

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2715/Del/2016  
(Assessment Year : 2012-13)

JCIT Central Circle – 31, New Delhi  <b>PAN No. AKUPS 3431 K (APPELLANT)</b>	Vs.	Sh. Gurinderjit Singh M/s. Krishna Continental Ltd., 31.32, Community Centre, Saket, New Delhi - 110017  <b>(RESPONDENT)</b>
--	-----	--

Assessee by	Shri Satish Khosla, Adv. Shri Manish Malik, Adv.
Revenue by	Shri H. K. Choudhary, CIT-D.R.

Date of hearing:	29.11.2022
Date of Pronouncement:	06.01.2023

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the Revenue is directed against the order dated 18.02.2016 of the Commissioner of Income Tax (Appeals)-30, New Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual who filed his return of income for A.Y. 2012-13 on 30.09.2012 declaring total income of

Rs.7,67,44,950/-. Initially, the return of income was processed u/s 143(1) of the Act on 27.03.2014. AO has noted that a search action u/s 132 of the Act was carried out on 22.11.2011 in the case of assessee. Consequently, proceedings u/s 153A of the Act was initiated for A.Ys. 2006-07 to 2011-12 and for A.Y. 2012-13, the case was selected for scrutiny. Assessee thereafter filed revised return of income on 10.12.2013 declaring total income at Rs.2,85,82,880/-. Thereafter, assessment was framed u/s 143(3) of the Act vide order dated 27.03.2014 and the total income was determined at Rs.7,73,27,830/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 18.02.2016 in Appeal No.220/14-15/1798 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 4,87,44,948/- on account of undisclosed income.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in ignoring that the assessee himself disclosed additional income of Rs. 4,87,44,948/- in his statement recorded u/s 132(4) of the I.T. Act on 23.11.2011 and later on through letter dated 05.04.2012.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating that the assessee filed its original return on 30.09.2012 wherein amount disclosed as additional income in statement u/s 132(4) of the I.T. Act was declared and later on retracted.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating that statement u/s 132(4) of the I.T. Act in which additional income was admitted itself is an incriminating document and an evidence.*
5. *That the order of the CIT(A) is erroneous and is not tenable on facts and in law.*
6. *That the grounds of appeal are without prejudice to each other.*
7. *That the appellant craves leave to add, amend, alter or forgo any/all of the grounds of appeal either before or at the time of hearing of the appeal.”*

5. Before us, at the outset, Learned DR submitted that though the Revenue has raised various grounds but the effective ground is Ground No.2.

6. AO noted that in the original return of income filed for A.Y. 2012-13 on 30.09.2012, assessee had declared total income of Rs.7,67,44,950/-. He noted that assessee had thereafter filed a revised return of income on 10.12.2013 declaring income of Rs.2,85,82,880/-. The assessee was asked to explain the reason for revising the return of income to which, assessee *inter alia* submitted that during the course of search and seizure operation carried out at the business and residential premises of the assessee and other entities on 22.11.2011, assessee to buy peace and put to an end of litigations emanating from search, offered to tax a sum of Rs.130 crores as the income in the hands of various business entity/companies and self for A.Y. 2012-13 at the time of search. It was further submitted that later on after examining

the record and details, it was noted that a sum of Rs.44.12 crores was disclosed for the same reasons as in earlier disclosure and thus the total disclosure amount stood at Rs.174.12 crores. It was further submitted by the assessee that a sum of Rs.102 crores related to the income of M/s. Sachi Properties Pvt. Ltd. for the F.Y. 2011-12 relevant to A.Y. 2012-13 and the taxes was also paid by Sachi Properties Pvt. Ltd. on such amount offered to tax. It was further submitted by the assessee that on analysing the papers, documents and the books of account, it was noticed that a sum of Rs.28 crores was to be disclosed in the hands of Aakriti Hotels Pvt. Ltd. and the assessee in his individual capacity. It was submitted that Rs.22,78,12,149/- was disclosed in the hands of M/s. Aakriti Hotels Pvt. Ltd. and the same was offered to tax for A.Ys. 2009-10 to 2012-13. It was thus submitted that since the amount of Rs.22,78,12,149/- has already been offered to tax in the case of M/s. Aakriti Hotels Pvt. Ltd., the tax has been paid on the same, the balance amount of Rs.5.22 crores was offered as income in A.Y. 2012-13 in the hands of the assessee and tax to the extent of Rs.1.61 crores including interest was paid. It was further submitted that the aforesaid disclosure in hands of the assessee was only a balancing figure without there being any asset or document to match the income. He, therefore, withdrew the disclosure of Rs.5.22 crores. The submissions of the assessee was not found acceptable to AO. AO noted that the assessee had made the retraction of the statement recorded u/s 132(4) of the Act and the retraction was made after 132 days of recording his original statement in the course of search proceedings. He also

noted that assessee had included a sum of Rs.5.22 crores in the return of income filed on 30.09.2012 and also paid the tax to it. He, therefore, concluded the retraction made by the assessee to be an afterthought. He, therefore, did not accept the retraction of the withdrawal of Rs.5.22 crores offered in the return of income. AO thereafter determined the total taxable income of the assessee at Rs.7,73,27,830/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) decided the issue in favour of the assessee by observing as under:

*4.6 I have carefully considered assessment order, written submission, case laws relied upon and oral arguments of Ld. AR. The objection/argument of the appellant are discussed as under:*

*(i) In the case of the appellant's group, a search and seizure action u/s 132 was carried out on 22.11.2011. In the statement of income recorded u/s 132(4) of the Act. the appellant has made the disclosure of Rs. 130 crores. The details of disclosure of Rs. 130 crores were furnished by the appellant during the appellate proceedings, same is reproduced as under:-*

S. No.	Name	Asstt. Yr.	Amount Surrendered	Returned Income	Assessed Income	Nature of Income Surrendered	Status of Dispute & Appeal filed
1.	Sachi Properties Pvt. Ltd	2012-13	102,02,000,00	131,65,00,000	131,65,00,000	Relinquishment of rights in the property	No Appeal filed
2	Aakriti Hotels Pvt Ltd	2009-10	5,60,52,148	5,60,52,148	79,07,81,548	Interest Income on FDR.	Appeal filed before CIT(A) on other
3	Aakriti Hotels Pvt Ltd	2010-11	10,80,15,350	10,80,15,350	27,44,38,250	Interest Income on FDR.	Appeal filed before CIT(A) on other
4	Aakriti Hotels Pvt Ltd	2011-12	5,07,62,681	5,07,62,681	5,07,62,681	Interest Income on FDR.	No Appeal filed
5	Aakriti Hotels Pvt Ltd	2012-13	1,29,81,970	1,29,81,970	2,60,40,150	Interest Income on FDR.	Appeal filed before CIT(A) on other
6	Gurinder Jit Singh	2012-13	5,21,24,851	7,67,44,950	77,327,830	Other Income	Appeal filed before CIT(A)
	<b>TOTAL</b>		<b>1,300,137,000</b>				

- (ii). *Original return of income u/s 139(1) was filed on 30.09.2012, declaring total income of Rs. 7,67,44,950/-, which includes disclosure of Rs. 4,87,44,948/- (Rs.5,01,00,100/- Rs.13,55,152), as against the disclosure of Rs. 5.22 Crores made in the statement recorded u/s 132(4) of the Act. Subsequent to the above, assessee filed a revised return of income on 10.12.2013, declaring total income at Rs.2,85,82,880/-, as against the original declared total income of Rs. 7,67,44.950/-, thus reducing the income by an amount of Rs. 4,81,62,070/- (Rs 7,67,44,950- Rs. 2,85,82,880). It is clarified here that the assessee has included alleged undisclosed income(net) of Rs.4,87,44,948/-, and the gross amount of Rs.5,01,00,100/-, and not the alleged undisclosed amount of Rs.5.22 crores.*
- (iii) *However, in the assessment proceedings, the A.O. did not accept the alleged revised return for the reason that :*
- *the disclosure u/s 132(4) was made on 22.11.2011 and the bifurcation of the same was submitted before the Investigation wing on 05.04.2012, which was after 132 days of recording his statement,*
  - *the assessee was having sufficient time for verification of seized material and to determine the correct amount of the disclosure made u/s 132(4), for which bifurcation was also submitted,*
  - *assessee made the bifurcation of the disclosure, which was confirmed for the fact that return of income was filed on 30.9.2012, where additional income of Rs.5.22 crores was included , on which taxes were also paid, and*
  - *the statement recorded u/s 132(4) on 22.11.2011 was voluntary .*

*In view of the above facts , A.O. was of the opinion that the retraction through filing of the alleged revised return on 10.12.2013. is after thought.*

(iv) During appellate proceedings it has been submitted by the appellant that the disclosure made on the estimated basis for entire group. However, the disclosure made in 5 persons, is not disputed and same has been disclosed and due taxes, have also been paid, except in the case of appellant. For the disclosure made in the case of appellant is not supported by any undisclosed asset/ seized paper and the amount of disclosure of Rs. 5.22 crores (Rs.130 - Rs.128.80), was determined as a balancing figure , after subtracting from Rs.130 crores , the disclosed amount of Rs. 128.80 crores in 5 persons. The same is also evident as per para 2.3 of the assessment order, where it has been stated by the A.O. that the balance amount of Rs. 5.22 crores, was offered in the hands of the assessee and vide letter dated 12.02.2014, same was claimed to have been retracted. The para 2.3, is reproduce as under :

“2.3. During the course of assessment proceedings, vide letter dated 12.02.2014, the assessee while clarifying about the amounts of surrender, explained that out of Rs.130 crore, a sum of Rs.102 crore is relatable to M/s Sachi Properties Pvt. Ltd. for A.Y. 2011-12 and out of the balance Rs.28 crore Rs.22.78 crore has been disclosed in the hands of M/s Aakriti Hotels Pvt. Ltd. and balance of Rs.5.22 crore was offered in the hands of the assessee (Mr. Gurinder Jit Singh). Now the assessee has made a retraction in respect of surrender of Rs.5.22 crore in his own hands from the total disclosure of Rs. 130 crore. The relevant para of assessee s letter dated 12.02.2014 is reproduced as under:”

It is further submitted that in the assessment order also, the addition on account of undisclosed income of Rs.4,87,44,948/- , is not based on any evidence ,which was in fact a balancing figure only. Therefore ,entire disclosure of Rs. 130 crores , was not correct and in order to correct the mistake , the revised return was filed on 10.12.2013. It is also clear from the table (supra) on page 19 of this order that the disclosure of Rs. 128.80 crores in 5 persons, has not been disputed by the appellant, since, same was supported by the documents found and seized during search and seizure action.

- (v) It has been submitted by the appellant that no seized material, evidencing the fact that the appellant was in possession of the undisclosed income of Rs 5.22 crores, in the form of any cash or asset(s) or any undisclosed investment, was found during search & seizure action or subsequently during assessment proceedings . It has also been submitted by the appellant that there is no evidence found as a result of search action, to point out the fact that the appellant has incurred expenditure of Rs. 5.22 Crores from undisclosed sources .
- (vi). It has also been submitted by the appellant there is no reference of any undisclosed bank account of the assessee, where the amount is deposited. It is further submitted that the CBDT has also issued Instruction No. 286/2/2003-IT Inv, dated 20.3.2003 that the A.O. should make addition on the basis of evidences collected during search and seizure action or thereafter while framing the relevant assessment order. In the case of the appellant, no evidence has been found during course of search and seizure action nor thereafter before completing the assessment u/s 143(3) of the Act.

### **CONCLUSION :**

On the perusal of the submissions made and argument given by the appellant, it is clear that the :

- the disclosure made by the appellant for A.Y. 2012-13 , was not supported by any evidence, found during course of search and seizure action u/s 132 and accordingly, the revised return filed by the appellant is in order,
- in the assessment proceedings also , A.O. has not referred for any document found during course of search and seizure action nor thereafter before completing the assessment u/s 143(3) of the Act.

In view of the above, I agree with the arguments of the appellant and the findings of the AO are erroneous and therefore, addition of Rs.4,87,44,948/-, on account of undisclosed income, is hereby deleted.

*Accordingly, ground no.1, is hereby allowed.”*

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

8. Before us, Learned DR took us to the findings of AO and submitted that during the course of search it is found that assessee had surrender the income in the statement recorded u/s 132(4) of the Act and during the course of search, he submitted that statement recorded u/s 132(4) has got evidentiary value. He further pointed to the fact noted by the assessee that the assessee has recorded at the end of the statement that the statement has been given by him voluntarily without any fear, threat, pressure or coercion. He submitted that assessee has not demonstrated by placing evidence on record to demonstrate that the statement recorded earlier u/s 132(4) of the Act was incorrect. He further submitted that after the statement, that was recorded u/s 132(4) of the Act, assessee had offered the impugned amount to tax, had paid the taxes on that in the original return filed by assessee. In such a situation, he submitted that the Learned CIT(A) had erred in holding that the revised return filed by the assessee to be in order and deleting the addition made by AO. He thus supported the order of AO.

9. Learned AR on the other hand reiterated the submissions made before CIT(A) and supported his order.

10. We have heard the rival submissions and perused the material on record. We find that CIT(A) while holding that the revised return of income filed by the assessee to be in order has given a finding that during the course of search, assessee had admitted disclosure of income in the case of assessee as well as the group and the admission was offered as income in the case of 5 persons and taxes were also paid on such income. He has further given a finding that the disclosure made in the case of the assessee was not supported by any undisclosed asset/seized paper and the disclosure of Rs.5.22 crore was a balancing figure after considering the disclosure and the amount disclosed as income in case of 5 persons. He has also given a finding that the addition of undisclosed amount was not based on any evidence found during the course of search. The submissions of the Learned AR that the assessee had made disclosure of undisclosed income in the course of search was made for the assessee as well as other entities in the group has not been controverted by Revenue. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. The only stress placed by Revenue is that the amount was accepted as undisclosed income in the statement recorded u/s 132(4) of the Act. It is a settled law that only on the basis of the statement, and without any corroborating evidence no addition of income can be made. Considering the totality of the aforesaid facts, we find no infirmity in the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

**11. In the result, appeal of Revenue is dismissed.**

**Order pronounced in the open court on 06.01.2023**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 06.01.2023

PY\*

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI