

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

**Before Sh. Saktijit Dey, Judicial Member**

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

**ITA No. 7428/Del/2017 : Asstt. Year : 2009-10**

Sanjeev Kumar, RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049	Vs	ACIT, Central Circle-14, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABBPK0132H</b>		

**Assessee by : Sh. Rakesh Gupta, Adv.**

**Revenue by : Sh. H. K. Choudhary, CIT DR**

**Date of Hearing: 16.03.2022**

**Date of Pronouncement: 18.05.2022**

**ORDER**

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

The present appeal has been filed by the assessee against the order Id. CIT(A)-XXVI, New Delhi dated 30.11.2017.

2. Following grounds have been raised by the assessee:

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order.*

*2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.50,00,000/- on the basis of material allegedly found during the course of search by treating as alleged unexplained income and that too in the year under appeal and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.50,00,000/- on the basis of material allegedly found during the course of search by treating as alleged unexplained income is bad in law and against the facts and circumstances of the case.*

5. *That in any case and without prejudice to the above grounds, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A and 234B of the Income Tax Act, 1961."*

3. The only grievance of the assessee is pertains to the addition of Rs.50,00,000/- being the opening balance as on 01.04.2009 in the hands of the assessee.

(5) Power Plant  
Mohit Kumar Shahdara  
Ledger Account  
1-Apr-2009 to 31-Mar-2010

Date	Particulars	Vch Type	Vch No	Debit	Page 1 Credit
1-4-2009	To Opening Balance				50,00,000.00
6-7-2009	To (1) Rama Group	Journal	1	2,00,000.00	
7-8-2009	By (1) Rama Group	Journal	1		2,00,000.00
28-11-2009	To (1) Rama Group	Journal	6	8,00,000.00	
21-12-2009	To (1) Rama Group	Journal	1	5,00,000.00	
6-2-2010	To (1) Rama Group	Journal	1	5,00,000.00	
8-3-2010	To (1) Rama Group	Journal	1	2,00,000.00	
	By Closing Balance			20,00,000.00	52,00,000.00
				32,00,000.00	
				52,00,000.00	52,00,000.00

Mohit Shahdara  
Ledger Account  
1-Apr-2010 to 31-Mar-2011

Date	Particulars	Vch Type	Vch No	Debit	Page 1 Credit
1-4-2010	Cr Opening Balance				32,00,000.00
20-4-2010	Cr (1) Rama Group	Journal	1	3,00,000.00	
	Dr Profit & Loss A/c	Journal	2		6,00,000.00
5-5-2010	Cr (1) Rama Group	Journal	1	2,00,000.00	
5-7-2010	Cr Cash	Payment	7	3,00,000.00	
6-7-2010	Cr (1) Rama Group	Journal	1	1,21,063.00	
8-6-2010	Cr (1) Rama Group	Journal	3	1,50,000.00	
15-6-2010	Cr (1) Rama Group	Journal	4	50,000.00	
21-8-2010	Cr (1) Rama Group	Journal	5	78,930.00	
27-8-2010	Cr (1) Rama Group	Journal	6	1,00,000.00	
31-8-2010	Cr (1) Rama Group	Journal	9	3,50,000.00	
11-9-2010	Cr (1) Rama Group	Journal	2	1,50,000.00	
29-9-2010	Cr (1) Rama Group	Journal	5	1,50,000.00	
30-9-2010	Cr (1) Rama Group	Journal	6	1,50,000.00	
6-10-2010	Cr (1) Rama Group	Journal	4	2,00,000.00	
12-10-2010	Cr (1) Rama Group	Journal	7	5,00,000.00	
19-10-2010	Cr (1) Rama Group	Journal	8	2,00,000.00	
26-10-2010	Cr (1) Rama Group	Journal	9	3,00,000.00	
15-11-2010	Cr (1) Rama Group	Journal	1	5,00,000.00	
	Cr Cash	Payment	22	7.00	
25-2-2011	Cr (1) Rama Group	Journal	1	5,00,000.00	
12-3-2011	Cr (1) Rama Group	Journal	1	1,50,000.00	
23-3-2011	Cr (1) Rama Group	Journal	2	3,50,000.00	
				48,00,000.00	38,00,000.00
	Dr Closing Balance				10,00,000.00
				48,00,000.00	48,00,000.00

(5) Power Plant

Mohit Shahdara  
Ledger Account

4. The AO held that the above seized material is the page no. 4 of the annexure A-19 seized from the party RU-2 which is the residence of Sh. Sanjeev Kumar at Rama Kutir, D.M. Road, Bulandsahar, U.P. shows transactions in the name of Sh. Mohit Kumar Shahdara and Rama group for the F.Y. 2009-10 and F.Y. 2010-11. Sh. Mohit Kumar is the son of Ms. Meena Gupta, who is the sister of Sh. Sanjeev Kumar, However, these transactions relating to Sh. Mohit Kumar are not accounted in the books of accounts nor the assessee has provided any documentary proof of these transactions proving them to be genuine.

5. As such the opening balance is Rs.50,00,000/- is treated as unexplained income for F.Y. 2008-09 and added to the total income in the hands of Sh. Sanjeev Kumar on substantive basis as these papers have been found from his possession at his residence and he has failed to explain these transactions and relate them to the books of accounts.

6. Aggrieved the assessee filed appeal before the Id. CIT(A) who held that the assessee has not offered any explanation in respect of the document before him or before the AO. It was held that this is a clear set off progressive transaction spanning three years as indicated by the opening balances, period of transactions and also the closing balances. The document was seized from the assessee and was cogent in description. The Id. CIT(A) held that it cannot be treated as a dumb document and confirmed the addition made by the AO.

7. Aggrieved the assessee filed appeal before us.

8. Heard the arguments of both the parties and perused the material available on record.

9. The submission of the Id. AR before the AO which have been reiterated before us are as under: [submissions before the Id. CIT(A)]

*"AO has made addition of Rs. 50,00,000/- vide para 8& 9 of the Assessment Order on the ground that page no. 4 of Annexure A-19 seized from the party RU-2 contains the transactions of this amount and since no explanation has been offered by the appellant according to Ld. AO, therefore such amount was added to the total income of the assessee.*

*It is respectfully submitted that the above referred page has been reproduced by Ld. AO at Page 17 of the Assessment order and Ld. AO has taken the figure of Rs. 50,00,000/- from the 'opening balance' of the ledger account of 'Mohit Kumar Shahdara'.*

*It is submitted that the said document does not belong to the assessee. It is not in the handwriting of the assessee nor bears his signature or his name. Moreover, the word 'Power Plant ' is appearing at the top of the page which also shows that this document does not belong to the assessee. There is no corroborative material which could be linked with the appellant. Who is Mohit Kumar, Shahdara has not been spelt out by Ld. AO. There is no adverse statement in this regard. There is nothing asked from the appellant at the time of search in this regard. Therefore, the first submission of the appellant is that addition could not be made in the hands of the assessee merely for the reason that this document was found at the residence of the assessee. (PB 3). Further, it is not out of place to mention here that 'Power Plant ', according to the information of the appellant, belongs to M/s Rama Brewery and therefore also Mr. Sanjeev, the assessee, has nothing to do with the alleged 'Power Plant ' and addition on such account could thus not be made in the hands of the appellant under any circumstances.*

*Next submission of the appellant is that without prejudice the above the said amount of Rs. 50,00,000/- does not belong to impugned assessment year. According to the document itself the said amount belongs to A. Y. 2008-09 which is evident from ledger account of A.Y. 2008-09 of "Mohit Sahadra" enclosed in paper book (PB 4). Therefore, when the said amount does not belong to the year under appeal; this amount cannot be added in impugned assessment year under any circumstances. A document is sought to be believed by Ld. AO according to his fancy. There cannot be blowing hot blowing cold. Theory of approbation or reprobation does not apply. Something cannot be believed on pick and choose basis or on the basis of parts. Therefore for this reason alone, impugned addition could not be made in the year under appeal and since made, it is prayed that the same may please be deleted.*

*Moreover, it may please be seen that Ld. AO has not returned any finding as to this opening balance of Rs. 50,00,000/- in the account titled as 'Mohit Kumar Shahdara' appearing on this document represents what. Nothing has been made out as to whether this was loans or liabilities, income, or expenses, payment or receipt, which is evident from plain reading of assessment order at para 8 & 9. Merely some amount has come to be mentioned on some document does not ipso facto lead to the addition. For this reason also, impugned addition could not be made."*

10. On the issue of seized material, we are in agreement with the observation of the Id. CIT(A) who referred to Section 292C which reads as under:

*"292C, Presumption as to assets, books of account, etc.—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, 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."*

11. We have also gone through the Assessment Order and find that the questionnaire was issued on 20.01.2016 and notice u/s 142(1) was issued on 01.02.2016, 11.02.2016, 29.02.2016, 24.10.2016, 01.11.2016, 08.12.2016, 09.12.2016. It can be seen from the assessment order as well as the submissions of the assessee before the Id. CIT(A) that the appellant has not discharged the onus of offering any explanation in this regard. We are in agreement with the finding of the Id. CIT(A) that "concept of Onus is dynamic no doubt, but the assessee is required to first discharge the onus cast upon by way of seizure of such documents that create prima facie basis for the AO to arrive at his conclusions. The assessee has moved on to present a whole series of jurisprudence that deals with next level of responsibility cast on the AO without substantively discharging his onus. Such onus does not shift back by the mere act of the assessee in plainly denying the document without really offering corroborative data or any

*substantive contentions to establish his case to rebut the information conveyed per the seized document. The appellant fails on this count as the primary onus is yet not discharged."*

12. Before us, it was argued that the addition cannot be made in the current year i.e. A.Y. 2009-10. We find that the document reflect opening balance as on 01.04.2009 which denotes that the amount has been brought forward from the earlier year F.Y. 2008-09 hence it has been rightly added to the income of the Assessment Year 2009-10. The Id. CIT(A) has squarely given a finding that this is a part of the progressive transactions spanning three years. It cannot be expected from the revenue to do an act of logical impossibility of proving a negative. The seized material has been found at the premises of the assessee for which the provisions of Section 292C are invited, the opening balance as on 01.04.2009 proves that the amount has not been earned in the F.Y. 2009-10. Hence, the AO has rightly brought the amount to tax in the A.Y. 2009-10.

13. On going through the entire factum, we are in agreement with the Id. CIT(A) who held that *"the available jurisprudence is clearly distinguishable on the facts of the case as assessee has failed miserably in discharging the primary onus in this regard to explain a document which is a speaking document and the place of its seizure clearly links it to the assessee. The assessee has deliberately and consciously chosen to not explain the document. The onus is clearly and unambiguously of the assessee and the failure to discharge the onus is writ large across the whole gamut of proceedings. Onus is a very dynamic concept no doubt but the assessee or the taxpayer has to first discharge his role by sincerely trying to explain. Mere silence of*

*evasion does not absolve the assessee. In fact silence and evasion are bound to result in adverse inference. The Id. Counsels have relied on variety of jurisprudence which is clearly inapplicable in absence of proper discharge of onus of explaining by the assessee. The assessee is bounden to cooperate and explain the documents indicating substantial transactions running into huge amounts.*

*The nomenclature of the same as ledger and formatted entries clearly point towards a systematic record of the transactions and this accompanied with total silence on the nature and type of transactions and absence of any linkages of the same with the books of accounts of the assessee, further reinforces the finding of the AO."*

14. The ledger indicates clear pattern of transactions which were not explained by the assessee. Hence, the amount of Rs.50,00,000/- being the opening balance pertaining to the F.Y. 2008-09 relevant to the A.Y. 2009-10 is hereby confirmed.

15. In the result, the appeal of the assessee is dismissed.  
Order Pronounced in the Open Court on 18/05/2022.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

**Dated: 18/05/2022**

**\*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**