

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI
(Through Video Conferencing)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.835/Del/2017
निर्धारणवर्ष/Assessment Year:2012-13

Sh. Sunil Jindal C/o M/s RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi.	बनाम Vs.	DCIT, Central Circle-II, Faridabad.
PAN No. AFSPJ5785L		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Sh. Somil Aggarwal, Adv.
राजस्वकीओरसे /Revenue by	Sh. H.K. Chaudhary, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	10.08.2021
उद्घोषणाकीतारीख/Pronouncement on	12.08.2021

आदेश /O R D E R

PER MADHUMITA ROY, J.M.

1. The instant appeal filed by the assessee is directed against the order dated 23.12.2016 passed by the Ld. CIT(A), Karnal arising out of the order dated 27.02.2015 passed by the Ld. DCIT, Central Circle-II, Faridabad u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2012-13.
2. The addition of Rs. 21 lakhs on account of subscription in committee/chits is a subject matter before us. During the course of search on 09.05.2012 at the residence of promoters of SRS group

at House No. 535, Sector 14, Faridabad, messages were retrieve from the mobile of the assessee Sh. Sunil Jindal which shows that he is transacting in chits, such messages were received from one Sh. Vikas Kumar Gupta. The assessee in his statement on the date of search admitted him to be his friend since last 8-9 years. However, the assessee denied of having chits but as he could not give any reason why such messages were being received by him over his mobile number, summons dated 21.05.2012 was issued directing him to furnish the income arising on such chits and source of investment. The assessee was further required to explain as to why Rs. 3 lakhs per month for seven months may not be added to his income with respect to his subscription his chit transacted by him as was found during the course of search. The assessee replied as follows:

g) "with reference to the alleged chit, it is humbly submitted that the assessee has neither invested in any chit nor is he dealing in chit funds.

The assessee has also confirmed from his friend Vikas Gupta from whose purported mobile the impugned electronic messages were retrieved. It has been stated by Sh. Vikas Gupta that he is not dealing in chits and never sent any message to the assessee. There appears to be some sort of technical error since Vikas Gupta deals in mobile repairing and message, if at all from his number, may have generated out of some faulty handset not related to him. The facts had been tested by the department itself in the assessment of Sh. Vikas Gupta. The assessment order of Sh. Gupta regarding the matter is attached and his assessment records are relied in this regard.

It is humbly submitted that no corroborative evidence any payment by the assessee is there. The assessee is not GM in

any company either. Thus, if at all something, these appear to be some misdirected electronic texts.”

3. However, such submission was not found suitable by the Ld. AO. Further that though the assessee admitted Mr. Vikas Gupta as his friend but not been able to produce him for his testimony in the office of the Ld. AO, ultimately taking into consideration the records available before the Ld. AO, addition of Rs. 21 lakhs @ 3 lakhs per month for seven months was made to the total income of the assessee which was in turn confirmed by the First Appellate Authority. Hence, the instant appeal before us.
4. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials on record as available before us.
- 4.1 It appears from the order of the Ld. AO that the addition of Rs. 21 lakhs has been made on the ground that there were text messages from one Shri Vikas Gupta which was found on appellant's mobile number during search, which further shows that the assessee was maintaining a chit of sum of Rs. 3 lakhs per month for seven months. However, the Ld. AO has not specified that the addition is made on account of any investment allegedly made by the assessee or for something else. Moreso, the addition has been made without any basis, material or evidence rather on surmises and conjectures upon perusal of the text messages, as it appears from

the order passed by the Ld. AO we do not find the same reflects any income or investment made by the assessee. Further, the assessee, during the course of search proceedings itself stated and explained that he has not maintained any chit.

4.2 Apart from that we have taken into consideration another aspect of the matter as has been brought to our notice by the Ld. AR that the assessment in respect of Shri Vikas Gupta though was reopened u/s 147 on the similar charge of making investment, nothing adverse was found. The said assessment order of Sh. Vikas Gupta is also filed before us being part of the paper book. It is relevant to mention that in the said assessment order of Sh. Vikas Gupta the Department has accepted that there was no such chit which is evident by this fact that this assessment reopened on the vary ground was finally assessed at the returned income. Relevant to mention that on oath Sh. Vikas Gupta has also deposed that he never sent these messages to the appellant. It is his case that he is having a business of repairing mobile phones and there is any possibility of any customer/employee testing of phone through his SIM card and some virus might have been activated. Such statement of Sh. Vikas Gupta has been accepted by the Revenue and assessment has been finalized at the returned income in his case. Therefore, when the vary basis of the allegation of involvement with chit by the assessee fails, we do not find any

reason for making addition of Rs. 21 lakhs on account of alleged subscription in committee/chit by the assessee particularly when the Revenue has also failed to controvert such case made out by the assessee by adducing corroborative evidence. Thus, in the absence of any cogent evidence and/or documents in the hands of the Revenue for making addition against the assessee in the manner as has been done, we find the same is not sustainable. Hence, the same is hereby deleted.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12/08/2021.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 12th August, 2021
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi