

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'PATNA' BENCH,
[VIRTUAL COURT HEARING AT KOLKATA]**

**Before Shri Manish Borad, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 167/PAT/2019
Assessment Year: 2013-2014**

***Assistant Commissioner of Income Tax,.....Appellant
Central Circle-1, Patna***

-Vs.-

***River Valley Flour Mills Pvt. Limited,.....Respondent
219, Ashiana Tower, Exhibition Road,
Patna
[PAN:AAACD8209P]***

Appearances by:

*Shri Sanjay Mukherjee, CIT, for the Appellant
Shri Nishant Maitin, C.A., for the Respondent*

Date of concluding the hearing : July 20, 2022
Date of pronouncing the order : August 29th, 2022

O R D E R

Per Manish Borad, Accountant Member:-

This appeal at the instance of Revenue for assessment year 2013-14 is directed against the order of Id. Commissioner of Income Tax (Appeals)-3, Patna dated 28.03.2019, which is arising out of the assessment order under section 153A/143(3) of the Act on 23.12.2016 framed by Assistant Commissioner of Income Tax, Central Circle-1, Patna.

2. The Revenue has raised the following grounds of appeal:-

(1) That on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.3,47,53,664/- on account of undisclosed income.

(2) That on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not

considering that every assessment year is a separate and independent proceeding and for the relevant assessment year the highest of the undisclosed assets/capital/income was added by the AO which is theoretically, practically and logically correct on the part of the AO.

(3) That on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not considering the fact that the assessee company failed to prove the genuineness of unaccounted liability of Rs.3,50,55,906/-.

3. Brief facts of the case are that the assessee is a Private Limited Company engaged in business. A search and seizure operation under section 132 of the Act was conducted on 07.08.2014 at the residential and business premises of Gupta Nutritions Group. The assessee-company is related to M/s. Gupta Nutritions Group of cases and was also subjected to the search. Certain incriminating material was found and seized. Notices were issued to the assessee to file return under section 153A of the Act. In response, the assessee filed the return of income under section 153A of the Act and offered undisclosed income by adopting a particular method for computation of undisclosed income. As far as year under appeal is concerned, income of Rs.23,34,260/- was declared in the regular return filed under section 139(1) of the Act and in the return filed under section 153A of the Act, the assessee offered unaccounted income of Rs.3,08,800/- and accordingly declared income at Rs.26,43,060/-. During the course of assessment proceedings carried out after duly servicing notices under section 143(2) and 142(1) of the Act, the Id. Assessing Officer while going through the details and the incriminating material, the assessee has shown the value of unaccounted assets of Rs.3,50,62,464/-, unaccounted capital of Rs.3,08,800/-, unaccounted liability at Rs.3,50,55,906/-. Based on these details, the Id. Assessing Officer was of the view that unaccounted assets were of the highest value and the same should have been offered for taxation as undisclosed income. However, the assessee contended that it is following the

consistent system of accounting for calculating the unaccounted income for A.Ys. 2012-13 to 2015-16 and has offered the unaccounted capital as undisclosed income. However, the ld. Assessing Officer was not satisfied and he after giving the benefit of unaccounted income declared by the assessee at Rs.3,08,800/- made the addition for the remaining amount of Rs.3,47,53,664/- i.e. the value of unaccounted assets and income assessed at Rs.3,73,96,724/-. Aggrieved, the assessee preferred appeal before the ld. CIT(Appeals) and succeeded.

4. The ld. CIT(Appeals) found merit in the contentions made by the assessee holding that there is no discretion available with the Department to rely upon a part of the document favourable to it and plead for rejection of the other part, which is not favourable to it or in respect of which no supporting material is found. The ld. CIT(Appeals) further held that the ld. Assessing Officer has not rebutted that the undisclosed assets, liabilities and capital shown in the seized balance-sheet do not belong to the appellant and since the assessee has already declared a sum of Rs.3,08,800/- for the relevant assessment year, there is no merit in the action of ld. Assessing Officer to enhance the disclosure in current year without giving any cogent reason for his action. Aggrieved, the Revenue now is in appeal before the Tribunal.

5. The ld. Departmental Representative vehemently argued supporting the order of the ld. Assessing Officer stating that the figure of unaccounted assets /unaccounted capital/ unaccounted liability/ unaccounted sales have been given by the assessee itself and the ld. Assessing Officer has rightly adopted the highest figure as unaccounted income.

