

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5862/Del/2011
(Assessment Year: 2009-10)

ACIT, Central Circle : 2, New Delhi.	Vs.	Shri Bal Kishan Saraf, 1290 – Katra Dhulia, Chandni Chowk, Delhi. PAN: AAHPS3659Q
(Appellant)		(Respondent)

Assessee by :	None;
Revenue by:	Shri Satpal Gulati [CIT] – D.R.;
Date of Hearing :	16/08/2021
Date of pronouncement :	24/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Id ACIT, Central Circle-2, New Delhi for Assessment Year 2009-10 against order of Id. Commissioner of Income Tax (Appeals)–III, New Delhi, who vide order dated 13.10.2011 for the impugned assessment year granted relief to the assessee.
2. The Id AO is aggrieved with this and has preferred this appeal raising following three substantive grounds of appeal:-
 - “1. *On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in deleting the disallowance of Rs.1,88,30,489/- made by the AO on account of undisclosed investment.*
 2. *On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in deleting the addition of Rs.66,88,489/- made by the AO on account of undisclosed income.*
 3. *On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in deleting the addition of Rs.58,69,600/- made by the AO on account of unaccounted cash.*
3. Brief facts of the case are that search and seizure action u/s 132 of the Act was carried on 26.02.2009 in case of Shri Ram Hari Ram Group of cases and the assessee was also covered therein. The assessee earned salary income from M/s. Sheetal Impex as well as capital gain, interest income and dividend.
4. During the course of search one Shri Rajiv Gupta of that group made a statement on 27.02.2009 making a total disclosure of unaccounted income for the entire group for Rs.

50 crores. He also gave a detailed bifurcation wherein, the assessee was also included. Subsequently, Shri Rajiv Gupta offered unaccounted income of Rs. 10 crores in the hands of the assessee.

5. The assessee at the time of filing of the return of income offered the sum of Rs. 9,33,11,511/- on account of income representing documents seized during the course of search. Consequently, the assessee filed his return of income on 22.12.2009 declared income of Rs. 9,47,39,738/-.
6. The Id AO passed an assessment order u/s 143(3) of the Act on 30.12.2010 wherein, the total income of the assessee was assessed at Rs. 12,61,28,316/-. The Id AO made the three additions to the total income of the assessee as under:-
 - a. A addition of Rs. 1,88,30,489/- on account of unexplained investment determined as per the seized documents.
 - b. A sum of Rs. 66,88,489/- on account of disclosure made by the assessee of Rs. 10 crores whereas the income offered is less than the above sum and therefore, for differential sum the above addition was made.
 - c. Addition of Rs. 58,69,000/- with respect non surrender of income of Rs. 49 lakhs in the return of income as per his statement of Rs. 9,69,600/- on account of unaccounted cash.
7. The order of the Id AO was challenged before the Id CIT(A) who deleted the addition and therefore, the Id AO is in appeal before us.
8. Despite notice none appeared on behalf of the assessee. On earlier 10 occasions the assessee did not appear. On this occasion, notice was served to the assessee and therefore, we proceed to decide the issue on the merits of the case as per information available on record.
9. The Id DR vehemently relied on the order of the Id AO.
10. We have carefully considered the contentions of Id DR and perused the orders of the lower authorities.
11. The first ground of appeal is with respect to addition of Rs. 1,88,30,489/- in the hands of the assessee. The Id CIT(A) has noted as per para No. 5 of his order that the addition has been made by the Id AO on the basis of two seized documents. Id CIT (A) held that On the basis of the above seized documents, the assessee offered total undisclosed income of Rs. 9,33,11,511/- and therefore, it is higher than the amount involved in this documents, hence, no addition is required to be made. He further noted that the Id AO has made the above addition in the hands of the assessee on protective basis. He further noted that as the documents has been found from the assessee's premises and are in handwriting of the

assessee, substantive addition is deserves to be made in the hands of the assessee. However, as the complete amount involved in those documents covers the disclosure made by the assessee , which is in excess of the sum declared by the assessee, the impugned amount of income comprised in the seized documents subsumed in the amount of the total disclosure. Accordingly, the addition was deleted. The Id DR could not show us any reason to deviate from him. Accordingly, Ground No. 1 of the appeal is dismissed.

12. Ground No. 2 of the appeal relating to the addition of Rs. 66,88,489/-. The above addition arises from the disclosure made by Shri Rajiv Gupta on behalf of the entire group. In the hands of the assessee, disclosure of Rs. 10 crores was made but the assessee owned only Rs. 9,33,11,511/- in the hands of the assessee and therefore this difference was added. The Id CIT(A) has dealt with the whole issue in para 6 of this order at page No. 50 to 52. The main reason for deleting the addition was that overall disclosure was given on estimated basis and on actual subsequent analysis, it has been found to be on the lower side than what was disclosed. . The Id AO did not investigate that as there is any further income over and above the income disclosed sum by the assessee in his return of income such addition could not have been made. The Id DR could not show any infirmity in the order of the Id CIT(A). We also find Mr. Rajiv Gupta disclosed Rs. 10 crores in the hands of the assessee which was found to be actually only Rs. 9,33,11,511/- which was disclosed by the assessee in his return of income. Therefore, to make any further addition same should have been substantiated by the Id AO with evidences after proper investigation and putting cogent material on record with the disclosure made by the assessee holding that it is not Rs. 9.33 crores but Rs. 10 crores. Such effort has not been made. No evidence is recorded in the assessment order as well as before the Id CIT(A). In view of this, we do not find any infirmity in deleting the above addition.
13. Ground No. 3 is with respect to Rs. 58,69,600/- on account of unaccounted cash. The above sum involved two different amount. The sum of Rs. 49 lakhs reflected at page No. 26 to 28 of the seized documents about money received by him on account of sale of property. A sum of Rs. 9,69,600/- is the cash which was found from the residence of Mr. Murari Lal Saraf, the uncle of the assessee who was residing on the 3rd floor of the building, where assessee resides. The Id CIT(A) deleted both the additions at page No. 52 to 53 of his order as under:-

