

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI B. R. BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1901/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2016-17)

Pooja Dharamvir Thakur Pooja Dharamvir Thakur, 32, Wing 1B, Winderemere Oshiwara New Link Road, Near Green Park Andheri.	बनाम/ Vs.	ITO-24(3)(3) 701 Piramal Chambers Lalbaug, Parel, Mumbai- 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADFPT6305H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rajesh Sanghvi
Revenue by:	Shri Ganesh Bare (DR)

सुनवाई की तारीख / Date of Hearing: 06/10/2022

घोषणा की तारीख /Date of Pronouncement: 18/11/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-49, Mumbai dated 28.06.2021 for the assessment year 2016-17.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) to have confirmed the addition of Rs.11 Lakhs u/s 69A of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts as noted by the Ld. CIT(A) is that pursuant to a search and seizure operation u/s 132(1) of the Act carried out in the case of Jain and Dixit Group of Indore, consequently a concern connected to them ie. M/s. Global Metal and Energy Pvt. Ltd was also covered, which was located at Flat No. 32 Wing-1B, Windmore, Oshiwara, New Link Road, Andheri, Mumbai. The assessee an



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individual was found to be using this place as her residence; and certain data was found to have been recovered from mobile phone of Shri Awadhesh Dixit (i.e, conversation in the form of SMS, whatsapp messages etc with assessee). As per the electronic message, data, it transpired that assessee has received cash amounting to Rs.16.00 Lakhs from the Mr. Dixit. Later notice u/s 153C of the Act was accordingly issued in the case of assessee and assessment was completed treating the said cash receipt as income of the assessee. Aggrieved by the action of the AO to have made an addition of Rs.16.00 Lakhs, the assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee by restricting the addition to Rs.11 Lakhs in place of Rs.16 Lakhs as made by AO. Still not satisfied, the assessee is before us.

5. We have heard both the parties and perused the records. We note that the assessee has filed the return of income on 31.03.2017 declaring total income of Rs.14,33,350/-. Later, the return was processed u/s 143(1) of the Act on 31.03.2018. Thereafter, the AO noticed that he has received a letter dated 05.03.2019 from ACIT Central-1, Indore which contained the satisfaction of the AO of the searched person as required u/s 153C of the Act to initiate action against the assessee u/s 153C of the Act. As per the information, AO noted that a search and seizure action u/s 132(1) of the Act was carried out at various residential and business premises connected to Jain and Dixit Group of Indore and in that process M/s. Global Metal and



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Energy Pvt. Ltd. located at Flat-32, Wing 1B, Windmore, Oshiwara, New Link Road, Andheri, Mumbai was also covered in the search u/s 132(1) of the Act. And it was found that the assessee used to reside there; and from the mobile phone of Shri Awadhesh Dixit (Jain and Dixit Group) certain SMS and Whatsapp messages were discovered which was between Shri Awadesh Dixit and the assessee on different dates. From the contents of the chats according to the AO it revealed cash movement between them to the tune of Rs.16 Lakhs during the relevant assessment year. And thereafter, the AO reproduced the chats between the assessee and Shri Awadesh Dixit in the form of a chart which has been reproduced at page 3 & 4 of the assessment order. And AO confronted the assessee as to why the cash received of Rs. 16 Lakhs should not be taxed in her hands u/s 69A of the Act. In response the assessee submitted that money did not belong to her and that she was receiving the money on behalf of the M/s. Global Metal and Energy Pvt. Ltd. and also contended that merely because she had communication with Shri Dixit does not mean that it is her income. The said plea of assessee was not accepted by AO who was of the opinion that the assessee has received cash of Rs.16 Lakhs from Shri Awadesh Dixit and added it to the total income of the assessee (as income earned from undisclosed sources of income u/s 69A of the Act). On appeal, the Ld. CIT(A) has restricted the addition to Rs.11 Lakhs. The Ld. CIT(A) noted certain facts from the case file of Shri Awadhesh Dixit (order dated 17.08.2019 in the case of Shri Awadhesh Dixit for AY. 2011-12 to 2016-17) that his case was referred to special