6. Per contra, ld. counsel for the assessee heavily relied on the detailed finding of the ld. CIT(Appeals) and further stated that the appellant adopted a particular method of accounting for computing

undisclosed income and after giving the details of computed value of unaccounted assets, excess of unaccounted assets over unaccounted capital and gross profit on unaccounted sales for each year, thereafter calculating cumulative effect thereof as undisclosed income of previous year was deployed in the business itself and not distributed to the members and finally the difference in cumulative value over previous year was offered for taxation. Further he submitted that the Id. Assessing Officer accepted the submission and working of the appellant for assessment years 2012-13 and 2015-16, but adopted the different method for assessment year 2013-14. He further submitted that for assessment year 2014-15 also, the Id. Assessing Officer framed the assessment by making an addition of Rs.3.02 lakhs but deducting the amount of undisclosed income of Rs.53.49 lakhs from the value of unaccounted assets of Rs.56.51 lakhs and the Id. CIT(Appeals) has granted the relief but no appeal has been preferred by the Department against the order of Id. CIT(Appeals) for A.Y. 2014-15.

7. Further referring to the ratio laid down by the various Hon'ble Courts that the Assessing Officer should not adopt different principle of taxing the amount of undisclosed income for various assessment years, relied on the judgment of the Hon'ble Supreme Court in the cases of (i) Bharat Sanchar Nigam Limited & Anr. -vs.- Union of India & Others (2006) 282 ITR 0273; (ii) Godrej & Boyce Manufacturing Company Limited -vs.- Dy. CIT (2017) 394 ITR 0449 and (iii) Radhasoami Satsang -vs.- Commissioner of Income Tax (1992) 193 ITR 321 (SC).

8. We have heard the rival contentions and perused the relevant material placed before us. The Revenue is aggrieved with the finding of Id. CIT(A) deleting the addition of Rs.3,47,53,664/- made by the Id. Assessing Officer on account of undisclosed income. We observe that the assessee-company was subjected to search and various incriminating material were found. Based on the incriminating material, the assessee

filed details by working out the disclosure by calculating unaccounted assets, unaccounted liability, unaccounted sales, unaccounted capital and thereafter calculated the cumulative value and offered unaccounted capital after adjusting disclosure upto the previous year thereby offering undisclosed income at Rs.16,13,645/-, Rs.3,08,800/- and Rs.53,49,618/- for A.Y. 2012-13, 2013-14 and 2014-15 respectively. There is no dispute before us at the end of revenue for A.Ys. 2012-13 and 2014-15. The dispute pertains to A.Y. 2013-14, wherein the Id. Assessing Officer has adopted the value of unaccounted assets at Rs.3,50,62,464/- liable to be taxed as unaccounted income. The assessee challenged the action of the Id. Assessing Officer stating that the assessee has adopted the unaccounted capital for each of the year as undisclosed income to be offered to tax and the same method should have been adopted for A.Y. 2013-14 also. But the Id. Assessing Officer found no merit in the submissions of the assessee. When the matter travelled before the Id. CIT(Appeals), the assessee got relief and the Id. CIT(Appeals) deleted the addition made by the Id. Assessing Officer observing as follows:-

"I have carefully considered the findings of the AO and the submission of the appellant. It is a fact that a search and seizure operation u/s 132(1) of the Income-tax Act, 1961 was conducted on 07/08/2014 at the residential and business premises of Gupta Nutrition's Group of cases. Gupta family is mainly engaged in the manufacturing and sale of atta, maida, sujji, bran etc. The appellant M/s River Valley Flour Mills Pvt. Ltd. is related to Gupta Nutrition Group and also covered u/s. 132(1) of the Act. During the search certain incriminating material in the form balance sheet for the F.Y.2011-12 to 2014-15 was found and seized. The said balance sheet contained both accounted and unaccounted transactions. Based on this incriminating document the appellant admitted undisclosed income of Rs.3,08,800/- for the year under appeal. However, during the assessment proceeding, the AO on perusal of seized balance sheet; noted that the appellant has shown unaccounted assets of Rs.3,50,62,464/-, unaccounted capital of Rs.3,08,800/-, unaccounted liability of Rs.3,50,55,906/- and unaccounted profit on unaccounted sales of Rs.3,08,801/-. The AO further observed that the appellant declared additional income based on unaccounted capital. Accordingly, the AO show-caused the appellant as to why the highest of unaccounted assets, unaccounted capital, unaccounted liability and unaccounted net profit be treated as undisclosed income. The AO having not satisfied with the submission of the appellant considered unaccounted assets of Rs.3,50,62,464/- as appellant's undisclosed income being on higher side and made a net addition of Rs.3,47,53,664/- (Rs.3,50,62,464 - 3,08,800).

