

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.41/Ind/2021
Assessment Year:2012-13

ACIT Central-2, Indore (Appellant)	<u>बनाम/</u> Vs.	Smt. Vimla Garg, Indore (Respondent)
P.A. No.ACJPG8157F		
Revenue by	Shri P.K. Mitra, CIT-DR	
Assessee by	Shri Ajay Tulsian & Miss Shalini Mehta, CAs	
Date of Hearing:	03.01.2022	
Date of Pronouncement:	08.03.2022	

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld.CIT]-III, Indore dated 28.08.2020 which is arising out of the order u/s

143(3) of the Income Tax Act 1961(In short the 'Act') dated 04.03.2014 framed by DCIT (Central), Indore.

The revenue has raised following grounds of appeal :

“ On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,29,67,100/- made by the Assessing officer on account of unexplained income.”

2. This appeal was filed on 01.03.2021 and Registry has informed that this appeal is time-barred by 104 days. Ld. CIT-DR submitted that due to current pandemic, the delay occurred which may be condoned in view of guidelines of Govt. of India and Hon'ble Supreme Court. On the other hand, Ld. counsel for the assessee submitted that delay should not be condoned. We find that vide Gazette "CG-DL-E-29092020-222110 No.63 New Delhi, 29/2020 issued by Secretary to Govt. of India, it has been directed that in computing the period of limitation for any appeal, the period for 20.3.2020 till 31.12.2020 or 31.3.2021, as the case may be, shall stand excluded. Further, the Hon'ble Supreme Court in *Suo Motu* Writ Petition (Civil) No.3 of 2020 dated 08.3.2021 has issued directions that in computing the period of limitation for any suit/appeal, the period for 15.3.2020 till 14.3.2021 shall stand excluded. Considering the same, we condone the delay in filing the revenue's appeal and admit the same for hearing.

3. Brief facts of the case as culled out from the records are that the assessee is an individual earning income from house property, share from partnership firm, capital gain, interest and others sources. Search and seizure operations u/s 132 of the Act were

carried out on 05.05.2011 on the business as well as residential premises of the Keti/Kalyan Group of Indore including the assessee. Assessee served with notice u/s 153A of the Act for furnishing the return of income for the year under appeal i.e. A.Y. 2012-13. Return was filed on 31.08.2012 declaring total income of Rs. 5,81,295/- including additional income of Rs.2,74,727/- voluntarily disclosed by the assessee. During the course of search proceedings, certain loose papers and diary bearing number at LPS-2/3, LPS-2/4 and BS-2/6 were found and seized from the residence of Shri Shyam Kumar Garg and Smt. Vimla Garg situated at Vidyakunj, Bicholi Mardana, Indore. In these loose papers, certain transactions were found to be recorded in the hand writing of Smt. Vimla Garg. Assessee was confronted as to why not the addition for Rs.2,29,67,100/- should not be made in the hands of assessee for income from unexplained sources appearing in seized documents. In response the assessee submitted that the transactions referred in the seized documents are mostly business transactions and have already been offered either in the hands of Mr. Shyam Garg as part of the additional income offered at Rs.2,21,96,290/- and in the case of assessee at Rs.21,11,150/- spread over various assessment years covered under search. Crux of the assessee's submissions were that the transactions appearing in the alleged seized loose papers are either explained by her or by her husband. The explanation given by the assessee were considered not found acceptable and ld. AO completed the assessment by making the addition for undisclosed

income of Rs.2,29,67,100/- and assessed the income at Rs.2,35,48,395/-.

4. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and partly succeeded and so far as addition of Rs. 2,29,67,100/- is concerned made by the Ld. AO for undisclosed income. Ld. CIT(A) deleted this addition on the basis of his observation that the noting mentioned in the seized loose paper relates to the business transactions and have been owned by her husband and already offered to tax.

5. Aggrieved revenue is now in appeal before this Tribunal. Ld. DR vehemently argued supporting the order of Ld. AO.

6. Per contra, Ld. counsel for the assessee vehemently argued referring to the detailed finding of Ld. CIT(A) and submission and documents placed before us.

7. We have heard rival contentions, perused the records placed before us. The revenue's sole grievance raised in ground no.1 is that the ld. CIT(A) erred in deleting the addition of Rs.2,29,67,100/- made by the ld. AO on account of unexplained income.