6. *Finding on Ground of Appeal No. 13,16,17,18, 20& 21;-*

The above ground relates to the addition made for Rs. 66.88.489/-. The basis of this addition arises from the disclosure of concealed income for Rs. 50 Crores made by Sh. Rajeev Gupta for the entire group in his statement recorded on 27.02.09 which also includes that of the assessee and which has subsequently been reiterated by Sh. Rajeev Gupta in the breakup provided in his letter to the ADIT on 09.06.2009 wherein the amount of Rs. 10 Crores has been declared on behalf of the assessee. The AO is of the view that the assessee has backtracked from his disclosure of Rs. 10 Crores and has made a disclosure in the returned income for only Rs. 9,33,11,511/-and accordingly, the difference of Rs. 66,48,489/- has been added to income in para 5.13 to the assessment order.

As against this the substance of the assessee's argument is that the initial disclosure of Rs. 50 Crores in various hands by Sh. Rajeev Gupta included the normal income of the group and not over and above the normal income. In this connection attention has been invited to the statement of Sh. Rajeev Gupta dated 27.02.09 and his subsequent letter to the ADIT on 05.06.09. It has also been argued by the appellant that in the return of income for 2009-10 Sh. Bal Kishan Saraf has shown income of approximately Rs. 10 Crores that is Rs. 10,00,02,904 (salary Rs. 14,00,000 + STCG Rs.67,875, LTCG Rs. 51,02,891 + Undisclosed income Rs. 9,33,11,511 + Bank interest 159+ Misc income Rs. 60,467 + Dividend Rs. 7,371 + minor child income Rs. 52,726 which includes income of Rs. 9,33,11,511 on account of document seized during the course of search and other normal income for the year like salary, interest, etc. That therefore as such the assessee has not retracted from the understanding conveyed to him by Rajiv Gupta as is clear and categorical from the letters submitted to ADIT (Inv) Mr Paramjit Singh by Rajiv Gupta and provided to assessee that income of Rs. 10 Crore includes normal income and would be subject to finalization of accounts and assessment of seized papers which was pending on 09.06.2009. It has additionally been argued that the admission on oath for income of Rs. 50 Crores (10 Crores in case of the assessee) is that of Sh. Rajeev Gupta and not of the assessee and therefore retraction if any is that of Sh. Rajeev Gupta and not that of the assessee. Reliance in this regard has also been placed on the decision in cases of Pullangode Rubber 91 ITR 18(C); Anoop Kumar 147 Taxman 26(ASR).

Considering the totality of the arguments it is observed that the assessee has shown a total income of more than Rs. 10 Crores which is inclusive of an amount of Rs. 9,33,11,511/-which is on account of income representing documents seized during course of search. Thus it is case where the statement on oath made at the time of search, though by the close associate of the assessee Sh. Rajeev Gupta, has been reflected in his return of income. It is also correct that the disclosure of Rs. 10 Crore made by Sh. Rajeev Gupta on behalf of the assessee vide letter written to the ADIT was inclusive of the normal income. Moreover, alternatively even if the assessee goes back on his disclosure for a certain amount, the onus shifts on the AO to investigate and substantiate the difference between the disclosure and the returned income and that the difference cannot straightaway be added to income. Moreover, the disclosure was given on a rough and ready basis which has on actual subsequent analysis by the assessee been found to be on the lower side, which has been offered for tax. In such circumstance it was the duty of the AO to have investigated the matter further before making addition to income and not merely based on the same on the initial disclosure. In view of the above discussion the addition made for Rs. 66,88,489/- is directed to be deleted.”

14. The Id DR could not show any infirmity in the order of the Id CIT(A). We also found that four different companies have accepted the receipt of Rs. 49 lakhs in cash towards sale consideration of the property which is duly reflected in their books of account and therefore, addition has rightly been deleted by the Id CIT(A). With respect to cash found of Rs. 96,99,600/-, it is subsumed by the overall disclosure of Rs. 9.33 crores. Further, the Id AO failed to telescopic the above addition which was given by the Id CIT (A). Accordingly, we confirm the order of the Id CIT(A) deleting the above addition.
15. In the result we confirm the order of the Id CIT(A) in deleting the above three additions and dismiss the appeal of the revenue.

Order pronounced in the open court on 24/09/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 24/09/2021.

AKKEOT

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi