

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

**ITA No.5753/Del/2016
Assessment Year: 2012-13**

ACIT Central Circle – 5, New Delhi	Vs.	Sh. Ashok Kapur B-5, Chirag Enclave, New Delhi-10048
PAN No.AAJPK0341H		
(Appellant)		(Respondent)

**Cross Objection No.135/Del/2019
(In ITA No.5753/Del/2016)
Assessment Year: 2012-13**

Sh. Ashok Kapur B-5, Chirag Enclave, New Delhi-10048	Vs.	ACIT Central Circle – 5, New Delhi
PAN No.AAJPK0341H		
(Appellant)		(Respondent)

Department by	Sh. Satpal Gulati, CIT(DR)
Assessee by	Ms. Shweta Bansal, CA

Date of hearing	02.08.2021
Date of pronouncement	02.08.2021

ORDER

PER O.P. KANT, AM

This appeal by the Revenue and cross objection by the assessee are directed against order dated 17/08/2016 passed by the Ld. CIT(Appeals)-29, New Delhi [in short the Ld. CIT(A)] for assessment year 2012-13.

2. The grounds of the appeal of the Revenue and cross objection of the assessee are reproduced as under:

Grounds of Appeal of Revenue:

- 1. The order of ld. CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs.12,00,00,000/- made by AO on account of unexplained expenditure/ investment.*

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

Cross Objection for A.Y. 2012-13

1. *The Ld. CIT(A) has grossly erred in law as well as on facts in not deciding the issue that the protective assessment made in the hands of appellant is ex-facie illegal, arbitrary and without jurisdiction because substantive assessment has not been made before the impugned protective assessment.*

3. In the appeal, Revenue is aggrieved with deleting the protective addition by the Ld. CIT(A), whereas in cross objection the assessee is aggrieved with not deciding the legal issue of sustainability of protective addition in absence of any substantive addition.

4. Briefly stated facts of the case are that the assessee is Chairman of M/s Krishna Maruti Group of Companies. During the course of search action at the premises of Krishna Maruti Group cases, the assessee surrendered Rs.

100 crore in respect of the various companies of the group, including Rs.12 crore to cover any unspecified expenditure or leakage. Since this surrender of Rs.12 crores was not declared in return of income of any of the companies, the Assessing Officer made addition of Rs. 12.00 crores in the hands of the assessee on protective basis. Before the Ld. CIT(A), the assessee submitted that in one of the group company M/s. HH Interior and Auto components Ltd, the settlement commission has enhanced income of Rs.15.06 crores, which covers the disclosure of Rs.12 crore. The Ld. CIT(A) after considering the submission of the assessee deleted the protective addition observing as under:

“6. I have gone through the above submissions of the appellant and have considered the facts and evidences on record. I have also considered the case laws relied upon by the appellant.

7. The fact of this case is that a search action u/s 132 of the Act was carried out in the case of Krishna Maruti Group and also at residence of the appellant on 21.10.2011. During the course of search, statement of the appellant was recorded and he has confirmed to be the controlling person in his capacity as director etc. to the various group companies. In his statement the appellant offered Rs. 100 crores as overall disclosure by the group ,as additional income, as follows, based on the documents seized during the course of search:-

S.No.	Company Name	Financial Year	Amt. (In Crs)
1.	SKH Auto Components Limited	2004-05	1.61
2.	SKH Auto Components Limited	2005-06	2.91
3.	SKH Auto Components Limited	2006-07	2.91
4.	SKH Auto Components Limited	2007-08	3.99
5.	SKH Auto Components Limited	2008-09	3.37
6.	SKH Auto Components Limited	2009-10	3.45
7.	SKH Auto Components Limited	2010-11	6.76
8.	M/s Laurel Infrastructure Pvt. Ltd.	2011-12	14.91
9.	M/s Zest Infrastructure Pvt. Ltd.	2011-12	16.03
10.	M/s Surge Infrastructure Pvt. Ltd.	2011-12	16.03
11.	M/s Panache Infrastructure Pvt. Ltd.	2011-12	16.03
12.	Other unexplained expenditures/investments/assets etc.	2011-12	12.00
Total			100.00

7.1 While submitting return of income the additional income of Rs. 12 crores, offered for any further discrepancy has not been disclosed as additional income, either in the hands of above companies or in the hands of appellant to that extent, and hence the disclosure has been retracted.