8. We find that Ld. CIT(A) on examination of the documents, seized material and income offered by the assessee's husband at Rs.2,21,96,290/- and by the assessee at Rs.21,11,150/- spread over various assessment years coupled with the fact that most of the transactions were related to the business and the cash income and expenditure of the group concerns was handled by the assessee

for centralized control and accordingly deleted the addition observing as follows:

3. Ground No. 1 and. 2:- *These grounds have been raised against the addition of Rs. 2,29,67,100/- made by the AO as undisclosed income. The issue is discussed by the Ao in Para 10 to 11.6 of the assessment order. The facts of the issue under consideration as gathered from the assessment order and also the written submissions of the appellant are that search operation u/s 132 were carried out in the case of Keti Kalyan Group of Indore and the appellant, a member of Kalyan Group was also covered. Certain documents were seized from the residential premises of the appellant, some of which were in the hand writing of the appellant. During the assessment proceedings the AO asked the appellant to explain the notings on the seized material. The AO has noted that the assessee filed written submission dated 15.01.2014 and, stated that all this transactions have already been offered in the hands of her husband Shri Shyam Garg. It is further stated by the AO that it was also explained by the assessee that the notings are in respect of cash in hand of most of the group companies of Kalyan Group which use to come to the appellant through the family members / staff Person and as and when required the same were returned back to the family members / staff person and as and when required the same were returned back to the family members / staff to be carried back to the offices of the group companies. The assessee also stated before the Ao that the additional income was offered in the hands of Shri Shyam Garg of Rs. 2,2L,96,290/- and in the hands of Smt. Vimla Gatg of Rs. 21,11,150/- include all the unexplained transactions of the above referred seized material. The AO also noted that the crux of the assessee's submission was that the transactions noted in the seized material are either explained or has already been offered for taxation. This explanation of the assessee was negated by the AO stating that the assessee has not filed any document to substantiate that the amount mentioned above was out of cash in hand of various companies and further stated that the cash balances of such companies are not matching with the transactions. It is also the case of the AO that the assessee neither filed the details of the employees or the family members who have brought the cash from the office nor any affidavit or letters were filed to this effect. Finally the AO concluded that the assessee has failed to establish any correlation between the income offered in the hands of Shri Shyam Garg and the impugned notings and accordingly made an addition of the total amount of Rs. 2,29,67100/ - on the basis of the notings on the seized LPS since the same were in the hand writing of the appellant.*

That appellant has reiterated the submission made before the AO and contended that all the documents seized from the residence of the

appellant, on the basis of which the impugned addition has been made, were duly considered in the case of the appellant's husband Shri Shyam Garg. It is also contended that all the documents were seized from the residence of Shri Shyam Garg who is also a director in the Kalyan Group companies and were related to commercial dealings of the group and were not related to the appellant in her individual capacity in any manner except for the fact that most of these notings were made by the appellant. The appellant explained that she being the wife of the director cash in hand of most of the group companies used to come to her for safe keeping either through the family members or staff members and as and when required, these amounts were used to be taken by the family members / staff persons back to the officers of the group companies. There are also opening and closing balances worked out in the notings. The appellant also contended that after the search, all these notings were recorded in the tally accounting software date wise and systematically and the resultant income was offered in the hands of Shri Shyam Garg. The notings are in the nature in inflows and outflows and the exact nature of the transaction is not discernable from the notings. Considering this aspect and also considering the nature of notings, all the transactions of receipts and payments found noted in all these documents were duly accounted for after the search and the resultant income in the form of negative peak was offered as income in the case of Shri Shyam Garg. The appellant has filed a copy of the assessment order passed in the case of Shri Shyam Garg and submitted that all the impugned seized material, on the basis of which addition has been made in the case of the appellant, were duly considered and also discussed in the assessment order of Shri Shyam Garg and the income offered by Shri Shyam Garg on the basis of these documents has been accepted without any variation and without any adverse comments and therefore, the addition made again in the hands of the appellant has resulted into double taxation of the same income. The appellant has also explained the various notings on the basis of which the addition has been made by the AO through written submission, which is already abstracted above. It is also contended that the AO has only considered the payment side of the notings and has also considered opening / closing balances and added all these amounts and made the impugned addition. It is also the contention of the appellant that the majority of the notings were for the month of January 2011 to March 2011 and some notings were related to April and May 2011, however, the AO without considering this aspect has considered all the notings in the FY 2011-12 i.e. AY 2012-13, while making the addition.

After taking into consideration carefully the observations made by the AO in the assessment order and the detailed written submissions filed by the appellant now proceed to adjudicate the issue under consideration. It is seen that the impugned documents were seized from the residence of Shri Shyam Garg and the appellant. All the notings in these documents

appear to be in the nature of commercial transactions of group concerns of the Kalyan Group. The appellant explained during the assessment proceedings that the impugned material seized from the residence was duly considered in the hands of Shri Shyam Garg. All these notings were date wise jotted down in the tally accounting software after the search and considering the nature of notings, income was worked out on the basis of peak credit and was offered in the hands of Shri Shyam Garg. The assessment of Shri Shyam Garg was also simultaneously taken up by the same AO. It is also seen that the AO issued an identical questionnaire on both the case i.e. in the case of Shri Shyam Garg and also in the case of the appellant in through which both these assessee's were required to show cause as to why an addition of Rs. 2,29,67,100/- be not made on account of the impugned documents seized from their residence. Copies of both the questionnaire dated 30.09.2013 are filed by the appellant in the paper book. From which it is evident that the AO abstracted the same table in the questionnaire issued in the case of Shri Shyam Garg, which is abstracted in the assessment order of the appellant for making the addition. During the assessment proceedings complete details of such notings along with tally printouts were filed to explain the income offered in the hands of Shri Shyam Garg. The assessment proceeding in the case of Shri Shyam Garg was also concluded simultaneously and a copy of the said assessment order passed in his case is also filed in the paper book. A perusal of this assessment order of Shri Shyam Garg shows that all the impugned LPS / BS seized from his residence, including the LPS / BS which have been considered by the AO in making the impugned addition in the hands of the appellant in this appeal, have also been discussed in the assessment order of Shri Shyam Garg. The fact that income was offered by Shri Shyam Garg in respect of these very BS / LPS on the basis of negative peak credit is also mentioned in the said assessment order. While concluding the assessment of Shri Shyam Garg, the AO has rendered a categorical finding that the assessee i.e. Shri Shyam Garg has admitted all the above discrepancies and has also offered income in his returns filed in compliance to the notices issued u/ s 153A and therefore, no addition was made on account of these loose papers. It is also seen that substantial income were offered by Shri Shyam Garg on the basis of this loose papers. Since the very seized material on the basis of which the AO has made the addition in the hands of the present appellant, have already been considered and appropriate income has already been offered in the hands of her husband Shri Shyam Garg, which has also been assessed and accepted in his case, the addition made in the hands of the appellant is patently wrong and uncalled for. From the notings in the seized material it is evident that all these transactions are of commercial nature and cannot be considered as belonging to or undertaken by the appellant in her individual capacity, who is a lady and does not have any business or commercial activity. Since the amounts use to come to the appellant for safe keeping, being the wife of the director and also the

house lady and were taken back subsequently as and when required, notings were maintained by her, as would have been done by any person who is entrusted with such job. Therefore, the mere fact that these notings are in the hand writing of the appellant would not be sacrosanct and cannot be considered, merely on this basis, as her income. The fact that all this notings are related to the business transactions, coupled with the fact that the same were owned up by husband who also offered substantial income on the basis of these notings, which were duly verified and stand accepted and assessed by the same AO is well borne out from the documents on record and also from the assessment order passed in the case of Shri Shyam Garg and there does not remain even an iota of doubt that the same could have been taxed in the hands of the appellant. In view of the above discussion the addition made by the AO of Rs.2,29,67,100/- is held to be wrong and is hereby deleted.

4. **GroundNo.3:** *The appellant did not add, alter, amend or deleted any of the grounds of the appeal on or before the final hearing, therefore, this ground of appeal is hereby dismissed.*

9. From perusal of the above finding as well as the submission made by the assessee before us, we find sufficient merit in the finding of Ld. CIT(A) that the transaction appearing in the alleged seized material No. LPS-2/3, LPS-2/4 & BS-2/6 are mainly business transaction. Assessee is part of the Kalyan/Keti Group wherein various companies are working. Assessee's husband is director in the Kalyan group of companies. The alleged transactions nowhere relates directly to the assessee in her individual capacity except that noting were made in her hands writing. It is claimed before us that cash in hand of the group companies used to come to the assessee, she being wife of the key person/director of Kalyan Group of company for safe keeping either through the family members or staff members and as when required these amounts were used to be taken by the family members/staff persons, back to the offices of the group companies.

10. We also find that the ld. DR failed to controvert the fact that the substantial income has been offered by the assessee's husband Mr.

Shyam Garg at Rs.2,21,96,290/- and by the assessee herself at Rs.21,11,150/- and also could not controvert the fact that the transactions appearing in the alleged seized material have been owned up by her husband and the undisclosed income forming part of such loose paper have been offered to tax being part of the undisclosed income of Rs.2,21,96,290/- by her husband Shri Shyam Garg.

11. We, under the given facts and circumstances of the case and the detailed finding of fact observed by ld. CIT(A) discussed herein above, are of the considered view that the ld. AO erred in making addition of Rs.2,29,67,100/- in the hands of assessee and therefore finding of Ld. CIT(A) deleting the impugned addition need no interference and the same is confirmed.

12. In the result, appeal of the Revenue in ITANo.41/Ind/2021 is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 08.03.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated :08 .03.2022

Patel/Sr. PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Sr. Private Secretary I.T.A.T., Indore