

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.46/Del./2020
Assessment Year 2011-2012

The DCIT, Circle-23(1), Room No.225-E, 2 nd Floor, C.R. Bldg., New Delhi. PIN – 110 002	vs.	M/s. Shivram Consultants India Pvt. Ltd., W-79, Ground Floor, Greater Kailash-II, New Delhi. PIN – 110 048 PAN AABCS2958P
(Appellant)		(Respondent)

Cross Objection No.49/Del./2022
Arising out of
ITA.No.46/Del./2020 - Assessment Year 2011-2012

M/s. Shivram Consultants India Pvt. Ltd., W-79, Ground Floor, Greater Kailash-II, New Delhi. PIN – 110 048 PAN AABCS2958P	vs.	The DCIT, Circle-23(1), Room No.225-E, 2 nd Floor, C.R. Bldg., New Delhi. PIN – 110 002.
(Cross-Objector)		(Respondent)

For Revenue :	Shri Abhishek Kumar, Sr. DR
For Assessee :	Shri Manoj Sabharwal, Advocate

Date of Hearing :	12.10.2022
Date of Pronouncement :	04.11.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Revenue and the Cross Objection filed by the Assessee are directed against the Order of the Ld. CIT(A)-8, New Delhi, dated 07.10.2019 in Appeal No.10325/18-19 relating to the A.Y. 2011-12.

2. Briefly stated facts of the case are that the assessee is a company who had filed its return of income for the A.Y. 2011-12 under section 139(1) of the I.T. Act, 1961 on 30.09.2011 declaring total taxable income of Rs.10,62,27,410/-. The return of income was later revised on 31.03.2012 under section 139(5) of the I.T. Act, 1961 declaring total income of Rs.10,62,27,410/-. The return of income was initially processed under section 143(1) of the I.T. Act, 1961. Subsequently, the A.O. received information from Investigation Wing which are noted by the A.O. in the assessment order, and based on such information and after analysing the return of income for the A.Ys. 2010-11 and 2011-12, after obtaining the approval from the Competent Authority, the case of the assessee-company was reopened

under section 148 of the I.T. Act, 1961 by issuing notice dated 30.03.2018. In response to the aforesaid notice, the assessee electronically filed its return of income declaring total income of Rs.10,62,27,410/-. The case was taken-up for scrutiny and consequently, assessment was framed under section 143(3) r.w.s. 147 of the I.T. Act, 1961 vide order dated 22.12.2018 and the total income was determined by the A.O. at Rs.14,62,27,410/-.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 07.10.2019 in Appeal No.10325/18-19 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective ground :

“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.4,00,00,000/- on account of unexplained money u/s 69A of the Income Tax Act and deciding the

case in favour of assessee despite of the concrete evidence in form of receipt of Rs.4 crores which was found received from Mr. Munish Arora as per hard disc found at the premises of Sh. Naresh Gupta, the deed writer and an advocate by profession. The same was accepted in the statement on oath of Sh. Naresh Gupta recorded u/s 131(1A) on 08.1.2003 which was further not denied in cross-examination/statement recorded during the re-assessment proceedings on 12.12.2018.”

4. The assessee also filed cross objections and has raised the following grounds :

1. *“That, the Id. CIT (A) has erred in not adjudicating on the issue of validity of assumption of jurisdiction under s. 147/ 148 of the Act.*
2. *That, the CIT(A) has erred in not holding that the assessment proceedings undertaken in the matter are without jurisdiction, and thus liable to be quashed as such.*

3. *That, the present cross objections are within limitation as the same appeal memo was received by the respondents only on 11.04.2022.*
4. *The Appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal.”*
5. We, first proceed to decide the grounds raised by the Revenue.
6. Briefly the facts emanating to the impugned addition are that the A.O. has noted in the reasons recorded for reopening that during the search conducted on AKN Group of cases, a hard disk was found at the residential premises of Shri Naresh Gupta, who is a deed writer and an Advocate by profession. As per the data retrieved from hard disk, it was found that during the F.Y. 2011-12 assessee had received Rs.4 crores in cash from Shri Munish Arora r/o. W-71, Greater Kailash Part-II, New Delhi on account of sale of property. It was also noted that Shri Naresh Gupta being a Deed Writer used to keep details of party-wise

transactions of various sale/purchase deeds in his hard disk and he used to keep account of the amount which has been paid by different parties in cash or through banking channels and the name of the assessee was also mentioned therein. The A.O. issued notice to the assessee company under section 133(6) of the I.T. Act, 1961 and asked it to furnish details of cash receipt of Rs.4 crores received by it, but, the assessee company denied having received any cash in lieu of selling of the property. The A.O. has noted that summons under section 131 of the I.T. Act, 1961 was issued to Shri Naresh Gupta, Deed Writer –cum- Advocate who appeared before the A.O. and his statement was recorded under section 131(1) of the I.T. Act, 1961. The statement of Shri Naresh Gupta is reproduced at page-3 of the assessment order. The A.O. has noted that on the analysis of the draft deed obtained during the search proceedings it was found that major constituents like the vendor, vendee, the name of the share holders and their share holdings, the sale consideration were exactly the same as that to the original sale deed executed by the assessee

company. The A.O. has also noted that the draft deed found during search contained a draft receipt, according to which, assessee had received Rs.4 crores in cash from Mr. Munish Arora in lieu of sale of property at Greater Kailash, New Delhi and Shri Naresh Gupta in his statement that was recorded on 12.12.2018 had never disputed the preparation of draft deed, but, had stated that he does not remember as to under whose instruction the draft deed was drafted. A.O. has further noted that in the reasons recorded for reopening, it is stated from the sale consideration amount one tranche of payment to the tune of Rs.5 crores mentioned in the draft deed bearing cheque No.222546 dated 16.04.2010 drawn on Bank of Maharashtra, Greater Kailash was exactly the same as that in the original sale deed which was executed by the assessee company. The A.O, therefore, concluded that the draft cash receipt which was found at the premises of Shri Naresh Gupta was indeed executed by the assessee company. The A.O. also noted that as per the statement of Shri Naresh Gupta though in his statement he has stated that he does not remember as to

under whose instruction the said draft deed was drafted, but, the transaction between M/s. Shivram Consultant Pvt. Ltd., and Mr. Munish Arora was never disputed by Shri Naresh Gupta. The A.O. further noted that Shri Naresh Gupta during the cross-examination by the Director of the assessee company, Shri Vijay Arora, had never disputed that such a deed was not drafted by him. Considering the aforesaid facts, the A.O. for the reasons recorded in the assessment order held that Rs.4 crores received in cash by the assessee-company as income under section 69A of the I.T. Act, 1961 and made the addition.

6.1. When the matter was carried in appeal before the Ld. CIT(A), he deleted the addition that were made by A.O. The Ld. CIT(A) while deleting the addition at para 4.5 of his order has noted that since the documents relied upon by the assessee company are undated, unsigned and unexecuted and, therefore, it did not have any evidentiary value and the presumption of transaction on the basis of the draft deed and draft cash receipt was not legal. He also noted that the documents were not found from the control

or possession of the assessee and according to him, the additions made by the A.O. were on the basis of surmises and conjectures. The Ld. CIT(A) has further noted that A.O. did not examine the buyer Shri Munish Arora to ascertain whether any cash payment was actually made by him or not and there was neither any statement of the buyer against the assessee company. He thereafter, at para-4.8 of the order has given a finding that provisions of Section 69A of the I.T. Act, 1961 cannot be invoked as the assessee was not found to be owner of any money, bullion, jewellery or other valuable article and according to him, to attract the provisions of Section 69A of the I.T. Act, 1961 it was necessary to prove both ownership and possession of money etc., in the hands of assessee company. He, thereafter, for the reasons noted in the order, deleted the addition made by the A.O.

7. Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us.

