

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.3434/DEL/2017
Assessment Year: 2011-2012

Rajender Sharma, C/o Ravi Gupta, Advocate, E 6A, Kailash Colony New Delhi.	vs.	DCIT, Central Circle, Noida.
TAN/PAN: AAIPS5983J		
(Appellant)		(Respondent)

Appellant by:	Shri P.C. Yadav, Adv.		
Respondent by:	Smt. Sushma Singh, CIT-D.R.		
Date of hearing:	19	08	2021
Date of pronouncement:	28	09	2021

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the impugned order dated 31.03.2017, passed by Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur for the quantum of assessment passed u/s.153A for the Assessment Year 2011-12.

2. The facts in brief are that search and seizure action was carried out u/s. 132(4) on 09.04.2012 in the case of Assessee. Accordingly, notice u/s.153A was issued for filing of return of income which was duly complied with. During the course of assessment proceedings, the assessee was confronted with the seized document at **page no. 24, Annexure A-21 Part**

No. ANR-01 when the Assessing Officer required the assessee to give the explanation under following issue:-

*“21. Please file the details of H. No. D-135, Sector-40, Noida. During the course of search a ‘Note Pad’ was seized at Annexure A-21, and it is observed that as per Page No.24 a payment of Rs.1.5 crores as per your books of accounts, failing which, it will be treated as your unaccounted investment and added back to your income without any further reference to you. I propose an addition of Rs.1.5 crores. **Proposed addition Rs.1.5 crores.**”*

3. In compliance thereof, the assessee submitted that the entire seized annexure pertains to his son, Mr. Akash Sharma’s business who was as a real estate agent. The diary which is the part of the seized annexure belongs to Mr. Akash Sharma who is maintaining and recording all the details of the prospective buyers/sellers in and around Noida along with their expectation. The said reply for the sake of ready reference is reproduced hereunder:

“19. As far as the Details of Rs. 1.5 Crore written in page no. 24 of seized document, Annexure - A-21, is concerned, this entire Annexure pertains to his son Mr. Akash Sharma’s business who was running his business as a Real Estate agent. It is merely a diary that Mr. Akash sharma maintained till 2006-07 and recorded all details of prospective buyers / sellers of various immovable properties in and around Noida along with their expectation. As a real estate agent he was required to suggest various Permutations and Combinations to their customers for timely execution of their transactions. Accordingly this sum of

Rs. 1.5 crores written in that diary was merely a proposal suggested to a customer for his outflow and is not related to Assessee's income at all.

20. As the assessee and his son is already engaged in Real Estate business, they have ample knowledge of construction and good connections with suppliers of building material. Accordingly the question of getting construction done on contractual basis to third party does not arise at all. Therefore, statement given by the third party regarding payment to him for Rs. 1.75 crores in cash for renovation of residential house property at D-135, Sector-40, Noida. Further note that total area constructed on the said plot is 253.81 sq. mtr. and if we go for construction through contractor also the estimated cost can be worked out to Rs. 37, 90, 682.22 only even as per CPWD approved rates. Besides this property was purchased by the assessee on which the construction was already there and the same is evident from the copy of title deed of the house. Accordingly the construction taken place at the premises by the assessee was merely a renovation of building and furnishing on which the assessee had incurred a total sum of near about-60 Lakhs which is duly accounted for in the books of accounts. The Assessee, his son Mr. Akash Sharma and his wife Mrs. Sabita Sharma had jointly taken a home loan for Rs. 40,00,000/- for the renovation and furnishing of the said house. A copy of repayment schedule of home loan is enclosed herewith for your kind perusal.

21. As far as the purchase of agricultural land for Rs. 4.60 Crores is concerned, the land is owned by M/s Cheap Housing Private Limited where the assessee or his family members are holding only 3.47% shares. Rest of the shares are being hold by

Assessee's elder brother. As far as any transaction against this set piece of land is concerned, the assessee' and its family members are not related at all.

4. However, the Id. Assessing Officer rejected the assessee's contention that seized annexure pertains to his son, Shri Akash Sharma's business, who has also tabulated the amount mentioned in the seized documents and made the addition in the following manner:

"The above seized document is clear in terms of cash of Rs.1.5 crores, which is as follows:

Rs.72,00,000/- cash

Rs.10,50,000/- cash

Rs.5,00,000/- cheque (not explained by assessee)

Rs.50,00,000/- cash

Rs.6,50,000/- cash

Rs.6,00,000/- cash

Total Rs.1,50,00,000/-

Therefore, as per this seized document undisclosed investment of Rs. 1.5 Crores made in cash for purchase of H. No. D-135, Sector - 40 Noida in August, 2010 by the assessee and his wife Smt. Sabita Sharma. Since, assessee has riot explained this document, I am left with not alternative but to apply the provisions of section 292C of IT Act and add back the unexplained investment bf Rs. 1.5 Crores u/s. 69 of IT Act in the income of the assessee.

Addition Rs.1,50,00,000/-"

5. Before the Ld. CIT (A), the assessee had filed a very detailed submission which has been incorporated in the

impugned appellate order, on which Ld. CIT (A) called for the remand report also. One very important fact which is emerging from the remand report is that, assessee's son, Shri Akash Sharma was also examined and his statement was recorded u/s.131, wherein he has admitted that diary belongs to him and the transaction pertains to his business of sale and purchase of the property as commission agent. Since, he was also subjected to search and residing at the same premises with his father, assessment u/s.153A was also made in his case including the impugned assessment year 2011-12. The relevant observation made by the Assessing Officer in the remand report which is incorporated at page 7 and 8 of the appellate order are as under:

“Though, as claimed this diary belongs to Sh. Akash Sharma and to ascertain this fact the undersigned has examined him on statement u/s 131 of the Act and he admitted that the diary belongs to him and the transactions pertains to his business of sale and purchase of property as commission agent. As per his statement Page No. 24 of Annexure A-2 is related with one of the client M/s Rashi Wears Pvt. Ltd. and M/s Denz Enterprises Pvt. Ltd. To materialized this - transaction an amount of Rs. 75,000/- was received as commission/ brokerage in cash and same has been claimed to be disclosed in ITR for A.Y. 2012-13. No evidence regarding the receipt of Rs. 75,000/- was produced to demonstrate that the assessee has actually received the brokerage. No details of TDS deducted by the company was furnished or claimed by the assessee. It is mandatory to deduct TDS on payments made on account of commission/brokerage

u/s 194H of the Act, 1961. In the bank statement, only cash deposit of Rs-.75,000/- is appearing. Further, from the perusal of ITR for the A.Y. 2012-13 it was found that assessee has shown Rs.3,28,014/- as income from business and profession. Sh. Akash Sharma S/o assessee was also assessed ii/s 153A t and income form business and profession (Commission/Brokerage from sale) declared are as under:

<i>A.Y.</i>	<i>Amount</i>
<i>2007-08</i>	<i>84,722/-</i>
<i>2008-09</i>	<i>1,29,432/-</i>
<i>2009-10</i>	<i>1,92,552/-</i>
<i>2010-11</i>	<i>3,02,738/-</i>
<i>2011-12</i>	<i>1,19,260/-</i>
<i>2012-13</i>	<i>3,28,014/-</i>
<i>2013-14</i>	<i>86,831/-</i>

Prima facie, from the perusal of the contents of the diary, it appears a business diary related with real estate but, nothing on the records show that the diary belongs to Akash Sharma & the receipts shown in the years as stated above has been earned / derived from the business of the real estate. No details of income/expenditure relating to his business of real estate such as office expense and expenses on account of advertisement etc. has been furnished. No primary evidences were adduced either at the time of assessment to establish the fact that the assessee has been engaged in the business of real estate as broker.”

6. Ld. CIT(A) has confirmed the said addition on the following reasons.

“5.1..... I do not agree with the contention of the appellant because of following reasons’

1. The seized documents were seized from premises of appellant during search and seizure action. Therefore, there is basic presumption that it belongs to appellant.

2. From seized Paper, it is amply clear on the jotting on the seized paper that it is about different stages of payment of Rs. 1.5 Crore in cash as well as through cheques.

3. In the submission of appellant, he has stated that it is business diary and it records only the noting about prospective buyers till year 2006-07. Now, the question arises, if it records noting only up to 2006-07, how it can be related to M/s. Denz Enterprises, in whose case, transfer deed of lease hold rights, has been documented only on 18.08.2011. Moreover, this transfer deed of lease hold rights is entered only on stamp of Rs. 100/-

The plea of the appellant it belongs to Shri Akash Sharma is only an afterthought and without any cogent evidence. In view of the above, I do not find force in the contention of the appellant. The cases relied upon by the appellant are on their own footing and distinguishable on facts. Therefore, these are not applicable to the present case and the addition of Rs.1,50,00,000/- is confirmed.”

7. Before us, ld counsel submitted that, first of all, the search and seizure action was conducted in the cases of the assessee and his son on the same date i.e. 09.04.2012, which is evident from the copy of the Panchnama, placed at pages 34 to 37 of the paper, which clearly shows that there was a

joint search warrant in the name of the assessee and his son at the same premises, House No.D-135, Sector-40, Noida which was in the name of 'Shri Rajinder Sharma, Shri Akash Sharma'. And in another Panchnama also both the names were appearing. Thus, when the assessee's son has categorically admitted that the diary belongs to him, then there was no occasion to draw any inference in the case of the assessee. He further submitted that from the bare perusal of the seized document, a copy of which has been placed at pages 58 of the paper book, it can be seen that it is a dump document and nowhere the Assessing Officer and Id. CIT(A) has tried to correlate the alleged figures mentioned in the documents with the property of the assessee situated at Noida, ignoring that the said property was purchased by assessee on 12.08.2020 by way of registered sale deed and the sale consideration as mentioned at Page No.60 is accepted by the Assessing Officer and Id. CIT(A) as correct. He submitted that both the authorities below have failed to appreciate that no underhand dealing document was found in search which would show that assessee has paid over and above the price mentioned in registered sale deed. Further, from day one assessee has been explaining that the alleged documents belongs to the business of his, who was also searched by Department and who was living with assessee at the same address and in whose case the assessments were framed under section 153A of the Act. He submitted that copy of Panchnama and orders of assessment u/s 153A would

prove beyond doubt that son of the assessee was searched by the revenue and his statement was also recorded by revenue, wherein he has admitted that the impugned document belong to his business and has also explained the deal to which this document pertained. However the AO and CIT (A), without appreciating that provision of section 292C are equally applicable in the case of son also sustained the addition without any reason in the hands of the assessee.

8. Ld. Counsel further submitted that it is a settled position of law that loose sheets found during the course of search are not books of accounts of the assessee and hence no reliance can be placed on these sheets unless they are corroborated with independent material. It is submitted that here the case of the revenue. He further submitted that section 132(4A) empowers an officer to presume that contents of books of such books of account and other documents are true. In this regard, it is submitted that it is now well settled law by the Hon'ble Apex Court in the case of **CIT Vs P.R. Metrani reported in 287 ITR 0209 (SC)** that presumption under sections 132(4A) is a rebuttable presumption and the same is not available for the purpose of framing assessment. It is submitted that perusal of the seized documents would show that these are no books of accounts or not fall under the definition of other documents also. These are dump documents only. He also relied upon various judgments to contest that these are merely dump documents and cannot be used against the assessee.

9. On the other hand, ld. DR strongly relied upon the order of the Assessing Officer and ld. CIT(A) and also relied upon catena of judgments. The list of which are as under:

1. **CIT vs. Naresh Kumar Aggarwala [2011] 9 taxmann. Com 249 (Delhi)/[2011] 198 Taxman 194 (Delhi)/[2011] 331 ITR 510 (Delhi)**
2. **Mahabir Prasad Rungta vs. CIT (2014) 43 taxmann.com 328 (Jharkhand)/[2014] 266 CTR 175 (Jharkhand)**
3. **Bhagheeratha Engineering Ltd. Vs. ACIT [2017] 79 taxmann.com 325 (Kerala)/[2015] 379 ITR 244 (Kerala)/[2016] 280 CTR 209 (Kerala)**
4. **Ashok Kumar Vs. CIT [2016] 69 taxmann.com 129 (Patna)/[2016] 239 Taxman 436 (Patna)/[2016] 386 ITR 342 (Patna)/[2016] 290 CTR 450 (Patna)**
5. **Baldev Raj vs. CIT [2010] 2 tamann.com 335 (Punjab & Haryana)**
6. **CIT vs. Sonal Construction [2012-TIOL-851-HC-DEL-IT] (Delhi)**

10. We have heard the rival submissions and also perused the relevant material placed on record. The entire addition has been made on the ground that the seized document at **page no.24 Annexure A-21 Part No. ANR-01** which was a part of diary was found from the residential premises of the assessee, therefore, the cash transaction mentioned therein belongs to the assessee, and therefore, presumption has been

drawn u/s. 132(4A) and 292C. We are unable to appreciate the reasoning given by the Assessing Officer and Id. CIT (A), as to how the presumption u/s. 132(4A) and 292C has been drawn against the assessee, once it is a matter of fact that from day one the assessee has been contending that these seized documents belongs to his son, Mr. Akash Sharma which pertains to his business of real estate agent. Not only that, there was a joint search warrant in the name of “Shri Rajinder Sharma and Shri Akash Sharma’ on the same premises in which the said document was found, then how the presumption has been drawn that it belongs to the assessee when the other person searched has himself owned up the document and has given his explanation. There is no reason as to why this document which has been denied by the assessee and accepted by the other searched person, adverse inference has been drawn in the case of the assessee and presumption is made in terms of Section 132(4A) and Section 292C. Not only that, as incorporated above the assessee’s son Shri Akash Sharma was also subjected to assessment u/s.153A, that means no adverse inference has been drawn despite Mr. Akash Sharma has owned up that these document belongs to him. Simply because the house is registered in the name of his father, i.e., assessee, it does not lead to inference that document which pertain to son residing in the same premises belongs to the assessee. Without going into the merits of the explanation given and also whether it is in nature of the dump document or not because the very

premise of drawing an adverse presumption against the assessee is not tenable and we hold that addition is unsustainable in the hands of the assessee.

11. In view of aforementioned facts that assessee's son was also covered under the search in the same premises and the document found from the said premises has been categorically owned by his son, Shri Akash Sharma who has given his explanation, then instead of drawing any inference in his assessment u/s.153A, no presumption has been made in the case of the assessee. Thus, once this document does not belong to the assessee nor there is any mention of any name of the seized document, presumption u/s. 132(4A) and Section 292C cannot be made against the assessee. Accordingly, no addition based on the said seized document can be made and same is directed to be deleted.

12. In the result, the appeal of the assessee is allowed.

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 28th September, 2021

Sd/-
[ANIL CHATURVEDI]
[ACCOUNTANT MEMBER]

DATED: 28/09/2021

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER