

आयकरअपीलीयअधिकरण “ए” न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM
AND DR. DIPAK P. RIPOTE, AM

आयकरअपीलसं. / ITA No. 1131/PUN/2017
निर्धारणवर्ष / Assessment Year : 2010-11

Shri Girish Chaudhari, L/H of Bhagwat Chaudari, 11, Swed Bindu, Shanti Nagar, Yawal Road, Bhusawal, Jalgaon-425201. PAN No. AALPC 0512 G	Vs	The I.T.O. (Central)-1, Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Nikhil S Pathak & Shri Devendra P Kulkarni- ARs
Revenue by	Shri S.P.Walimbe- DR
Date of hearing	22/03/2022
Date of pronouncement	06/05/2022

आदेश/ ORDER

PER: DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of ld.Commissioner of Income Tax(Appeals)-12, Pune, Appeal No.PN/CIT(A)-12/825,826,827,828/2014-15 dated 20/03/2017 for the Assessment Year 2010-11. The Assessee has raised following grounds of appeal:

- “1. *The learned CIT(A) erred in confirming the addition on account of deemed rental of Rs. 3,09,357/- u/s 23(4) of the Act.*
- 1.1 *The learned CIT(A) failed to appreciate that the said addition of Rs. 3,09,357/- was not justified since no incriminating evidence was found relating to this issue in the course of search and hence, the said addition ought to have been deleted.*
- 1.2 *The learned CIT(A) failed to appreciate that the various properties in respect of which the deemed rental income was being taxed were used for the business purposes by the appellant and therefore, there was no reason to tax deemed rental income u/s 23(4) of the Act.*
2. *The learned CIT(A) erred in confirming an addition of Rs. 5,229/- on account of undisclosed rental income received by the appellant*

without appreciating that no incriminating evidence was found relating to this issue in the course of search and hence, the said addition was not justified at all.

- 2.1 *The learned CIT(A) erred in not appreciating that the addition made was no presumptions and surmises and therefore, such addition was not justified at all.*
3. *The learned CIT(A) erred in confirming an addition of Rs. 1,06,00,000/- made on the basis of the notings on the seized paper on the ground that the said notings indicated unaccounted receipt of the appellant.*
- 3.1 *The learned CIT(A) failed to appreciate that the notings on the loose paper were dump notings and no addition could be made in the hands of the appellant on the basis of these notings and accordingly, the addition made should be deleted.*
- 3.2 *The learned CIT(A) erred in not appreciating that no corroborative evidence was found during the course of search which indicated that the appellant had received unaccounted income of Rs. 1,06,00,000/- and accordingly, the addition made is not justified at all.*
4. *The appellant craves leave to add, amend or delete any of the above grounds of appeal.”*

2. Brief facts of the case are that it is mentioned in the assessment Order that the assessee had not filed return of income under section 139 of the Act. Assessee filed return of income only after the search under section 132, in response to notice under section 153A. There was a search under section 132 at the residential premises of the assessee on 04/10/2011 and Survey under section 133A in the business premises. The copies of the seized documents were provided to the assessee. Assessment was completed under section 143(3) r.w.s 153A.

2.1 In para 12 of the assessment order the Assessing Officer(AO) has made addition of Rs.1,06,00,000/-. The relevant part of the assessment order is reproduced hereunder:

“12.1 During the course of search at the assessee’s residential premises at 11, Swed Bindu, Tapi Road, Shanti Nagar, Bhusawal, Dist. Jalgaon, documents were seized as per Annexure-A/4, Page No.1 to 49 (written pages 1 to 4, 6 to 11, 48 & 49). Vide notice dated 19.09.2013 the assessee was called upon to explain the nature of transactions entered on Page No.9 as under:

“Page No.9 :- This page contains hand written notings dated 10.05.2009 made by Pen. It contains noting of Rs 5 Lacs. It also contains following notings

31	30	
<u>15</u>	<u>10</u>	
46	5	Nashik
<u>5</u>	1	Gabu
51	<u>9</u>	Tinu
	55	

The above notings are noted in coded form.

Please decoded the above coded transaction and whether these transactions mentioned therein are recorded in your regular books of accounts? If yes, furnish copy of relevant ledger account extract along with books of accounts, falling which the above transactions will be assessed as your “unexplained income.”

12.2 The assessee in his submissions filed on 08.01.2014 submitted as under:

“Rough scribbled / jotting miscellaneous noting document. Therefore this has no evidentiary value.”

12.3 The assessee’s above submissions have been perused. These notings are like the notings in the diaries seized as per Annexure-A/2, A/4 & A/6 from the residential premises of Shri Girish B. Chaudhari at Pune. While completing assessment of the assessee for A.Y. 2011-12 details reasons have been recorded while making additions in respect of the amounts noted in the diaries. From the perusal of the document it is appearing that monies have been received from Gabu and Tinu who are family members of the assessee and the above entreis are in coded form i.e. the amounts are noted in lacs. Total amount received is Rs.1,06,00,000/- (51 + 55). Therefore sum of Rs.1,06,00,000/- is added to the total income of the assessee on account of undisclosed income. Penalty proceedings u/s.271(1)(c) of the Act are initiated separately.”

2.2 The Id.CIT(A) has discussed the issue in para 30 page 85 of his order. The Id.CIT(A) held as under:

“The paper was seized from the residence of the appellant and primary onus was on the appellant to explain the content of the same. The seized paper is not rough jotting as claimed by the

appellant as it contained date as well as names of the family members of the appellant. One of the notings at the top left hand corner mentioned as Rs.5 lakh, which decoded that all other notings were in lakhs. The AO had held that amounts were received by the appellant. Simple denial by the appellant would not rebut the presumption u/s 132(4A) of the Act. I, therefore, uphold the addition of Rs.1,06,00,000/- being the undisclosed income of the appellant for the year under consideration. Ground raised by the appellant is hereby dismissed.”

3. Aggrieved by the order of the ld.CIT(A), the appellant assessee has filed this appeal before this Tribunal.

4. In the beginning the ld.Authorised Representative(ld.AR) submitted that the Ground No.1, 1.2, 2, 2.1 are not pressed. Accordingly, the said grounds are dismissed as not pressed.

5. With respect to addition of Rs.1,06,00,000/-, the ld.AR submitted that these are dumb notings. He stated that no supporting evidence has been brought by the AO. However, the ld.AR accepted that the notings are in the handwriting of the assessee and the paper was found in the residence of the assessee.

5.1. The ld.Departmental Representative(ld.DR) invited our attention to the seized document. The ld.DR for the Revenue explained that this seized document is not a dumb paper. The ld.DR further explained that on the top right hand corner, date is mentioned as “Date 10/05/2009”. Then he explained that on the left hand top corner, the word mentioned is 5 lakhs. The ld.DR further explained that there are names mentioned against the figures as under:

31	30
<u>15</u>	<u>10</u>

46	5	Nashik
<u>5</u>	1	Gabu
51	<u>9</u>	Tinu
		55

The ld.DR brought to our attention that Gabu and Tinu are names of assessee's sons. The ld.AR confirmed this fact. The ld.DR explained that since on the left hand top corner of the page 5 lakhs is mentioned, it can be inferred that the other figures are also in lakhs. Therefore, the ld.DR vehemently stated that the onus was on assessee to explain these documents. The assessee failed to make any submission other than stating that these are dumb notings. As per section 292C of the Act, the onus is on assessee to prove that these are dumb notings as claimed. In the absence of any explanation, the AO has rightly arrived at the conclusion that the assessee has received Rs.1,06,00,000/- and tax as undisclosed income.

6. We have heard both the parties, perused the material available on record and gone through the orders of lower authorities. We have also gone through the impugned seized paper. It is observed that on the seized paper there is mention of "structure – vedant". Section 292C of the Act is reproduced here as under:

"292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*
- (ii) that the contents of such books of account and other documents are true; and*
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in*

that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.”

6.1 Thus, as per section 292C, the documents found during the search is presumed to be belonging to the person searched. It is also presumed that the contents of such documents are true. Therefore, in this scenario, the onus was on the assessee to establish that these were dumb notings as claimed. The assessee has only stated that the notings are dumb notings. It is a fact that names of assessee's sons i.e. Gabu and Tinu appear against the figures on the impugned seized paper. Also date 10-05-2009 appears on the impugned paper. And also name Vedant appears on the paper. The Income Tax Act has cast an obligation on the assessee to explain entries appearing on the impugned paper. However, the assessee has not offered any explanation. If we apply the test of human probability, no person will write his sons names, a specific dates on a paper and preserve it. No one preserves a paper with casual entries. A search was conducted on 04-10-2011, whereas the impugned paper has a date 10.05.2009. No prudent person will preserve the paper with casual notings for two years. It is also a fact that the appellant had not filed the return of income under section 139 of the Act. The return was filed only after the Search action. All these things together explains that the notings on the impugned paper are not dumb notings. The AO has rightly concluded that appellant had received

Rs.1,06,00,000/- as undisclosed income. Therefore, the said addition is upheld. The ground no.3 raised by the assessee is dismissed.

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

Order pronounced in the open Court on 6th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6th May, 2022
*SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-Central, Pune.
4. The Pr. CIT concerned, Pune.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.