8. Before us, Ld. D.R. took us through the order of A.O. and submitted that during the course of search on AKN

Group of cases, a hard disk was found at the residential premises of Shri Naresh Gupta, who is a Deed Writer and an Advocate by profession. From the data recovered from hard disk it was found that during A.Y. 2011-12, assessee had received Rs.4 crores in cash from Shri Munish Arora on account of sale of property. He submitted that the data retrieved from the hard disk matched with the details of sale deed furnished by assessee as the name of purchaser and seller matched with the Draft Deed and the actual Sale Deed. He submitted that a draft cash receipt of Rs.4 crore being paid to assessee was also found. He further submitted in the data retrieved there was mention of Rs.5 crore being paid along with the Cheque No.222546. He submitted that when the part of consideration along with the cheque number matched with the actual sale deed, then it can be safely presumed that the other part of the data being receipt of Rs.4 crore in cash was actually received by the assessee. He, therefore, submitted that the Ld. CIT(A) has grossly erred in observing that the draft deed and draft cash receipt had no evidentiary value. He, therefore, submitted that the

order of Ld. CIT(A) be set aside and the order of A.O. be upheld.

9. The Learned Counsel for the Assessee, on the other hand, reiterated the submissions made before the lower authorities. He further took us through the order of Ld. CIT(A) and supported his order. He further submitted that the addition was made on the basis of draft cash receipt which is undated, unexecuted and unsigned and it has no evidentiary value. He further submitted that since assessee was not found to be in possession or ownership of money amounting to Rs.4 crore, Section 69A does not apply. He further submitted that in the case of I.G. Builders & Promoters P. Ltd., [ITA.No.4282/Del./2016 order dated 14.10.2021] wherein also the addition was made arising from the same search, but, the addition was deleted by the Tribunal. He also placed reliance on the decision in the case of Commissioner of Income Tax vs., Alpha Impex (P) Ltd., [2014] 45 taxmann.com 205 (Bom.) and on the decision of ITAT, Amritsar Bench in the case of ITO vs., Arun Kumar

Kapoor [2011] 16 taxmann.com 373 (Amritsar). He, thus, supported the order of Ld. CIT(A).

10. We have heard the rival submissions and perused the material on record. The issue in the present ground is with reference to addition of Rs.4 crores made by A.O, but, deleted by the Ld. CIT(A). It is an undisputed fact that during the course of search conducted on AKN Group of cases a hard disk was found at the residential premises of Shri Naresh Gupta, who is stated to be a Deed Writer and an Advocate by profession. The data retrieved from the hard disk revealed undated, unsigned and unexecuted Draft Deed and draft cash receipt relating to the transaction of sale of property between assessee and Shri Munish Arora. On the basis of data retrieved from the hard disk, it was found that during the year under consideration assessee had received Rs.4 crores in cash from Shri Munish Arora on account of sale of property. When the assessee was asked about the details of receipt of Rs.4 crore cash, assessee denied of having received any cash. A.O. on comparing the Draft Deed that was retrieved from the hard disk with the

original Sale Deed executed by the assessee noticed that the name of the Vendor, Vendee, the name of the shareholders and their shareholding, the sale consideration were exactly similar in the Draft Deed and the original Sale Deed. He also noticed that one tranche of payment to the tune of Rs.5 crores received through Cheque No.222546 dated 16.04.2010 drawn of Bank of Maharashtra, Greater Kailash was also reflected in the Draft Deed retrieved from the hard disk and the original Sale Deed executed by the assessee. A.O. has noted that the Draft Deed retrieved from the hard disk also revealed about receipt of cash of Rs.4 crore in lieu of sale of property, but, assessee denied in receipt. The A.O. accordingly made addition of Rs.4 crore as income under section 69A of the I.T. Act, 1961. The Ld. CIT(A) deleted the addition. While deleting the addition, we find that the Ld. CIT(A) was guided by the fact that the addition was made on the basis of undated, unsigned and unexecuted Draft Deed and draft cash receipt retrieved from the hard disk of Shri Naresh Gupta, there being no 3rd party confirmation or corroborating evidence of the receipt of cash. We do not

agree with the reasoning given by the Ld. CIT(A) for deleting the addition. We find that A.O. has noted that the Draft Deed retrieved from the hard disk showed that the major constituents like the Vendor, Vendee, the name of the shareholders and their shareholdings, the sale consideration were exactly similar in the Draft Deed and original Sale Deed executed by the assessee. Further, in the Draft Deed there was mention about the part of sale consideration of Rs.5 crore paid by Cheque No.222546 dated 16.04.2010 drawn on Bank of Maharashtra, Greater Kailash which matched with the part of sale consideration mentioned in the original Sale Deed executed by the assessee. Thus, when the part of the sale consideration of Rs.5 crores along with the date of cheque, its number and the bank on which it was drawn matched with the Draft Agreement, then this material evidence cannot be simply ignored and brushed aside and overlooked by holding that the Draft Agreement was undated, unstamped and, therefore, cannot be relied upon.

10.1. As far as the reasoning of Ld. CIT(A) about the non-applicability of the provisions of Section 69A of the I.T. Act, 1961 to the present case is concerned, we find that according to Ld. CIT(A) to attract the provisions of Section 69A, it is necessary to prove both ownership and possession of money etc., in the hands of the assessee and since no cash was found, provisions of Section 69A were not attracted. We are not in agreement with the reasoning and finding of Ld. CIT(A) on that issue. A bare reading of Section 69A makes it clear that where the property described under section 69A of the I.T. Act, 1961 is not recorded in the books of account, if any, maintained by the assessee from any source of income and the assessee does not offer any explanation about the nature and source of acquisition of such property and the explanation offered is not satisfactory in the opinion of A.O, then the value of such property would be deemed to be the income of the assessee for such financial year. We find that Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income Tax vs., Bimal Parkash Gupta [1989] 179 ITR 613 (P & H) (HC) has held

that the expression “income” as used in Section 69A has a wide meaning and means anything which come in or resulted in gain. The case law relied upon by the assessee are distinguishable on facts and, therefore, not applicable to the facts of the present case. Thus, considering the totality of the aforesaid facts, we are of the view that the Ld. CIT(A) was not justified in deleting the addition. We, therefore, set aside the order of Ld. CIT(A) and uphold the order of A.O. **Thus, the ground of Revenue is allowed.**

11. In the result, **appeal of the Revenue is allowed.**
12. We, now, proceed with the Cross Objection of the Assessee.
13. In the cross objection, the assessee is challenging the validity of assumption of jurisdiction under section 147/148 of the I.T. Act, 1961.
14. Before us, the Learned Counsel for the Assessee has simply placed reliance on the decision ITAT, Amritsar Bench, Amritsar in the case of ITO vs., Arunkumar Kapoor [2011] 16 taxmann.com 373 (Amritsar).

15. The Ld. D.R. on the other hand supported the order of A.O.

16. We have heard the rival submissions and perused the material on record. The assessee in the cross objection is challenging the validity of assumption of jurisdiction under section 147/148 of the I.T. Act, 1961 and relies upon the decision of Arunkumar Kapoor (supra). Before us, the Learned Counsel for the Assessee has simply relied on the aforesaid decision. We find that the facts of the present case and facts in the case of Arunkumar Kapoor (supra) are different and, therefore, the decision is not applicable to the present case. In that case, the issue was whether the proceedings should have been initiated under section 153C or under section 148 of the I.T. Act which is not the case in the present ground of assessee. Considering the aforesaid facts and circumstances of the case, we do not find merit in the ground of assessee and thus, **the ground of appeal of assessee is dismissed.**

17. In the result, **cross-objection of the Assessee is dismissed.**

18. To sum-up, **appeal of Revenue is allowed and cross-objection of Assessee is dismissed.**

Order pronounced in the open Court on 04.11.2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 04th November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.