On the other hand the appellant submitted that the seized balance sheet for F.Y.2011-12 to 2015-16 contains both accounted and unaccounted transactions. Accordingly, it segregated the unaccounted portion in the seized balance sheet with the help of audited balance sheet. The appellant further submitted that after segregating the unaccounted portion it offered additional income for A.Y.2012-13 to 2015-16 based on unaccounted capital and the AO accepted the same for A.Y.2009-10 to A. 7.2012-13 and A.Y.2015-16. However for the assessment year under appeal, the AO adopted a different approach by taking into consideration the highest of unaccounted assets, unaccounted capital, unaccounted liability and unaccounted net profit. The appellant further brought to the notice that the undisclosed liability of Rs 3,50,55,906/- was pertaining to F.Y.2013-14 relevant to A.Y.2014-15 and therefore taxing the same as undisclosed liability for assessment year 2013-14 is also a fallacy beyond correction. In spite of the same the appellant submitted that it has (made disclosure of Rs.3,08,800/- as a matter of abundant precaution and suffered tax and interest thereon. The other main contention of the appellant is that the AO has accepted the amount of undisclosed capital computed by the appellant in other group companies in search proceedings and thus the AO cannot substitute principle of taxing the difference of unaccounted liabilities ignoring the declaration without any cogent reason and taking conflicting stand in the case of the appellant in comparison to other group companies wherein the identical issues are involved. In support of the same the appellant relied on certain case laws (supra). The appellant further stated that the AO has not cast any doubt on the figures of undisclosed assets, capital, liabilities or profit as contained in the balance sheet seized so as to disbelieve the claim of the appellant.

In view of the detailed submission made by the appellant I find enough force in the argument of the appellant. Accordingly, I hold that the AO erred in adopting a different principle of taxing the amount of undisclosed income for the current assessment year, whereas the AO has accepted the declaration on account of undisclosed capital for earlier A.Yrs as well as other assessee's of the same group in various assessment years before him. Further, the AO has not cast any doubts on the figures shown for undisclosed balance sheet. It is well settled law that when a document found in the search/survey has to be relied upon as a whole. There is no discretion available with the Department or the assessee to rely upon a part of the document favourable to it and plead for rejection of the other part which is not favourable to it, or in respect of which no supporting material is found. In the case of S.P. Goyal v. DCIT CIT [2002] 82 ITD 85 (Mum.) (TM), it has been held that a document found in the search/survey has to be relied upon as a whole. There is no discretion available with the Department or the assessee to rely upon a part of the document favourable to it and plead for rejection of the other part which is not favourable to it, or in respect of which no supporting material is found. However, in certain circumstances some part of the seized document has to be ignored for the reason that it may not represent any financial transaction or is only scribbling not decipherable. But in general, the contents of the document seized have to be accepted as true irrespective of whether it is favourable to assessee or Department as held in the case of Chander Mohan Mehta, v. Ass ft. CIT CIT[1999] 71 ITD 245 (Pune)). Similarly, in the cases of Dhanvarsha Builders & Developers (P.) Ltd.

v. Dy. CIT [2006] 102 ITD 375 (Pune); Asstt. CIT v. Omprakash & Co. [2003] 132 Taxman 99 (Mag.)/[2004] 2 SOT 1 (Mum.); Vivek Kumar Kathotia v. Dy. CIT [2013] 32 taxmann.com 331/142 ITD 394 (Kol. - Trib.); CIT v. D.D. Gears Ltd. [2012] 25 taxmann.com 562/211 Taxman 8 (Delhi)(Mag.), it has been held that a seized/impounded document should be read as a whole.

Further, under section 292C presumption is available to the Department in respect of any books of account, other documents, money, bullions, jewellery or other valuable article or thing if found in the possession or control of any person in the course of search u/s 132 or survey u/s 133A, in any proceedings under this Act. This section states as under:-

"292C. 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 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."

The presumption available u/s 292C is not a conclusive presumption. It is a rebuttable one. It may be used against the assessee until and unless it is not rebutted by the assessee. The onus is on the assessee to rebut the presumption that the books of account or the documents found during the course of search/survey do not belong to him or are not in his hand.

In the instant case the AO has not rebutted that the undisclosed assets, liabilities and capital shown in the seized balance sheet doesn't belong to the appellant. Since the appellant already declared a sum of Rs. 3,08,800/- for the relevant assessment year, I find no merit in the action of AO towards enhancing the disclosure in current year without giving any cogent reason for his action. In view of these factual finding, the AO is directed to delete the addition made of Rs.3,47,53,664/-.

Accordingly, this ground is allowed".

9. From perusal of the above finding of Id. CIT(Appeals), we notice that the Id. CIT(Appeals) found error in the working of the Id. Assessing Officer adopting at different principle of taxing the amount of undisclosed income for the current assessment year, i.e. A.Y. 2013-14, whereas the Id. Assessing Officer has accepted the declaration on account of undisclosed capital for earlier assessment years as well as other assessees of the same group in various assessment years before him. The Id. CIT(Appeals) has also appreciated the fact that the Id. Assessing Officer has not raised any doubt on the figures shown for undisclosed balance-sheet. For ready reference, we reproduce below the chart made by the assessee and submitted before both the lower authorities for calculating the amount of undisclosed capital to be offered to tax for various assessment years:-

AY	Unaccounted assets	Unaccounted capital	Unaccounted liability	Unaccounted assets and liability	Unaccounted sales	NP on unaccounted sales	Unaccounted income	High of column B, D & F	Disclosure for the AY on account of undisclosed capital (after adjusting disclosure upto previous year)
	A	B	C	D	E	F	F	G	H
2012-13	1613645	1613645		1613645			1613645	1613645	
Cumulative	1613645	1613645		1613645			1613645	1613645	1613645
2013-14	35062464	308800	35055906	6558	12352028	308801	153062	308801	
Cumulative	36676109	1922445	35055906	1620203	12352028	308801	1766705	1922445	308800
2014-15	5651860	5349618		5651860	⁸⁰²⁹¹²¹⁸	2007280		5651860	
Cumulative	42327969	7272063	35055906	7272063	92643246	2316081	1766705	7272063	5349618
2015-16	7586206	8651551		7586206	131155843	3278896	2686925	8651551	
Cumulative	49914175	15923614	35055906	14858269	223799089	5594977	4453630	15923614	

10. From perusal of the above chart as well as the detailed finding of the Id. CIT(Appeals), we find merit in the contentions made by the Id. counsel for the assessee because in A.Ys. 2012-13 to 2015-16, cumulative amount of unaccounted capital has been offered to tax and has been duly accepted by the Id. Assessing Officer. For instance, A.Y. 2012-13- Rs.16,13,645/- has been offered, for A.Y. 2013-14- Rs.3,08,800/- has been offered, for A.Y. 2014-15- unaccounted capital shown by the assessee is

Rs.53,49,618/- and it has also been accepted by the Id. Assessing Officer but decided to follow the different methodology for A.Y. 2013-14 since the value of unaccounted assets was higher than the unaccounted capital.

11. Hon'ble Supreme Court in the case of Radhasoami Satsang -vs.- CIT (supra) has held as follows:-

"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where as fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year".

12. In the judgment cited above, Hon'ble Supreme Court has mandated the need for consistency and certainty and in case of departure from settled position, strong and compelling reason needs to be spelt out. In the instant case, we find that the Id. Assessing Officer has not raised any doubt on various figures shown for undisclosed and unaccounted assets/liabilities/capital/sales or the method of computation of undisclosed income. It is judicially well settled that when a document is found during the course of search, it has to be relied upon in entirety and there is no discretion available with the assessee or the Department to rely upon a part of the document favourable to it and plead for rejection of the other part which is not favourable to it, or in respect of which no supporting material is found.

13. We, therefore, under the given facts and circumstances of the case and also the ratio laid down by the Hon'ble Apex Court as referred hereinabove, find no inconsistency in the finding of the Id. CIT(Appeals) deleting the addition of Rs.3,47,53,664/- made by the Id. Assessing Officer wrongly adopting the figure of unaccounted assets in place of the

unaccounted capital offered by the assessee in the return of income filed under section 153A of the Act. Grounds No. 1 to 3 raised by the Revenue are dismissed.

14. Ground No. 4 is general in nature and does not need for any adjudication.

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

Order pronounced in the open Court on August 29th , 2022.

**Sd/-
(Sonjoy Sarma)
Judicial Member**

**Sd/-
(Manish Borad)
Accountant Member**

Kolkata, the 29th day of August, 2022

- Copies to :*
- (1) Assistant Commissioner of Income Tax,
Central Circle-1, Patna*
 - (2) River Valley Flour Mills Pvt. Limited,
219, Ashiana Tower, Exhibition Road, Patna*
 - (3) Commissioner of Income Tax (Appeals)-3, Patna,*
 - (4) Commissioner of Income Tax- ,*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.