

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.664/MUM/2022 (A.Y. 2011-12)

Shri Vinay Todi 98, Christopher Road Brindavan Garden, B2, 6 th Floor Flat No. 1 & 2 Kolkata-700046 PAN: ADAPT6426A	v.	DCIT – Circle – 1(4) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Haridas Bhatt
Department Represented by	:	Shri Vranda U Matkari
Date of Hearing	:	17.08.2022
Date of Pronouncement	:	14.11.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 21.02.2022 for the A.Y. 2011-12.

2. Brief facts of the case are, assessee filed his return of income for the A.Y.2011-12 on 27.07.2011 declaring taxable income of ₹.339,950/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act'). The assessee is a resident having salary and other income, holding position of director in M/s. Rutron Logistics Pvt Ltd, the group company of M/s. Rutron International Ltd.

3. A survey action u/s 133A of the Act was carried out in the case of M/s. Rutron International Ltd by the Investigation Wing, Mumbai. During Survey, the investigation wing found an excel sheet containing data of branches names, dates without year and various amounts mentioned in column wise in the laptop of the assessee. The assessee is one of the director in the above company and a statement u/s 131 of the Act was recorded, in one of the question i.e., Q. No 25, the assessee was asked to explain the details of the above information found during survey, the Assessing Officer presumed the above data a cash deposits. However, the assessee did not reply to the above query and asked for a week time to reply.

4. The assessee in reply vide letter dated 13.04.2015, informed the Investigation wing that the amount mentioned in the excel sheet relates

to M/s. Shree Vrindavan Logistics P. Ltd and it is prior to the acquisition of the above said company by the group concerns. Since the reply of the assessee was vague without any corroborative evidence and confirmation, in order to verify the same, the case of the assessee was reopened by issue of notice u/s 148 of the Act.

5. In response, the assessee filed the return of income on 27.09.2018 and copy of the reasons recorded for reopening was provided to the assessee. The assessee filed various objections for reopening of the assessment and the objections were rebutted by the Assessing Officer and the same are reproduced in the assessment order. Subsequently, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, the assessee filed details of the information found in the laptop in the tabular form and maintained that the cash deposited in the bank has no connection with him. The same reasons and contentions made by the assessee before Investigation Wing were maintained before Assessing Officer also, AO not satisfied with the submissions, issued notice u/s.133(6) of the Act to M/s. Shree Vrindavan Logistics P. Ltd with the information found during the Survey. In response, they have given vague statements. Not satisfied with the response for the notice issued u/s.133(6), he proceeded to make the addition in the hands of the

assessee by observing that the assessee failed to fully establish that the cash belongs to Shree Vrindavan Logistics and even Shree Vrindavan Logistics did not own up the above cash deposits. As the cash deposits are found in the personal laptop of the assessee and did not establish the source of the cash generation and the explanation offered by the assessee are not satisfactory, hence added u/s 68 of the Act.

6. Aggrieved, the assessee preferred an appeal before CIT(A) -47, Mumbai and submitted a detailed note, for the sake of convenience, it is reproduced below: -

"The Appellant is an individual, filing his return of Income regularly under PAN ADAPT6426A. The main source of Income of the Appellant constitutes Salary and income from Other Sources.

The return of income for the captioned A.Y was electronically filed vide e-filing acknowledgement number 247923960270711 on 27.07.2011 declaring total income of Rs. 3,39,950/-. We are enclosing herewith copy of acknowledgement of Return of Income, Computation of total Income, Capital Account, Balance Sheet.(Refer page No 1 to 4).

Subsequently appellant has received a notice u/s 148 of the Act to reopen the case of the appellant. In response to the said notice, the appellant had filed return of Income online vide Acknowledgement No. 308372770270918 on 27.09.2018 declaring the same taxable income of Rs. 3,39,950/ as shown in original return filed on 27.07.2011. We are enclosing herewith copy of acknowledgement of Return of Income, Computation of total Income. (Refer page No. 5 to 9).

The assessment was than completed u/s 143(3) of the Income Tax Act, 1961 ("The Act") on 20.12.2018 making an addition of Rs. 1,66,94,495/ u/s 68 of The Act as an unexplained Cash credit.(Copy of order enclosed in paper book, refer Page No. 10 to 21).

Aggrieved from the Order of the Assessing Officer, the Appellant has preferred an appeal before your honor.

Ground No. 1:

"The Learned AO has erred in making an addition of Rs. 1,66,94,495/- on the pretext that cash was deposited, whereas there is no such cash deposit into any bank account and there is no evidence of any cash deposit of whatsoever nature. The addition is made absolutely on arbitrary basis".

The Appellant is an individual. In the year under reference, his main source of Income was from Salary and income from Other Sources. He was also a director in a company which was carrying on logistic business. The said company was looking to solicit logistic business of M/s Indian Oil Corporation and for the same they were hunting for a Bank approved and empanelled company. In this process, they came across to Shree Vrindavan Logistics (P) Ltd. (SVLPL) -A Bank Approved Company through its Director& CEO Mr. KK Nareda. The Appellant has asked for business data and financials of Shree Vrindavan Logistics (P) Ltd. for analysis and review. These details were received in soft copy and it was on the laptop of the appellant. There was an excel sheet which contains no header and footer. There is only Branch name and under that there are two columns i.e. date and amount. The total of amount column of these two pages excel sheet printout amounts to Rs. 1,66,94,495/- The date period is from July to October but there is no year mentioned. There is written nothing except date and amount. Under Ahmadabad Branch between 29/09 and 08/10, there is written "pay from Delhi office" and amount is Rs. 49,000/. We are failed to understand how the Ld. AO has come to the conclusion that it is cash deposit into Bank when no Bank name is written in the excel sheet, he has no evidence of any bank deposit of the said amount, he doesn't even know that the dates and amount relates to which year and what this excel is and for what purpose.

The Assessing Officer (AO) vide his notice u/s 142(1) dated 14.09.2018 has threatened to the appellant to invoke the provisions of Section 144 of the Act whereas the AO himself has ignored the fact that appellant has submitted reply vide e mail dated 26.04.2018 (Refer Paper Book Page No. 22 to 23). He has raised the objection about reopening his case u/s 148 after the expiry of 6. Years and requested to drop the

reassessment proceedings. In the said letter the AO has given the reason for reopening that

"A survey action u/s 133A of the Act was carried out by the DDIT (Inv.), Unit -5(4), Mumbai on 09.04.2015. During the course of survey action, statement of Shri Vinay Todi Director of M/s Rutron Logistics Pvt. Ltd. was recorded u/s 133A of the Act on 09.04.2015.

During the course of survey action, from the laptop of the assess, Shri Vinay Todi, entry of cash deposit of Rs. 1,66,94,495/- was found which was deposited in various banks. In the statement of Shri Vinay Todi dated 09-04-2015, vide question No. 25, the assessee was asked to explain the same. Shri Vinay Todi in his reply to the question stated that the explanation will be given in a week's time.

The Assessee, vide letter dated 13-04-2015, furnished explanation to Question No. 25 as mentioned above. In the explanation, Shri Vinay Todi stated that the amount of Rs. 1,66,94,495/- was related to purchase of concern named M/s Vrindaban Logistics (P) Ltd....."

The Appellant replied vide letter dated 13.04.2015 and made it very clear to the Ld. AO that the excel sheet under reference was a part of documents sent by SVLPL for scrutiny and analysis. The sheet was relating to transactions of SVLPL and the appellant has no direct or indirect connection with the said excel sheet in any manner of whatsoever nature. He also attached to the said letter, a mail sent to K K Nareda and reply received from Mr. K K Nareda. The simple perusal of the said documents, no one can come to the conclusion that the excel sheet figures are related to any cash deposit to any bank account (when no bank name is given, how it can be presumed as cash deposit). The AO has failed completely to produce a single document which can be understood as cash deposit into Bank. It seems that the AO has decided to stop applying his mind and put his entire energy to establish and prove that the excel sheet found on laptop by investigation team into cash deposit statement by hook or crook without any justification / any basis / any evidence. He put his entire energy in proving a wrong statement as he understood instead of investigating with open eyes based on facts and figures. Enclosing herewith the copy of the letter dated 13.04.2015 along with copy of mails and copy of excel sheet (Refer Paper Book Page No 24 to 26).

The AO has ignored all the documents produced by the appellant and not bothered to see them. The mail submitted by appellant sent to Mr. K K Nareda and reply given by Mr. KK Nareda on the even date which amply clear that the appellant has no connection with the alleged excel sheet but the AO has kept his eyes and ears closed. We are enclosing herewith the copy of said mails (Refer Paper Book Page No 27 to 28).

The Appellant draws your kind attention to his submission dated 13.11.2018 which consists of an affidavit given by the appellant before the notary public along with relevant enclosures which makes it crystal clear that the appellant has no connection with the alleged excel sheet and there is no cash deposit in any bank account of the appellant anywhere in India. We are enclosing herewith the copy of our submission dated 13.11.2018 along with Affidavit and its enclosures (Refer Paper Book Page No 29 to 40).

Further, the statement of the appellant was recorded in the last week of November 2018 by the AO and the appellant has made it very clear that there is no cash deposit by him which is well verifiable from the bank statement of the appellant submitted to the AO with affidavit. Even in the course of interrogation by the AO, nothing could be proved/ established by the AO that the appellant has any role in their so called cash deposit which is illusionary and without any head and tail. It is just like someone has dreamed that there is cash around him and every figure he see is a cash deposit. He could not establish a single evidence of cash deposit into any bank, anywhere in India of the excel sheet figures but he keep on stressing on appellant to accept as cash deposit by him into bank but the appellant has remained with truth and not accepted AO's contention at all. The AO stated to the appellant that if he can produce any evidence that the alleged excel sheet is not related to him but related to SVLPL, he can rely on the statement of the appellant. The Appellant immediately sent a mail to Mr. Nareda Director of SVLPL who promptly confirmed on mail that these transactions doesn't relates to the appellant but these are branch transfer details of SVLPL and in confirmation Mr. K K Nareda sent a alleged excel sheet duly signed and stamped of M/s Shree Vrindavan Logistics Private Limited on mail. We are enclosing the copy of the same. (Refer Paper Book-Page No 41 to 43).

The AO has also sent one notice u/s 133(6) in back date of 07.12.2018 which was never received by the party M/s SVLPL and the same was confirmed to the inspector of the AO Mr. Manish Kumar who sent the

same notice on mail dated 19.12.2018 which was promptly replied by Mr. K K Nareda - Director of SVLPL and very clearly confirmed that the appellant has no connection with the excel sheet figures and transactions. We are enclosing herewith the copy of the said mail (Refer Paper Book Page No 44 to 45). The said reply is also misinterpreted by the AO which is stated in the Assessment Order.

The Ld. AO has contented in Point 14 of the Assessment Order that "The Cash was deposited in Various Bank Accounts. The Assessee failed to establish the source of the Cash Generation, and the explanation furnished by the assessee is not satisfactory, therefore, the said cash is treated as unexplained cash credit....."

We have failed to understand that, when there is no actual cash deposited in any of the bank account of the Appellant (details/documents is already submitted) then how come it can be considered as unexplained cash.

We draw your kind attention to the provision of section 68 of the Income Tax Act, 1961, which reads as under

"Where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the Income of the Assessee of that previous year."

From the aforesaid provision, it is clear that the Section 68 is attracted when any sum is found credited in the books for which assessee offers no explanation about the nature and source. In the given case, there is no entry of such alleged cash deposit amount of Rs. 1,66,94,495/- is found in the book of the appellant. Since there is no cash deposited in the books of the appellant which has already been substantiated by the appellant by giving all his Bank Statements where the AO could not find any cash deposit hence, the application of Section 68 is grossly incorrect and the addition of Rs. 1,66,94,495/- needs to be rejected. From the above, it is clear that addition made by Ld. AO is arbitrary in nature, without any merit and against the Natural Justice.

Your Appellant Prays to your honour to kindly delete the arbitrary addition made by the AO without any basis and evidence.

Ground No. 2:

"The Appellant craves the leave to add, alter, amend, delete and/or modify the above grounds of appeal at the time of hearing"

7. After considering the submissions of the assessee, Ld.CIT(A) asked for the remand report from the Assessing Officer and shared the same with the assessee. After considering the remand report and reply of the assessee, he dismissed the appeal filed by the assessee with the following observations: -

"7.7 In the submission of the assessee filed on 20.04.2019, it is claimed that the excel sheets transactions amounting to Rs. 1.66,94,495/- belong to M/s. Shree Vrindavan Logistics P. Ltd. as confirmed by Mr. K.K. Nareda, director of the company. It is also claimed that the excel sheets have been signed by Mr. K.K. Nareda as director of Shree Vrindavan Logistics P. Ltd. From the statement of facts and affidavit of the assessee dated 12.11.2018, it is found that while Shri K.K. Nareda is the director of the M/s. Vrindavan Logistics P. Ltd., Shri Ajay Agarwal is the owners of both M/s. Vrindavan Logistics P. Ltd. and M/s Balmukund Polyplast P. Ltd.

7.8 During the appellate proceedings, a no. of emails are produced to claim that Shri K.K. Nareda and Shri Ajay Agarwal have stated that the transactions found in the laptop of the assessee relate to inter branch transfer of M/s. Vrindavan Logistics P. Ltd. However, no documentary of accounts, etc. are produced either before the Investigation Wing, A.O or during appellate proceedings where such transactions are reflected as inter branch transfer. From the Remand Report, it is further observed that Shri Ajay Agarwal has actually expressed his ignorance about these transactions. In my considered view, making any claim without any supporting material has no relevance as far as Income Tax Proceedings are concerned.

7.9 Moreover, as stated above, Shri Ajay Agarwal who is the owner of both M/s. Vrindavan Logistics P. Ltd. and M/s Balmukund Polyplast P. Ltd., in response to notice u/s 133(6), vide letter dated 09.11.2020 has submitted his reply in the form of Affidavits (as reflected in the remand report of A.O. dated 11.12.2020) stating that there is no transaction with Mr. Vinay Todi. It is also categorically stated that they do not have any relation with Mr. Vinay Todi. This contradicts the claim of the appellant that these are transactions related to M/s. Vrindavan Logistics P. Ltd. 7.10 In the totality of facts and circumstances of the issue involved, I am of the considered opinion that

(i) The assessee has not conclusively established that the transactions found in the laptop of the assessee, are

connected with M/s. Vrindavan Logistics P. Ltd., except some email correspondences, which cannot be taken on its face value.

(ii) Any claim made by the assessee needs full proof documentary support which is lacking in this case.

(iii) Shri Ajay Agarwal, in his affidavit, filed in response to remand proceedings, has denied any transaction/contact with the appellant.

(iv) Although a circumstance has been narrated as to how the excel sheet came in the laptop of the assessee, but the same lacks credibility and onus on the assessee has not been discharged.

7.11 In view of the facts and the circumstances narrated above, no relief can be granted to the assessee. Therefore, the addition of Rs.1,66,94,495/- made by the Assessing Officer as unexplained cash deposit u/s.68 of the Act, is upheld. Consequently, ground no. 1 taken by the appellant is rejected.

8. Aggrieved, the assessee is in appeal before us raising following grounds of appeal: -

"1. On the facts and circumstances of the case, and in Law, the Ld. CIT(A) erred in confirming the addition of Rs.1,66,94,495/- on account of alleged cash deposit.

2. The Ld. CIT (A) failed to appreciate the facts that:

a) The AO neither mentioned where the alleged cash is deposited nor gave any evidence of the cash deposit

b) The AO made an addition in the Assessment year based on an unidentified worksheet found in the laptop of the assessee where the year of transaction is not mentioned.

c) None of the entries are co related with the books of accounts or records of the Assessee. And no evidence is placed on record to suggest that the entry belong to the Assessee.

d) The Additions are made based on surmises and conjecture which is bad at law.

3 *The appellant therefore prays that the addition of Rs.1,66,94,495/- may kindly be deleted."*

9. At the time of hearing, Ld AR of the assessee submitted that the assessee has no business income and admitted that during survey, investigation wing found a excel sheet, which reproduced and attached in the paper book, he submitted that it contains only dates without any year and he wondered how it is relevant to AY 2011-12. He submitted there is no such deposits made in the bank account belongs to assessee and bank account maintained by the assessee is only salary account. He further submitted that the Assessing Officer found a random file in the assessee's laptop and has not actually verified the transaction whether it belongs to assessee. According to him, it is nothing but dumb document and it is belonging to Shree Vrindavan Logistics. In this regard he relied on the following case law:-

- (i) *CIT vs. Vivek Aggarwal (2015) 92 CCH 0051 Del High Court (2015) 121 DTR 0241 (Del)*
- (ii) *Pr.CIT v. Virender Kumar Bhatia (2019) 106 CCH 0150 DelHC, (2020) 268 TAXMAN 0412 (Delhi)*
- (iii) *Paras Shantilal Shah vs. DCIT (2015) 93 CCH 0326 Mum High Court (2015) 127 DTR 0345 (Bom), (2016) 282 CTR 0291 (Bom), (2015) 378 ITR 0041 (Bom)*
- (iv) *CIT vs. girish chaudhary (2007) 75 CCH 0490 Del High Court (2008) 296 ITR 0619, (2007) 163 TAXMAN 0608*

10. On the other hand, Ld DR brought to our notice the facts of the case from the assessment order and appellate order and vehemently argued the merits on this case. Prayed that the order of lower authorities are proper and needs to be sustained.

11. Considered the rival submissions and material placed on record. We observe that during Survey, an excel document was found in the laptop belongs to the assessee, which contained certain financial data with date but without the year and various details of branches. This data, according to the revenue, related to cash deposits. When the same was enquired with the assessee, he did not answer but took time to reply. In reply, he submitted that this information relating to Shree Vrindavan Logistics, which the group company intended to acquire for the logistic business. Thereafter, the assessee took different stand and pleaded that the excel sheet found in laptop is a dumb document. If the above information found in the laptop is dumb, the assessee should have instantly informed the same to revenue but tried to justify that it is relating to Shree Vrindavan Logistics. Subsequently, the Shree Vrindavan Logistics gave a vague reply owning the information and disowning partly. In substance, the assessee has not given clear and satisfactory reply on the information found in his laptop. It shows that statement of the assessee is not dependable. The

information contained in the excel sheet not only contains dates (without year) but also contains the details of various branches. Whether the branches mentioned in the excel sheet belongs to M/s. Rutron International Ltd., or to the M/s. Vrindavan Logistics Pvt. Limited. Obviously it cannot be of the assessee since assessee is one of the director. In our view, it can never belong to the assessee. It is also supported by the submission that no cash was deposited in the assessee bank account. The assessee being a director of the company and found with some data, whether the document/information belongs to him or it belongs to company, can only be disclosed by the assessee. In statement, it was informed that it is relating to Shree Vrindavan Logistics but the said information is not owned by the said company, at the same time the document found in the laptop has no clear information about the nature of the transaction. The Assessing Officer cannot presume and make the addition. As described above even the assessee has not given clear information. For the sake of overall justice, we deem it fit to remit this issue back to the file of the Assessing Officer, with the direction to collect the bank statement for the A.Y. 2011-12 of the companies in which assessee has a interest i.e. M/s. Rutron International Limited, other group companies of Rutron and M/s. Shree Vrrindavan Logistics P. Ltd., with the

abundant caution, we also would like to direct assessee to cooperate with Assessing Officer to complete the verification. In case of non-cooperation from the assessee side, the same may be added in the hands of the assessee. We direct the Assessing Officer to give proper opportunity of being heard to the assessee and verify the information with proper data and not to make the addition on presumptions. Accordingly, the appeal filed by the assessee is allowed for statistical purpose.

12. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 14th November, 2022.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 14/11/2022
Giridhar, SPS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)
ITAT, Mum