7.2 In the meantime the appellant filed a petition for settlement before the Principle Bench, Settlement Commission, New Delhi, in the case of M/s HH Interior and Auto Components Ltd, a group company of appellant. It has been contended by the appellant that no incriminating document has been found nor any matching asset has been discovered during the search in the hands of appellant and the additional income has already been disclosed in the hands of various companies, controlled by the appellant, therefore neither the said additional income of Rs. 12 crore has been offered in the hands of any entity of the group companies, nor in the hands of appellant. The AO made a protective assessment of Rs. 12 crores in the hands of appellant taking into account such disclosure during the course of search and also looking to the petition filed by one of the group company M/s HH Interior and Auto Components Ltd., before Settlement Commission. ,

7.3 As mentioned earlier, the appellant raised various objections with respect to the said addition during appellate proceedings. It was disputed that the statement is unreliable as no oath was administered, statement recorded at midnight. In this regard, it is observed that there are two statements of appellant recorded in the process of search. First statement was recorded on 21- 22/ 10/2011 and Second statement of appellant recorded on 16.12.2011. In the first statement, all the pages have been signed by the appellant with the verification that whatever has been stated is true to the best of his knowledge and belief. In answer to question no. 16, and after perusal of the contents of the material seized, the appellant offered an additional income of Rs. 100 crores. It was clearly mentioned that the said statement has been recorded "without any force

thereat or coercion...." During the course of taking statement, the request of the appellant was considered and he has been provided rest between 1.26 a.m. to 5.46 a.m., when he pointed out to allow sufficient time to take rest. Therefore it clearly transpires that appellant has been provided adequate rest and no undue pressure was given and the declaration has been made voluntarily, on the basis of the seized documents.

7.4 The second statement recorded on 16.12.2011 on oath, which is after almost 2 months of search, wherein the appellant has reiterated about the said disclosure in the hands of various companies amounting to Rs. 100 crores and no retraction was made. While filing the return of income, Rs. 12 crores was not offered for taxation in the hands of any group company or the appellant.

7.5 From the above it is clear that appellant has been provided adequate rest, and sufficient time has been given. Further, in the second statement, the same disclosure was retained by the appellant, which clearly shows that no infirmity in the statement recorded, especially when the same is made on the basis of the documents seized during search. Hence the contention of appellant is not tenable in this regard.

7.6 The disclosure has been made on the basis of the seized documents and voluntarily by the appellant, therefore to argue that no corroborative evidence was found during search is not correct.

7.7 Further, the retraction has been made only vide letter dated 24.03.2014, whereas disclosure made during search on 21.10.2011 which was further confirmed during statement dated 16.12.2011. Therefore the argument of the appellant is not acceptable as

sufficient time was available with the assessee and this retraction appears to be an afterthought.

7.8 During the appellate proceedings it was submitted that vide order u/s 245D(4) dated 05/09.02.2015 in the case of M/s HH Interior and Auto Components Ltd., Hon'ble Settlement Commission has settled the case, increasing the total incremental income from 23.99 crores to 39.05 crores, against Rs. 25 crores, surrendered during the search. Thus it was requested that Rs. 15.06 crores has been enhanced for settlement and the same being much more than the residuary disclosure of Rs. 12 crores, the addition made on protective basis in the hands of appellant is required to be deleted as the same amount has already been subject to tax.

7.9 The contention of the appellant was found correct, as the disclosure of Rs. 12 crores was not made specifically in the hands of appellant, but in general for the group. The addition has been made on protective basis to cover up search disclosure, which was retracted subsequent to search. It is also seen that the Hon'ble Settlement Commission, settled the income higher by 14.07 crores, against the 12 crores, shown as part of composite disclosure.

7.10 Therefore looking to the fact and the circumstances of the case and in view of the discussions in foregoing paragraphs, the addition made on protective basis deserves to be deleted as it is already covered through the enhanced income by the Hon'ble Settlement Commission in the case of group company, controlled by the appellant. Accordingly, the appellant gets a relief of Rs. 12 crores.”

5. Before us the Ld. DR relied on the order of the Assessing Officer, however, could not point out any error in the order of the Ld. CIT(A).

6. The Ld. Counsel of the assessee on the other hand relied on the order of Ld. CIT(A).

7. We have heard rival submission of the parties and perused the relevant material on record. We find that residuary surrender of Rs.12 crore against unexplained expenditure/investment/assets was not specifically identified and before the settlement commission the assessee has already paid taxes on the enhanced income of Rs.15.06 crore in the case of one of the group company. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is justified and we do not find any error in the same. Accordingly, we uphold the same and dismiss the ground of appeal of the Revenue.

8. As far as cross objection of the assessee is concerned, once the protective addition has already been deleted by the Ld. CIT(A), which has been upheld by us, the issue raised by the assessee in cross objection is reduced merely

academic. We, accordingly, dismiss the cross objection of the assessee as infructuous.

9. In the result, both the appeal of the Revenue and Cross Objections of the assessee are dismissed.

Order pronounced in the open court.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

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

Dated: 2nd August, 2021

Neha

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi