

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 57/DEL/2020 [A.Y 2013-14]

ITA No. 58/DEL/2020 [A.Y 2014-15]

ITA No. 59/DEL/2020 [A.Y 2015-16]

Shri Kewal Kohli
D - 210, Ashok Vihar
Phase - 1, New Delhi

Vs.

The A.C.I.T.
Central Circle -28
New Delhi

PAN: AAEPK 9641 F

ITA No. 387/DEL/2020 [A.Y 2013-14]

ITA No. 388/DEL/2020 [A.Y 2014-15]

The A.C.I.T.
Central Circle -28
New Delhi

Vs.

Shri Kewal Kohli
D - 210, Ashok Vihar
Phase - 1, New Delhi

PAN: AAEPK 9641 F

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA

Department By : Ms. Aashna Paul, CIT- DR

Date of Hearing : 05.07.2022

Date of Pronouncement : 07.07.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above cross appeals by the Assessee and Revenue in ITA Nos. 57 & 58/DEL/2020 by the assessee and ITA Nos. 387 & 388/DEL/2020 by the Revenue are preferred against the order of the CIT(A) - 26, New Delhi dated 06.11.2019 pertaining to assessment years 2013-14 and 2014-15 respectively. The assessee has also preferred an appeal in ITA No. 59/DEL/2020 against the order of the CIT(A) -26, New Delhi dated 06.11.2019 pertaining to A.Y 2015-16.

2. The captioned appeals have common issues and the underlying facts in issues are identical. Therefore, we are disposing off all the appeals by this common order for the sake of convenience and brevity.

3. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was carried out on Dua Group of cases on 25.04.2014 and simultaneously, premises of the assessee and his son Shri Himanshu Kohli were also searched. Various incriminating documents etc. were

found and seized. Statements of various persons were recorded on oath u/s 132(4) of the Act.

4. An analysis of the documents found and seized revealed that Dua group was involved in unaccounted sale and purchase of non-ferrous metals. The son of the assessee, namely, Shri Himanshu Kohli was the key person who handled out of books sale/purchase of the metals for Dua group. Shri Himanshu Kohli, in his statement recorded on oath u/s 132(4) of the Act, admitted that out of books sale and purchase of metal trading of Dua group was done through him for which, he was paid commission of Re. 1/- per kg. He also admitted that 70% of total turnover of this metal trading business belonged to Shri Pawan Kumar Dua and remaining 30% belonged to M/s Kewal Metals whose proprietor was his father, the assessee in the present bunch of appeals.

5. Basis the seized documents, Assessment Year wise break-up of 30% of the total unaccounted turnover in respect of metal trading business of M/s Kewal Metal, as admitted by Shri Himanshu Kohli in his statement was worked out by the Assessing Officer as under:

Assessment Year	Total Qty (revised as per discussions above)	30% of Qty mentioned in Col 2 (belonging to Dua Group)	Value of stock in Col 2 @ Rs 324 per KG as per DG5&D rates (Rs)
1	2	3	4
2013-14	3920560.10	1176168.03	381078442
2014-15	14093661.30	4228098.39	1369903878
2015-15	361287.22	108386.16	35117116
Total	18375508.62	5512652.58	1786099436

6. The Assessing Officer, accordingly, made addition of gross profit of 30% of unaccounted sale in respective Assessment Years and, further made addition on account of investment in these unaccounted transactions after reducing the gross profit added and further made additions,

7. The Assessing Officer also made addition of remaining 70% of gross profit and peak investment on protective basis observing that substantive addition shall be made in the hands of Shri Pawan Kumar Dua.

8. Additions were challenged before the Id. CIT(A).

9. The Id. CIT(A) was convinced that since the addition has been made on substantive basis in the hands of Shri Pawan Kumar Dua, the same was deleted from the hands of the assessee. Addition on account of payment of commission to Shri Himanshu Kohli has also been upheld for Assessment Years 2013-14 to 2015-16. Therefore, the same was also deleted from the hands of the assessee and balance addition has been confirmed.

10. The representatives of both the sides were heard at length, the case records carefully perused. Relevant documentary evidences brought on record duly considered.

11. A perusal of the assessment order shows that the entire addition has been made on the basis of documents found and seized from the premises of the son of the assessee, namely, Shri Himanshu Kohli. Shri Himanshu Kohli, in his statement recorded on oath u/s 132(4) of the Act has also admitted that he was doing unaccounted transactions in metals in the firm, whose proprietor was his father. Even the Assessing Officer has not denied this fact anywhere. The presumption u/s 132(4A) of the Act is against Shri Himanshu Kohli. Similarly, presumption u/s 292C of the Act is also against Shri Himanshu Kohli.

12. There is no denying of the fact that the documents of unaccounted business were found from the premises of Shri Himanshu Kohli and the entire edifice of assessment is based upon this fact. In one of his replies, the assessee has categorically denied the alleged unaccounted transaction, whereas Shri Himanshu Kohli has categorically admitted the unaccounted transaction. Therefore, presumption of sections 132(4) and 292C of the Act has been substantiated by the admission of Shri Himanshu Kohli.

13. In his reply filed by the assessee before the ACIT, Central Circle - 28, New Delhi, which is exhibited at pages 67 to 86 of the paper book, at Para 4.2, which is at page 77 of the paper book, the assessee has specifically mentioned that majority of purchase/sale transactions were of Dua group in respect of which his son Shri Himanshu Kohli had received commission and at Para 4.4, which is at page 79 of the paper book, the assessee has again mentioned that 30% of the transactions represents unaccounted business looked after by Shri Himanshu Kohli and at para 4.6 which is at page 80 of the paper book, the assessee categorically stated that Shri Himanshu Kohli was doing metal business on commission basis for Dua group. While doing it for them, some of

the off-books cash business of metal he began doing it for himself using the name of M/s Kewal Metal Store.

14. The assessee further submitted that unaccounted stock, which was lying there, has been surrendered as undisclosed income for Assessment Year 2015-16.

15. These factual statements of the assessee have neither been controverted nor demolished by the Assessing Officer by bringing cogent material evidence on record. In our considered opinion, the entire additions made by the Assessing Officer are on the basis of surmises and conjectures devoid of any supporting evidence.

16. Statements referred to and relied upon by the Assessing Officer are that of Shri Himanshu Kohli, who, in fact, has admitted the transactions done by himself in the name of his father. Therefore, qua the presumption u/ss 132(4A) and 292C of the Act, the entire additions, if any, should have been made in the hands of Shri Himanshu Kohli and not the assessee.

17. Considering the facts of the case in totality, we do not find any merit in the additions made by the Assessing Officer. Therefore, the Assessing Officer is directed to delete all the additions made in the hands of the assessee.

18. Grounds challenging the validity of the approval u/s 153D of the Act were not pressed and the same are dismissed as not pressed.

19. All the appeals of the assessee are accordingly partly allowed and simultaneously, the appeals of the Revenue are dismissed.

13. To sum up, in the result, all the three appeals of the assessee in ITA Nos. 57 to 59/DEL/2020 are partly allowed whereas the appeals of the Revenue in ITA Nos. 387 and 388/DEL/2020 are dismissed.

The order is pronounced in the open court on 07.07.2022.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 07th JULY, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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