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auditor; and the auditor has observed that as per seized material (phone, messages, communication) cash amounting to Rs.11 Lakhs was paid to Miss Pooja Thakur/assessee during AY. 2016-17. Therefore, the Ld. CIT(A) restricted the addition to Rs.11.00 Lakhs only. Still not satisfied by the aforesaid action of the Ld. CIT(A), the assessee wants deletion of Rs 11 lakhs, claiming it is not her income and that she was only custodian of the amount given to her and used to spent as instructed by Shri Dixit. We note assessee who is an individual has filed return of income declaring more than Rs 14 Lakhs [Rs 14,33,350/-]. And we find that the Ld. CIT(A) has taken note of the fact that in the case of Shri Awadhesh Dixit, his case was referred to special auditor and the auditor has observed that as per the seized material (SMS and Whatsapp SMS) cash amounting to Rs.11 Lakhs was given to Ms. Pooja Thakur/assessee, and therefore, he restricted the addition to Rs.11 Lakh. Before us, the Ld. AR drew our attention to the sworn-affidavit filed by Shri Awadhesh Dixit wherein he has undertaken that the addition made in the hands of Shri Awadhesh Dixit to the tune of Rs.40 Lakhs would not be assailed before the Tribunal (Indore Bench) if relief is granted to the assessee. The Ld. AR [Shri Rajesh Sanghvi] also undertakes the commitment made by Shri Awadhesh Dixit not to contest the addition of Rs.40 Lakhs before the Tribunal which is the amount/cash handed over to assessee in the assessment u/s 153A/153C of the Act. Now in the light of the undertaking by Shri Awadhesh Dixit and the Ld AR, the question is whether the amount of Rs.11 Lakhs given to the assessee can part-take the



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character of income in assessee's hand. Under the peculiar facts of the case, we note that the assessee has claimed to have received the amount on behalf of M/s. Global Metal and Energy Pvt. Ltd.; and claims to have not received the same for any services rendered by her to Shri Awadhesh Dixit. From perusal of the undertaking/affidavit (supra), we note that the department has already brought to tax Rs.40 Lakhs in the hands of Shri Awadhesh Dixit (which he undertakes not contest before the Tribunal) then the same (i.e. 40 Lakhs becomes the income of Shri Awadhesh Dixit and by virtue of the same he has to remit the tax in accordance to law. Once Rs.40 Lakhs is treated as income of Shri Awadhesh Dixit, next question is what would be character of it when he has given it to assessee. According to Shri Awadesh Dixit, the same was given to assessee for and on behalf of M/s. Global Metal and Energy Pvt. Ltd. Meaning the assessee was only custodian of the amount given to her (by Shri Awadhesh Dixit) and the same is disbursed later on as per his direction i.e. the said money that is given to M/s. Global Metal and Energy Pvt. Ltd have been spend as per the direction of M/s. Awadhesh Dixit and the amount in question passed through assessee. We find corroboration of the same from the chats reproduced by Ld. CIT(A)/AO wherein on 05.05.2016 message reads "*Attu wo kisan ko paisa dena 1 lac pohocha dete to mila ke de deti.*" Meaning payment of Rs.1 Lac to Kisan will be made once, it is received. So the assessee is saying about giving money to some kisan as per the instruction of Shri Awadhesh. Further we note that assessee an individual has shown income of



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Rs.14,33,350/- in her return of income filed as 31.03.2017. And when Shri Awadhesh Dixit has owned up Rs.40 Lakhs as his income (affidavit) and taking into consideration his assertion that payments to assessee was only for disbursing the same as per his instruction, the said amount cannot part-take the character of income in the hands of the assessee. Therefore in the peculiar facts and circumstances of the case, no addition was warranted in the hands of assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 18/11/2022.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/11/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai