addition of Rs.1,85,24,000/- could be made, as this was a dumb figure.

10. By virtue of the impugned order, the ld. CIT(A) has deleted the additions made, amounting to Rs.1,85,24,000/-. While doing so, the ld. CIT(A) has, inter alia, observed as below:

5(4)(i) I have examined the facts and circumstances of the case. I have considered the findings of the Assessing Officer in the assessment order and the submissions of the appellant. I have also considered the contentions raised by the appellant during the course of appellate proceedings before me. I find that the issue involved is the notings in round figures as appearing in Annexure A-2/pages 5 (Rs.70,00,000/- + Rs.50,00,000/-), treated as unexplained investment of Rs.1,20,00,000/- and notings appearing on Annexure A-2/page 19 treated as unexplained investment of Rs.65,24,000/-. The AO has observed that these notings have not been explained by the assessee and therefore these represent unexplained investment whereas the appellant's case is that these are the approximate maturity value of FDRs. The submissions made by the assessee are reproduced hereunder:-

A - Letter dated 19.2.2015:

1.	70,00,000/-	This shows approximate maturity value of FDR No.700056110001819 dated 25.08.2011, for Rs.5448788 of Bank of India purchased by SK Garg. Originally it was an FDR of Rs.5000000 taken from Bank of India on 19.04.2010. The maturity value of the FDR for Rs.54,48,788 was Rs.63,04,249. This figure of Rs.70,00,000 is the estimated of maturity value of this FDR for Rs.63,04,249 at SI N.(4) at page No.3 of Annexure A2 as Enclosure 4.
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2.	50,00,000/-	<p><i>This shows estimated amount received/receivable on maturity of deposit under senior Citizen Saving Deposit Scheme amounting to Rs.3000000 (Rs.1500000 with SBI A/c No.6505 and Rs.1500000 with Post Office A/c No.874000009 listed at sl. no.(2) of page 3 of Annexure A-2 above)</i></p>
1.	70,00,000	<p><i>This shows approximate maturity value of FDR No.7000561100018189 dated 25.08.2011 for Rs.54,48,788 of Bank of India, Civil Lines Branch, Allahabad of S.K. Garg. Originally it was an FDR of Rs.50,00,000 taken from Bank of India on 19.04.2010. The maturity value of the FDR of Rs.54,48,788 was Rs.63,04,249. The figure of Rs.70,00,000 is the estimated maturity value of the FDR for Rs.63,04,249, as may be seen from FDR No.700056110003221 dated 4.3.2013 which had been issued by the Bank after its maturity on 2.3.2013. Copies of all the FDRs are enclosed herewith and have been marked as Annexure-I, II and III (pages 11 to 13) hereto. It is categorically stated that there is no direct investment as such for a sum of Rs.70,00,000 in any form.</i></p>
2.	50,00,000	<p><i>This shows the estimated amount received/receivable on maturity of deposit under Senior Citizen Saving Deposit Scheme amounting to Rs.3000000 (Rs.1500000 with SBI A/c No.31554506505 and Rs.1500000 with Post Office A/c</i></p>

		<i>No.874000009 as is verifiable from the statement of relevant bank accounts copies of which are enclosed and have been marked Annexures- IV and (v) (pages 14 to 20). It is categorically stated that there is no direct investment as such for a sum of Rs.50,00,000 other than FDR A/c No.700045110003450 dated 19.04.2010 which has already matured on 19.07.2011. (emphasis added)</i>
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5(4)(ii) So far as the addition of Rs.65,24,000/- is concerned, the assessee's contention is that this figure too was approximate maturity value of another FOR with Bank of India particulars of which had been made available vide explanation dated 9.3.2015 which have been reproduced also on pages 9 and 10 of the assessment order as under:-

"65,24,000 The figures of Rs.65.24 lacs was stated to be the approximate value of FDR A/c.700045110004350 dated 19.04.2010 for Rs.50 lacs which got renewed from time to time as per particulars given herein below:-

<i>FOR No.700045110004350 with Bank of India</i>				
<i>Date</i>	<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>	<i>Balance</i>
<i>19.04.2010</i>	<i>Fresh FDR</i>	<i>50,00,000.00</i>		<i>50,00,000.00</i>
<i>20.09.2010</i>	<i>Interest for the period</i>	<i>1,63,413.87</i>		<i>51,63,413.87</i>
<i>20.09.2010</i>	<i>TDS deducted on above</i>		<i>16,340.00</i>	<i>51,47,073.87</i>
<i>28.03.2011</i>	<i>Interest for the period</i>	<i>1,88,886.69</i>		<i>53,35,960.56</i>
<i>28.03.2011</i>	<i>TDS deducted on above</i>		<i>18,890.00</i>	<i>53,17,070.56</i>
<i>19.07.2011</i>	<i>Interest for the period</i>	<i>1,16,120.40</i>		<i>54,33,190.96</i>
<i>19.07.2011</i>	<i>TDS deducted on above</i>		<i>11,610.00</i>	<i>54,21,580.96</i>
<i>25.08.2011</i>	<i>Interest for the period</i>	<i>30,227.17</i>		<i>54,51,808.13</i>
<i>25.08.2011</i>	<i>TDS deducted on above</i>		<i>3,020.00</i>	<i>54,48,788.13</i>
<i>25.08.2011</i>	<i>Transferred to FDR No.700056110001819</i>		<i>54,48,788.13</i>	<i>-</i>
<i>FDR No.700056110001819 with Bank of India</i>				
<i>Date</i>	<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>	<i>Balance</i>

25.08.2011	Transfer from FDR No.700045110004350	54,48,788.13		54,48,788.13
26.09.2011	Interest for the period	51,649.97		55,00,438.10
26.09.2011	TDS deducted on above		5,170.00	54,95,268.10
26.03.2012	Interest for the period	2,72,400.38		57,67,668.48
26.03.2012	TDS deducted on above		27,240.00	57,40,428.48
24.09.2012	Interest for the period	2,81,912.61		60,22,341.09
24.09.2012	TDS deducted on above		28,1990.00	59,94,151.09
02.03.2013	Interest for the period	2,44,984.10		62,39,135.19
02.03.2013	TDS deducted on above		24,500.00	62,14,635.19
04.03.2013	Transferred to FDR No.700056110003221		62,14,635.19	-
FDR No.700056110003221 with Bank of India				
Date	Particulars	Amount	Amount	Balance
04.03.2013	Transfer from FDR No.700045110001819	62,14,635.19		62,14,635.19
25.03.2013	Interest for the period	43,978.57		62,58,613.76
25.03.2013	TDS deducted on above		4,400.00	62,54,213.76
23.09.2013	Interest for the period	3,08,373.38		65,62,587.14
23.09.2013	TDS deducted on above		30,830.00	65,31,757.14
24.03.2014	Interest for the period	3,22,477.64		68,54,234.78
24.03.2014	TDS deducted on above		32,240.00	68,21,994.78
10.09.2014	Interest for the period	2,97,650.73		71,19,645.51
10.09.2014	TDS deducted on above		29,770.00	70,89,875.51

A certificate as issued by the Bank of India is enclosed and marked as Annexure-VIII (page 43) and it is stated that there is no such investment as that of Rs.65,24,000 is rounded figures."

5(5) I find that the AO proceeded to make addition of Rs.1,85,24,000/- on the basis of loose papers found during the course of search, scanned copy of which is incorporated on page 3 and page 8 of the assessment order. I find from the examination of the seized paper, that there are no dates mentioned on the paper on the basis of which it could be said that the paper relates to the financial year 2011-2012 under consideration. The finding of the AO reveals that the AO has taken the figures mentioned in the loose paper as unexplained investment of the appellant. What are those unexplained investment is not clear either from the paper or from the finding of the AO which is a total work of assumption without any corroborative evidence. The AO has presumed the paper as having certain details of unexplained investment in some assets. Factually however, the loose paper does not contain the details of assets or any inkling as

to the nature of transactions recorded on the paper. The appellant explained that the paper contains working of approximate value of FDRs and other assets belonging to him and his wife Smt. Bina Garg. The explanation so offered by the appellant has not been found to be false.

5(6) The perusal of the above mentioned seized paper would show that there is some kind of rough jottings, no date has been mentioned and no transaction can be deciphered the reborn. There is no way to connect the paper to the assessee apart from the fact that it was found from the assessee's premises. In my opinion, even if assessee failed to explain the contents of the slip, it is for the AO to prove on the basis of material on record that the seized paper represented some transaction; AO has not been brought on record anything to substantiate describe or express the substance of any transaction as recorded on the aforesaid seized paper. It is also not clear from the paper whether the entries therein are for income or expenditure. The AO has also given a confused finding in this regard. At the most the loose paper can be taken as a dumb document.

5(7) Coming to the legal position as to the person/party on whom the burden lies to prove the facts recorded in a document, in my considered view, in a case where the AO is of the view that the assessee's explanation is not acceptable or satisfactory regarding the contents of the document seized from his premises/possession (the notings being unintelligible and cryptic in nature) then the burden to substantiate or prove the contents of the document shifts over to the person who is making such assertion, that is the Assessing Officer in this case. This substantiation or drawing of logical and reasonable inference could either be derived by the AO from the contents written on the document itself when these are speaking in nature or in case the same are not entirely speaking/ coherent then also a rational correlation can be made by the assessing officer in conjunction with other corroborative material. Section 292C of the Act does raise a presumption against the assessee who has been searched upon that the contents of books of accounts and other documents found from his possession or

control are true. However, in my considered view the word contents used in this section presupposes that the contents are intelligible, comprehensible and speaking either by itself or in correlation with other material or upon further investigation. Unless such is the case, mere jottings recorded on seized documents which are capable of several/various interpretations, lacks evidentiary value and is not sufficient enough to fasten taxability on the assessee. Presumption under section 134(4A) of the Act is available only against the person from whose possession the document is found and not against the third person. In this case the AO has presumed the paper as belonging to the appellant since the appellant is the main person of the group.

5(8)(i) It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So unless and until the contents of the documents are proved against a person, the possession of the document or handwriting of that person on such document by itself cannot prove the contents of the document. Therefore even if the paper was seized from the search in the case of the assessee is of no consequence as the writer of the document has not been mentioned on the seized paper. The only conclusion which can be drawn about the nature and contents of the document is that it is a dumb document and on the basis of the entry of noting or figures etc. in this document it cannot be concluded that this represent the undisclosed income of the assessee. Hon'ble Apex Court in Central Bureau of Investigation Vs V.C. Shukla [1998] 3 SCC 410 held that seized paper which were not proved to be written by the assessee does not fall within the compass of the meaning of books of account having credibility of its acceptance without support of corroborative evidence. The Hon'ble Supreme Court has further held that without independent evidence, the entries in the books of account cannot foist liability on a person.

5(9) The Assessing officer has not made any independent enquiry; and there are no corroborating evidences to support case of the AO that the paper is related to the unexplained investment made by the appellant, or that paper contains the

figures which represent income or expenses. The appellant explained that the paper contains working of approximate value of FDRs and other assets belonging to him and his wife Smt. Bina Garg. The explanation so offered by the appellant has not been found to be false. The AO has made additions on the basis of the loose paper even though no unexplained investments have been found during the course of the search. In View of the above mentioned factual, legal position, judgements and in view of the fact that appellant's explanation of the said paper as containing rough calculations of investments in FOR has not been found to be false, the figures written on this paper cannot be treated as appellant's income. The addition of Rs.1,85,24,000/- made by the Assessing Officer is deleted. The appellant gets consequential relief. The ground of appeal is allowed.”

11. Thus, in effect, the Id. CIT(A) has held that:
- (1) The addition of Rs.1,85,24,000/- stood made by the Assessing Officer on the basis of the seized documents, wherein no dates had been mentioned;
 - (2) There was nothing on the document to indicate that it related to the year under consideration, i.e., assessment year 2012-13;
 - (3) The Assessing Officer had alleged unexplained investment;
 - (4) The nature of the alleged unexplained investment was not clear from the document seized;
 - (5) The Assessing Officer had also not recorded any specific finding in this regard;
 - (6) The assessee's explanation was that the entries represented working of approximate maturity value of FDRs and other assets of the assessee and his wife;

- (7) This explanation had not been found to be false;
- (8) The entries contained some kind of rough jottings;
- (9) No date stood mentioned;
- (10) No transaction was decipherable;
- (11) The only connect between the assessee and the document was its recovery from the assessee's premises;
- (12) It was the Assessing Officer's burden to prove that the paper represented some transaction;
- (13) The Assessing Officer had not brought anything on record in this regard;
- (14) It was also not clear, whether the entries represented income or expenditure;
- (15) The Assessing Officer's finding in this regard was nebulous;
- (16) At the most, the loose paper could be taken only as a dumb document;
- (17) As per section 292C of the Act, the presumption regarding the documents recovered from his possession, was against the assessee, with regard to the contents thereof ;
- (18) Mere jottings on the seized document were not sufficient to prove the liability of the assessee;
- (19) Presumption under section 134(4A) of the Act arises only against the person in possession of the document, and none else;

- (20) The assessee is the main person of the group, but this, by itself, cannot lead to any presumption that the document belonged to the assessee;
- (21) The contents of the document were not proved against the assessee;
- (22) Sans the above, possession and handwriting of the assessee cannot prove the contents of the document; the document were dumb document;
- (23) The entries on the document do no lead to the conclusion of undisclosed income of the assessee;
- (24) As per 'Central Bureau of Investigation vs. V.C. Shukla' [1998] 3 SCC 410, seized papers not proved as written by the assessee, are not, without corroborative evidence, credible books of account;
- (25) As per 'V.C. Shukla' (supra), too, sans independent evidence, entries in the books of account, cannot foist liability on a person;

12. The ld. D.R. has contended that the ld. CIT(A) has erred in deleting the additions, aggregating to Rs.1,85,24,000/-, made by the Assessing Officer, on account of unexplained and undisclosed investment without appreciating the fact that the additions were made by the Assessing Officer on the basis of seized documents found during the search.

13. The ld. D.R. has further stated that with regard to the entries of Rs.70,00,000/-, the assessee's contention that this is maturity amount of an original FDR of Rs.50 lakhs, as on 19.04.2010, is not acceptable, because the date of search was 29.05.2012 and, therefore, the entries of investments in the

seized documents must have been recorded on or before 29.05.2012, but the assessee could not show that the maturity value comes even close to Rs.70 lakhs; that most of the entries in the seized document have been accepted on the basis of the assessee's explanation, taking into account the maturity value on a future date; that the assessee has also mentioned the exact value of maturity of some of his investments in the same seized documents, therefore, the version of the assessee that the entry of Rs.70 lakhs related to the said FDR, whose maturity value is only Rs.63,04,249/-, is not acceptable.

14. The Id. D.R., with regard to the entry of Rs.50,00,000/-, submitted that the assessee's contention that this is maturity amount of Senior Citizen Saving Deposit Scheme amounting to Rs.30 lakhs (Rs.15 lakhs each in the post office and in SBI), is far-fetched, because on a perusal of the supporting documents, i.e., reply dated 09.03.2015, it is clear that the maturity value of the said deposit schemes would not aggregate to Rs.50 lakhs even on the date of maturity, i.e., 18.11.2015; that thus, it is evident that the amount of Rs.50 lakhs is not related to the maturity value of the Senior Citizen Saving Deposit Scheme, as contended by the assessee; that as the entries in the seized documents are admitted by the assessee himself, as being investment details of the assessee, there is no reason not to treat the figure of Rs.50 lakhs as the assessee's investment, the source of which could not be explained by him; that moreover, where the assessee has not adduced any rebuttal evidence to show that the entries made in the documents recovered during the search are not income in the hands of the assessee, and therefore, the total investment entries, amounting of Rs.1,20,00,000 (Rs.70 lakhs +

Rs.50 lakhs), as per the seized document Annexure A-2/page 5, are correctly found to be unexplained and undisclosed.

15. The ld. D.R., with regard to the entry of Rs.65,24,000/-, contended that Annexure A-2/page 19, is a copy paper in which a number of entries were found recorded in the name of the assessee; that the investment as per the entry of Rs.65,24,000/- was neither disclosed by the assessee in his books of accounts, nor had the same been explained by the assessee during the course of hearing before the Assessing Officer; that in the scanned copy of seized document A-2/page 19, there are entries, which the assessee could tally with the investments made by him for which those investments have been accepted as explained; that the entry of Rs.16,58,517/- in the said seized document could be tallied exactly with the maturity value of an FDR of Bank of India shown in page 3 of the annexure; that, however, the amount of Rs.65.24,000/- could not be matched with any investment or its maturity value; that as per details of maturity value of FDR No. 700045110004350 dated 19.04.2010 for Rs.50 lakhs, which got renewed from time to time, it is patently clear that the amount of Rs.65,24,000/- does not tally with any of the figures shown in the explanation given by the assessee; that as the entries in the seized documents are admitted by the assessee himself, as being investment details of the assessee, there was no reason not to treat the figure of Rs.65.24 lakhs as the assessee's investment, the source of which could not be explained by him; and that moreover, the assessee has not adduced any rebuttal evidence to show that the entries made in documents recovered during the search are not the income in the hands of the assessee.

16. The Id. D.R. has further submitted that the explanation offered by the assessee was rightly not found by the Assessing Officer to be correct; that therefore, the Assessing Officer was well justified in making the addition as unexplained investment made by the assessee; that the assessee accepts the existence and seizure of the documents seized from the possession of the assessee; that therefore, the documents seized are not, by any stretch of imagination, 'dumb documents', as dubbed by the Id. CIT(A); and that in this view of the matter, the addition made by the Assessing Officer is entitled to be sustained, which be sustained, by reversing the unsustainable order passed by the Id. CIT(A).

17. Per contra, the Id. Counsel for the assessee has placed strong reliance on the impugned order. It has been contended that on being required to give clarification about the said notings, the assessee had submitted a letter dated 05.03.2015, on 09.03.2015, before the Assessing Officer, a copy of which is on record, at pages 8 to 17 of the 2nd volume of the paper book, and the copies of the FDRs are at pages 18,19 and 20 of the paper book; that the investments in such FDRs are reflected in the personal Balance Sheet of the assessee and his wife, Smt. Bina Garg, which are placed on record at pages 21 to 30 and 31 to 40 of the 2nd volume of the paper book; that in support of his contentions, an affidavit, duly sworn in by the assessee, on 02.03.2015, is placed at pages 16 to 26 of 1st volume of the paper book; that the contents of the said affidavit having not been rebutted by the Assessing Officer, either by making any enquiry about the existence of such investment and/or by cross-examination of the deponent; that therefore, the onus, if any, lying on the assessee is fully discharged and the averments made

in the said affidavit are to be taken as evidence/admitted facts as per the principle laid down by the Hon'ble Supreme Court in the case of 'Mehta Parikh and Co. Vs. CIT', (1956) 30 ITR 181, wherein, their lordships have observed and held as under:-

"(ii) as the cash book of the appellants was accepted, and the entries therein were not challenged, and neither further accounts nor vouchers were called for, and the persons who gave the affidavits were not cross-examined, it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made in the affidavits;"

18. The Id. Counsel for the assessee further submitted that the submissions made by the assessee on the issue under consideration have been duly taken note of by the Id. CIT(A) in his order, as appearing at para 5(3)(i), wherein, he states as follows:-

"5(3)(i) The appellant has filed written submissions which are placed on record. It is stated that from a perusal of the assessment order giving rise to the three additions aggregating Rs.1,85,24,000/-, it is seen that:

a) There was no additional investment as such represented by the three figures of Rs.70,00,000, Rs.50,00,000 and Rs.65,24,000 and/or any of them;

b) These are simply the estimated figures receivable at maturity of other investments/FDR details of which had duly been given in the explanation itself, about which there was no dispute;

c) In any case it is a search and seizure case and in the absence of tangible material or corroborative evidence in support of alleged investment, notings of the three figures aggregating Rs.1,85,24,000/- (for which additions have been made) it could not have been presumed either on facts or in law that there existed such investment and source of such investment remained unexplained."

19. The Id. Counsel for the assessee further submitted that after the assessment had been completed and during the pendency of the appeal, the assessee, vide his letter dated 28.10.2015, filed on 29.10.2015, had requested the Assessing Officer to make available to him the particulars of any such investment which, according to him, was represented by the said addition; that the Id. CIT(A) has recorded his findings in paras 5(5), 5(6), and 5(7), wherein, section 292C had also been dealt with, para 5(8)(i), wherein, a reference had been made to the decision of the Hon'ble Apex Court in the case of 'CBI vs. V.C. Shukla', and paras 5(8)(ii), 5(8)(iii), 5(8)(iv), and 8(v) of his order; that eventually, on the basis of such observations, he has categorically stated in para 5(9), page 17 of his order, as under:-

"5(9) The Assessing Officer has not made any independent enquiry and there are no corroborating evidences to support case of the AO that the paper is related to the unexplained investment made by the appellant, or that paper contains the figures which represent income or expenses. The appellant explained that the paper contains working of approximate value of FDRs and other assets belonging to him and his wife Smt. Bina Garg. The explanation so offered by the appellant has not been found to be false. The AO has made additions on the basis of the loose paper even though no unexplained investments have been found during the course of the search. In view of the above mentioned factual, legal position, judgments and in view of the fact that appellant's explanation of the said paper as containing rough calculations of investments in FDR has not been found to be false, the figures written on this paper cannot be treated as appellant's income. The addition of Rs.1,85,24,000/- made by the Assessing Officer is deleted. The appellant gets consequential relief. The ground of appeal is allowed."

20. The Id. Counsel for the assessee submitted that even after the expiry of a period of more than seven and a half years

from the date when the search took place, i.e., on 29/05/2012, no such investment had come to the light with the Income Tax Department.

21. Heard. The question for consideration is as to whether the Id. CIT(A) is correct in deleting the addition amounting to Rs.1,85,24,000/-, made by the Assessing Officer, as unexplained investment made by the assessee.

22. First off, it is seen that the assessee has maintained that the notings on the documents seized represented estimated maturity value of the FDRs, amounting to Rs.70 lakhs, Rs.50 lakhs and Rs.65.24 lakhs. Now, immediately as the assessee makes this contention, it negates the finding of the Id. CIT(A) to the effect that the documents are dumb documents. The factum of the documents having been recovered from the possession of the assessee is not under challenge too.

23. This now takes us to the presumption in law that possession of a document is prima facie proof of the ownership thereof by the possessor. This presumption stands accepted when the assessee admits the nature of the entries to be the approximate values of the FDRs of the assessee and his wife.

24. The Assessing Officer has observed that the addition of the figures representing the approximate maturity value of FDRs, is wrong. Now, accepting, arguendo, that this is so, does this, by itself, lead to the inexorable conclusion that the amount represents unexplained income of the assessee? The answer, we are afraid is a big "NO". It is but elementary that fastening of a liability to tax entails proof thereof. In other words, even if the assessee is taken to have failed to prove his contention of approximate maturity value of FDRs, it was the Assessing

Officer's burden to prove that the amounts represented unexplained investment of the assessee. So, it was for the Assessing Officer to prove the alleged unexplained investments, which, it cannot be gainsaid, need to be tangible investments, evincible from the record. In the present case, however, the Assessing Officer has made not even as much as a whisper in the assessment order, as to the nature of the alleged investments. He sits sated that the explanation of the assessee was not accepted, oblivious of, or in utter disregard of, the legal position that in order to slap additions in the form of unexplained investments, it was his burden to prove such alleged unexplained investments, which has not been done. In this regard, the findings of the ld. CIT(A), as recorded in the impugned order, remain steadfast and unhinged. He has observed to the effect that the Assessing Officer has not made any independent enquiry and that there is no evidence corroborating the so called unexplained investment alleged by the Assessing Officer. His finding that the Assessing Officer has not found the assessee's explanation to be false, has also not been successfully rebutted before us. The personal balance sheet of the assessee and his wife, as filed before the Assessing Officer, vide letter dated 5/3/2015, were never rebutted by the Assessing Officer, even considering that other than being the Assessing Officer, he himself was the Investigating Officer too. The fate of the affidavit filed by the assessee remained much the same. It is also important to note that vide letter dated 28/10/2015, while the matter was pending before the ld. CIT(A), the assessee had requested the Assessing Officer to make available to him, the particulars of any investment which, as per Assessing Officer, was represented by the addition made, in response to which, nothing was said by the Assessing Officer.

25. In para 5(7) of his order, the Id. CIT(A) has observed that section 292C of the Act raises a presumption that the contents of the books of account and other documents found in the possession or control of any person during the search, are true. The Id. CIT(A) has held that 'contents' here presupposes that they are intelligible, comprehensible and speaking, either by themselves, or in correlation with other material, or from further investigation; and that unless it is so, mere jottings recorded on the seized documents, which documents are capable of several/various interpretations, lack evidentiary value and are not sufficient for fastening of tax liability.

26. In this regard, the matter is quite simple, as we see it. Section 292C(1)(ii) states the above presumption. As per this provision, the contents of the documents seized carry a presumption of truth. In the present case scenario, as discussed hereinabove, the assessee's submission of the contents of the seized documents representing approximate maturity value of FDRs, does not stand rebutted. Therefore, the presumption arising under section 292C(1)(ii) of the Act is confirmed. However, it operates not against the assessee, but for him, since, as deliberated upon in the preceding paragraphs, whereas the assessee's contention of the approximate maturity value has not been rebutted. And not only that, the allegation of the Assessing Officer that the contents of the documents seized represented unexplained investment, does not stand established by any investigation and/or corroborative evidence in support of such allegation.

27. In 'Monga Metals (P) Ltd. vs. ACIT', 67 TTJ (Alld) 247, it has been held that it was the Revenue's onus first to prove that the arithmetical figures appearing on loose papers were receipts,

were in the nature of sale of ingots and amounted to undisclosed income in the assessee's hands.

28. Likewise, in the present case, as observed, it was the Department's onus to prove that the figures of Rs.70 lakhs, Rs.50 lakhs and Rs.65.24 lakhs represented unexplained investments in the hands of the assessee. This onus has not been discharged. 'Monga Metals (P) Ltd. vs. ACIT' (supra) finds no counter decision referred to before us. The ld. CIT(A) is, therefore, justified in relying on this decision.

29. The same is the position qua 'Ajay Kumar Jain vs. DCIT', 64 TTJ (Delhi) 786, as per which, if the jottings contained on the paper seized do not describe the substance of any transaction, even if it has been seized from the possession of the assessee, the contents thereof are not capable of describing the transactions the way the Assessing Officer has described them, without support of corroborative evidence, such paper does not comprise a 'document', as defined in the Evidence Act, and, as such, it does not have any evidentiary value for forming the basis for assessing undisclosed income.

30. Apropos 'CIT vs. Ravi Kumar', 294 ITR 78 (P&H), it was held therein, inter alia, that even if the assessee had failed to explain the contents of the slips, it was for the Revenue to prove, on the basis of the material on record, that the same represented transactions of sales or stock in hand, before making any addition in this score; and that the assessee had duly explained that these were rough calculations and the assessee's explanations were not rebutted by any material evidence. Similar is the situation at hand. As discussed, the Assessing Officer's stance of unexplained investment was not supported by any evidence whatsoever. On the other hand, the assessee's

contention of approximate maturity value was not successfully rebutted.

31. As per 'ACIT vs. Shri Sharad Chaudhary', rendered in ITA No.933/DEL/2012, pertaining to assessment year 2006-07, again, addition without any basis or corroborative evidence is not permissible. The seized document was held to be a dumb document, since on a logical analysis thereof, neither independent, nor collective meaning of the notings or entries contained therein, were held to support the conclusion of the Assessing Officer regarding investment in purchase of land out of income earned out of the books of account from undisclosed sources. It cannot be gainsaid that the facts and circumstances of the case at hand are exactly similar to those in the said case.

32. To sum up, the Department has not been able to successfully repel the categorical findings recorded by the ld. CIT(A) to the effect that the Assessing Officer had not made any independent enquiry so as to bring on record any evidence to corroborate his conclusion that the amount of Rs.1,85,24,000/- represented unexplained investment made by the assessee; that the seized documents per se did not contain anything to show the figures contained therein, to represent any such alleged unexplained investment; that the assessee's contention of the figures representing approximate value of FDRs and other assets of the assessee and his wife, had not been found to be incorrect/false; and that even in the search, no unexplained investments had been found to have been made.

33. In view of the above, the findings of the ld. CIT(A) to the above effect are found to be justified and are confirmed. The grievance of the Department qua these findings is found to be shorn of merit and is rejected as such. The action of the ld.

CIT(A) in deleting the addition of Rs.1,85,24,000/- in the hands of the assessee, as unexplained investment made, is on all fours. The same is, therefore, upheld.

34. Coming to the Cross Objections filed by the assessee, the ld. counsel for the assessee did not press Ground no.1 raised in the cross objection, whereas Ground no.2 is in support of the order of the ld. CIT(A). Since we have dismissed the appeal of the Revenue, the cross objection filed by the assessee have become infructuous and are liable to be dismissed as such. They are dismissed as infructuous.

35. In the result, the appeal of the Revenue as well as the Cross Objections of the assessee are dismissed.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules, 1963, by putting on notice board on 19/3/2020.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:19/03/2020

JJ:1202

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar