

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5571/Del/2016: Asstt. Year : 2012-13

ACIT, Central Circle-3, New Delhi	Vs	M/s Mauria Udyog Ltd., R. No. 107, 1 st Floor, Netaji Subhash Road, Anand Jyoti Building, Kolkata, W.B.-711204
(APPELLANT)		(RESPONDENT)
PAN No. AABCM9522F		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Ms. Sarita Kumari, CIT DR

Date of Hearing: 22.11.2021

Date of Pronouncement: 21.02.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the orders of the Id. CIT(A)-23, New Delhi dated 31.08.2016.

2. Following core grounds have been raised by the Revenue:

"1. On the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.1,64,20,000/- made by the AO on account of cash transaction with Amrapali Group.

2. On the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.56,42,710/- made by the AO on account of unexplained money."

2. The assessee is a flagship company of Mauria group engaged in the business of manufacturing of LPG Cylinders, Self

Closing Valves, Domestic Pressure Regulators, Adopter, Terry Towel, Readymade Garments, Cylinder Accessories and trading in Edible Oil Seed, Valves HR Coil, GI Pipe, TMT Bar, Burner Top Burner Spindle, Shares Securities, Land & Real Estates and all type of steels.

3. A search & seizure proceedings u/s 132 of the Income Tax Act, 1961 were conducted in the case of M/s Mauria Udyog Ltd. and its group concerns and residential/factory premises of partners, directors and proprietors of the group on 07.08.2013.

4. At the outset, it was brought to our notice that the same issue of cash transactions with Amarpali Group has been adjudicated by the Co-ordinate Bench of ITAT in ITA No. 5573, 6660 & 6661/Del/2016 for the A.Y. 2013-14 in the case of the assessee vide order dated 29.11.2018. For the sake of ready reference, the relevant portion of the order is as under:

"ITA No. 5573/DEL/2016

2. The only grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 1 crore made by the Assessing Officer on account of unexplained income u/s 69A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that during search and survey operations conducted at various premises of Mauria Udyog Ltd. incriminating documents relating to transactions undertaken by the 3 group with Amrapali Group of companies were seized. One such document which was a .xls file was extracted from Annexure A-2 Party P-17 from the residence of

Shri Rohtash Kumar. Statement of Shri Rohtash Kumar was recorded u/s 13294) of the Act. The relevant portion of his statement is reproduced as under:

"Q No. 28. As per your answer to above question it is clear that he amounts mentioned against the noting "cash/cash payments cash received/paid by the Mauria Group/Bihariji Group from/to Amarpali Group. The details of such payments is as follows:

<i>Date</i>	<i>Amount</i>
<i>28/11/2012</i>	<i>50,00,000</i>
<i>28/11/2012</i>	<i>50,00,000</i>
<i>19/10/2012</i>	<i>25,00,000</i>
<i>24/11/2012</i>	<i>25,00,000</i>
<i>11/12/2012</i>	<i>50,00,000</i>
<i>31/01/2013</i>	<i>50,00,000</i>
<i>01/02/2013</i>	<i>50,00,000</i>
<i>16/02/2013</i>	<i>1,00,00,000</i>
<i>21/02/2013</i>	<i>1,00,00,000</i>
<i>28/02/2013</i>	<i>1,00,00,000</i>
<i>11/03/2013</i>	<i>1,00,00,000</i>
<i>14/03/2013</i>	<i>1,00,00,000</i>
<i>22/03/2013</i>	<i>50,00,000</i>
<i>23/03/2013</i>	<i>50,00,000</i>
<i>30/03/2013</i>	<i>50,00,000</i>

This shows that an amount of 9 Crores has been reed in cash and 50 lacs paid in cash by Bihariji Group/Mauria group from/to Amarpali Group. Do you agree with this? If so, comment on accounting of these transactions in the books of Bihariji/Mauria Group?

Ans Yes I agree that the above mentioned payments have been received/made in cash by Bihariji Group/Mauria Group from/to Amarpali Group. However, regarding its accounting I am not sure. Mr Navneet Sureka can only comment on it."

4. On the strength of the statement of Shri Rohtash, the Assessing Officer formed a belief that Shri Rohtash himself admitted that the amounts that are mentioned in the .xls file are nothing but payments that have been made by different Amrapali Group companies to Mauria group company. The Assessing Officer was of the opinion that the case is squarely covered u/s 69A of the Act and accordingly, made an addition of Rs. 1 crore. The assessee carried the matter before the CIT(A).

5. The CIT(A), drawing support from the decision given by him in the case of M/s Bihari Ispat Udyog Ltd in Appeal No. 23/16-17, deleted the addition.

6. Before us, the Id. DR pointed out that the appeal in the case of M/s Bihari Ispat Udyog Ltd [supra] has been dismissed by the Tribunal for want of tax effect.

7. Before us, the Id. Counsel vehemently stated that though the additions have been made u/s 69A of the Act, the said provisions are not at all applicable to the facts of the case in hand. It is the say of the Id. AR that since the foundation itself is weak, the super structure must fall.

8. Per contra, the Id. DR strongly supported the findings of the Assessing Officer.

9. We have given thoughtful consideration to the orders of the authorities below. Before proceeding further, let us examine the provisions of section 69A of the Act which read as under:

"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the 4Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

10. A plain reading of the aforesaid section clearly shows that it is applicable in a case where the assessee is found to be owner of any money, bullion, jewellery or other valuable article. The facts of the case in hand show that the assessee was never found to be in possession of any real money. The addition having been made only on the strength of some notings found in some file extracted from the computer of Shri Rohtash, clearly establish that the provisions of section 69A of the Act do not apply. We agree with the contention of the Id. AR that the foundation itself is weak and the addition should not survive. However, the Assessing Officer made the addition on the strength of the statement of Shri Rohtash wherein he has admitted that Rs. 1 crore has been received. Exhibit 85 of the

paper books reveals that on the date of receipt of the impugned amount, the same was returned back to Amrapali Group by M/s Bihariji group. The entries of Rs. 50 lakhs each on 11.12.2012 and 01.02.2013 can be seen from the said Exhibit 85 of the paper book. This means that the date on which the alleged Rs. 1 crore was received, on the very same day the same was returned back.

11. More importantly, there is no mention of the assessee's name in the impugned document. The Assessing Officer has simply assumed that the reference to the impugned amount is in relation to the assessee. In our understanding, no addition can be made on the basis of presumptions and surmises. Assuming, yet not accepting that the amounts were received by the assessee, the same were returned back on the very same date as per Exhibit 85 of the paper book. Even on this count, addition is uncalled for.

12. In the result, the appeal filed by the Revenue is dismissed."

6. Since, the issue has been squarely covered by the judgment of Co-ordinate Bench of ITAT as mentioned above except the change in the quantum involved, in the absence of any change in the material facts and legal proposition, the appeal of the Revenue on this ground is hereby dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 21/02/2022.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 21/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR