

Shri Ghanshyam Jaiswal v. DCIT, Circle-1, Gorakhpur, U.P.

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH "SMC", VARANASI**

BEFORE RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.14-17/VNS/2020
Assessment Year:2009-10 to 2012-13

Shri Ghanshyam Jaiswal Harbanspur, Sadar, Azamgarh-273001,Uttar Pradesh PAN:AAHPV9097R (Appellant)	v.	Deputy Commissioner of Income-tax, Circle-1, Gorakhpur-273001,U.P. (Respondent)
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Appellant by	None(Adjournment Application filed only for Assessment Year 2009-10)
Respondent by	Shri Amalendu Nath Mishra, CIT-DR
Date of hearing	12/01/2023
Date of pronouncement	16/01/2023

ORDER

These four appeals in I.T.A. No.14-17/VNS/2020 for assessment year's(ay): 2009-10 to 2012-13 have been filed by the assessee challenging separate appellate orders all dated 22.10.2019 passed by learned Commissioner of Income-tax (Appeals)-Gorakhpur (Hereinafter called "CIT(A)") under section 250 of the Income-tax Act, 1961(hereinafter called "the Act"). These appeals were heard in open Court proceedings through physical mode.

ITA No. 14/Vns/2020 for Assessment Year 2009-10

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Varanasi Circuit Bench, Varanasi

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(hereinafter called “the tribunal”) in ITA No. 14/VNS/2020 for ay:2009-10, reads as under:

GROUND OF APPEAL

- “1. That in any view of the matter the assessment order dated 31/03/2014 passed u/s 143(3)(ii) r.w.s. 153B(Ib) of the IT Act by the assessing officer and his action as partly confirmed by the Commissioner of Income Tax (Appeal) vide his order dated 22.10.2019 is bad both on the facts and in law.
2. That in any view of the matter the addition of Rs. **9 lacs** as made and maintained in first appeal in the hands of the appellant by alleging unexplained income without appreciating the correct facts is highly unjustified and incorrect in the facts and circumstances of the case hence the same is liable to be deleted in interest of justice.
3. That in any view of the matter a part sum of Rs.28,000/- out of the addition of Rs.1,44,000/- so made by the assessing officer on estimate basis account of house hold expenses as maintained by the first appellate authorities as per para 9 of the his order is highly unjustified and illegal in the facts and circumstances of the case, hence the same is liable to be deleted.
4. That in any view of the matter the entire approach of the two lower authorities for making and maintaining the addition without bringing any corroborative evidence on record and even observation and findings of the two lower authorities in this orders are general, vague and contrary to the actual facts of the case, hence the addition is liable to be deleted.”

2b. The assessee has also filed additional grounds of appeal for ay:2009-10, which reads as under:

ADDITIONAL GROUND OF APPEAL

- “1. That in any view of the matter the addition of Rs. 9 lacs made by the Assessing Officer and confirmed by CIT(A) is highly unjustified in so far as the deposits in bank from definite sources and out of withdrawals from bank as well as earlier year savings was utilized hence the addition is unwarranted.

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2. That in any view of the matter the seized amount of Rs.9,00,000/- was not undisclosed money but out of the withdrawal from books hence addition is unwarranted.
3. That in any view of the matter the house hold expenses as estimated by the Assessing Officer without any basis/material and especially when proceeding was started u/s 153A then there is no justification to add the amount on account of household expenses since no incriminating material was found hence addition is unwarranted.
4. That in any view of the matter the house hold expenses estimated without any basis and especially when standard of living of the appellant is very ordinary hence addition is uncalled for.”

3a. The brief facts of the case are that a search and seizure operation u/s 132A of the 1961 Act was conducted in the case of Mr. Naim Ahmad S/o Late Iftekhar Ahmad on 06.05.2008 , action u/s 132A in the case of Shri Naim Ahmad was taken by department, on perusal of information received by Shri Punit Parihar, S.I. ATS, Eastern Zone, Varanasi, from reliable informer to the effect that , one person who is engaged in Hawala Business is waiting for someone with Hawala money at Ashapur Railway crossing. On search they found the said person and on checking they recovered a sum of Rs. 9,00,000/- from possession of Shri Naim Ahmad, who stated that the money recovered was given to him by Shri Mohan at Benia Tiraha who has asked him to hand over it to Mr. Imran of Saraimeer. The matter was intimated by the Police Authorities to the Enforcement Directorate on same day.

3b. The Deputy Director, Delhi Zonal Office , vide his letter no. T-3/Misc./01/LZO/10, has intimated to the Assistant Director , Varanasi, Sub-Zonal Office, Varanasi that the case does not indicate any FEMA violations and consequently suggested to transfer the same to the Income

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Tax Department. On 25.10.2010 intimation was made to the DDIT(Inv.) ,
Varanasi on compliance of which, a warrant of authorization was issued
by the DDIT(Inv.), Varanasi on compliance of which , a warrant of
authorization issued by the DDIT(Inv.) , Kanpur u/s 132A of the 1961 Act
authorizing the officers to take possession of the seized material and to
deposit the cash recovered in PD account no. 31446530372 of CIT,
Gorakhpur , which was deposited in the said account on 03.01.2011.

3c. On the basis of warrant of authorization issued by the DDIT(Inv.),
Kanpur , total cash of Rs. 9,00,000/- were requisitioned from the police
authorities during the search proceedings.

3d. In view of the above, notices u/s 153A was issued on 14.02.2014, for
assessment year 2006-07 to 2012-13. Notice u/s 142(1) along with
questionnaire was also issued for filing of return of income for the
impugned assessment year , and which was claimed by Revenue to have
been duly served on the assessee by speed post.

3e. Since the case was assigned to Circle-1, Gorakhpur vide order dated
05.03.2013 of the CIT, Gorakhpur, the AO issued notice u/s 153A for the
assessment years 2006-07 to 2012-13 . The AO also issued notice u/s
142(1) of the 1961 Act for filing of return of income for the assessment
year 2009-10 along with detailed questionnaire were issued and served
to the assessee by speed post, for compliance on 06.03.2014. The
assessee duly participated in the assessment proceedings, from time to
time, and submitted details .

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3f. The AO based on examination of record observed that during the requisition proceedings before ADIT(Inv.) , Gorakhpur , statement of Shri Naim Ahmad son of Late Shri Iftikar Ahmad was recorded u/s 131(1A) of the 1961 Act , on 14.02.2011. While recording statement u/s 131(1A) of the Act, he has stated before the police authorities(ATS) that the said amount is of Hawala Business and was given to him by on Shri Mohan at Beni Tiraha , and the same was ultimately to be handed over to Shri Imran off Saraimmeer. He also explained that he does not know much about Shri Mohan.

3g. The AO further observed that on further examination by the ED , Shri Naim Ahmad stated that he is residing at CK-42/69, Chahmama , Dalmandi, Varanasi (the house belonging to his maternal side) and was doing business of running mobile shop in Dalmandi Varanasi. He gave one mobile no. 9956241287. He further stated that this money of Rs. 9 lacs recovered is of hawala business, vide statement dated 16.05.2008 before ED. In the initial stage in the statement recorded by ED, Shri Naim Ahmad did not divulge the money belonged to Shri Ghanshyam Jaiswal and he never stated that he was an employee of Ghanshyam Jaiswal. He was further examined by the ED on 06.01.2010 , 18.03.2010, 05.05.2010 and statement of Shri Naim Ahmad was also recorded by Shri Puneet Parihar, SI, STF. In subsequent statements recorded after 16.05.2008 , Shri Naim Ahmad has changed his statement and claimed that cash of Rs. 9.00 lacs recovered and seized from him on 06.05.2008 relates to Shri Ghanshyam Jaiswal. His statement was also recorded u/s 131(1A) on 30.11.2011, in which he stated that the money was given by Mr. Ghanshyam Jaiswal and he was an employee of Shri Ghanshyam Jaiswal since last 4-5 years. The AO observed that as per initial statement , Shri Naim Ahmad was running

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a mobile shop , and nowhere uttered the name of Shri Ghanshyam Jaiswal that the money belonged to him. The AO also observed that it is not acceptable that the huge amount of money of Rs. 9.00 lacs was sent by Shri Ghanshyam Jaiswal through an employee without any connectivity by Shri Naim Ahmad on the way to Varanasi. As Naim Ahmad has denied from the fact that he is not having any mobile phone with him during transportation of the money, but actually the fact is that the mobile phone was recovered by the Police Authorities from Mr. Naim Ahmad as per page 3 of the statement dated 05.05.2010 before ED. The AO observed that Shri Naim Ahmad has not come forward with true facts with respect to recovery and seizure of cash of Rs. 9.00 lacs from his possession by Police Authorities(ATS), on 06.05.2008.

3h. The statement of Shri Ghanshyam Jaiswal was recorded u/s 131(1A) of the 1961 Act on 14.02.2011, in which he stated that he is the proprietor of M/s Simla Colour Lab which has commenced since assessment year 2008-09. He was specifically questioned about the source of cash of Rs. 9 lacs. In reply, he stated as under:

“ That the money was withdrawn from the cash credit account viz., Rs. 1,50,000/- , Rs. 1,50,000/- and Rs. 2,00,000/- were withdrawn in December 2007 and Rs. 4,50,000/- in January ‘ 2008 which was kept at house for purchase of the land at Varanasi. The alleged sum of Rs. 9.00 lacs was given to Shri Naim Ahmad on 06.05.2008 to deliver it at Varanasi.”

3i. The AO observed that In view of the above reply/statement, since the assessee has made withdrawals from his cash credit account , on which the interest rate varies from 14% to 17%, in December 2007 and January 2008 and after lapse of about 4-6 months, was given for purchase of land .

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Hence, it is not believable , that it can be withdrawn on one or two days earlier for the purchase of land and a prudent businessmen will not do such an act.

3j. The AO further noticed that vide question number 6 of the statement recorded of Shri Ghanshyam Jaiswal on 14.02.2011, he was specifically asked to prove the evidence of opening balance as on 31.03.2007 of Rs. 6,99,193/- of his bank account maintained. But he was not able to produce any evidence for the same. Therefore, the AO observed that availability of opening cash balance remained unverified, which has been created by the assessee as an afterthought just to prove the seizure of Rs.9.00 lacs which was claimed by him as his own money from time to time.

3k. In view of the above facts, the AO held that it is proved that no funds are available with the assessee to give Rs. 9.00 lacs for the purchase of land and no corroborative evidence is being submitted by the assessee as proof/evidence, which could justify/substantiate the facts mentioned by the assessee. Therefore, the AO held that the version of the assessee is found to be unjustified and hence not acceptable. Therefore, the AO concluded that the cash seized does not belong to the assessee.

3l. The AO observed that since the assessee claimed that the sum of Rs. 9.00 lacs as his own money and also claimed that Shri Naim Ahmad was his employee, the sum of Rs. 9.00 lacs recovered from possession of Shri Naim Ahmad on 06.05.2008 to whom the assessee is stated to have given the money is treated as unexplained in the hands of the assessee on **protective basis** for the a.y.: 2009-10, and hence the addition of Rs.

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9,00,000/- was made by the AO in the hands of the assessee on **protective basis**, vide assessment order dated 30.03.2014 passed u/s 143(3)(ii) read with Section 153B(1b) of the 1961 Act.

4. There was one more additions made by the AO to the income of the assessee to the tune of Rs. 1,44,000/- on account of low drawings towards household expenses shown by the assessee, while framing assessment against the assessee. The AO during assessment proceedings observed that the assessee has stated that he is running a Colour Lab under the name and style of M/s Simla Colour Lab, since 1st April 1998. The AO observed that the assessee has also stated that he is earning income from house property and also derives income from commission by doing the business of LIC Agent. The AO observed that the assessee is filing return of income from the assessment year(ay): 2006-07. The AO also observed that the assessee has made no withdrawal as household expenses, to meet out the basic needs of his family. The assessee was asked by AO to furnish the details to justify the withdrawal. The assessee stated as under:-

“ That there are four members in my family i.e. My-Self, my wife & one daughter and one son. The household expenditure is managed from business income and from rent received during the year.”

The AO observed considering the material submitted by the assessee, that the assessee has made the drawings of Rs. 72,000/- p.a., which is insufficient to fulfill the basic needs of the family. Thus, keeping in view increasing cost of index and other social, ceremonial and educational expenses, total household expenditure was estimated by the AO at Rs. 18,000/- per month i.e. Rs. 2,16,000/-, which resulted in additions to the tune of Rs. 1,44,000/- made by the AO to the income of the assessee

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towards low withdrawal towards household expenses, vide assessment order dated 30.03.2014 passed u/s 143(3)(ii) read with Section 153B(1b) of the 1961 Act passed by the AO.

4. The assessee being aggrieved by assessment framed by the AO, filed first appeal with ld. CIT(A) and raised as many as eight grounds. On legal challenge made by the assessee to the assessment framed by the AO, the ld. CIT(A) dismissed the appeal of the assessee on the legal challenge to assessment framed by the AO . On merits of the additions, the ld. CIT(A) upheld the addition in the hands of the assessee of Rs. 9,00,000/- towards cash seized from Shri Naim Ahmad on 06.05.2008 by Police Authorities. So far as additions made by the AO on account of low withdrawal of household expense to the tune of Rs. 1,44,000/-, the ld. CIT(A) gave part relief to the assessee by confirming the additions to the tune of Rs.28,000/- on account of low withdrawal towards household expenses. The ld. CIT(A) passed appellate order dated 22.10.2019 u/s 250 of the 1961 Act (Appeal No. CIT(A)/GKP/2014-15/28/163). The operative part of the appellate order passed by ld. CIT(A) is reproduced hereunder:

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OFFICE OF THE
COMMISSIONER OF INCOME TAX (APPEALS)-Gorakhpur
MOTI CHAMBERS, LUCKNOW.

1.	Date of Appellate order	22-10-2019
2.	Appeal No.	A.No.CIT(A)/GKP/2014-15/28/163
	Date of Institution of Appeal	06.05.2014
4.	Name & designation of the Officer who made the assessment	Shri Hariman Ram Dy. Commissioner of Income Tax, Circle-1, Gorakhpur
5.	Assessment Year	2009-10
6.	Name & address of Appellant	Shri Ghan Shyam Jaiswal, Harbanspur, Sadar, Azamgarh
7.	PAN	AAHPV9097R
8.	Status	Individual
9.	Income/wealth assessed	12,14,400/-
10.	Tax demanded	5,22,328/-
11.	Section under which the assessment was made	143(3)(ii) of the I.T. Act, 1961.
12.	Date of hearing	As per order sheet
13.	Present for the appellant	Shri Ramjeet Yadav, Advocate
14.	Present for the Department	None

APPELLATE ORDER AND GROUNDS OF DECISION

1. This appeal is filed against order 143(3)(ii) of the I.T. Act, 1961 (hereinafter called Act) dated 30.03.2014 passed by Dy. Commissioner of Income Tax, Circle-1, Gorakhpur (hereinafter called A.O.)

2. The facts of the case are as under:-

The appellant is an individual. A sum of Rs. 9,00,000/- was seized from the possession of Shri Naim Ahmad by the Police authorities on 06/05/2008. Thereafter the matter was transferred to the department on 25/10/2010. The ownership of the fund was accepted by the appellant, thereafter notice u/s 153A of the Act for the A.Y. 2006-07 to 2012-13 were issued. The total income of the appellant was assessed at Rs. 12,14,400/- for the year under consideration.

Aggrieved by the above the present appeal was filed.

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The grounds of appeal filed by appellant are as under:-

1. *That in any view of the matter assessment framed vide order dated 31.03.2014 passed u/s 143(3)(ii) r.w.s. 153B(ib) of the income tax act and by such order income determined at Rs. 12,14,400.00 is both on the facts and in law in the facts and circumstances of the case.*
2. *That in any view of the matter the entire assessment is illegal and bad in law and without jurisdiction in so far as the proper procedure was not followed according to the law therefore the assessment is liable to be declared annulled and void.*
3. *That in any view of the matter entire discussions, observations and findings recorded in the assessment order by the assessing officer is incorrect and contrary to the actual facts of the case. Even no proper opportunity was provided to the assessee to explain full facts and in this was the assessee was debarred from natural justice. Even while framing the assessment the assessing officer did not apply judicious approach rather ignoring the correct facts and the assessing officer proceeded in a mechanical manner which is unjustified and wrong in the eyes of law.*
4. *That in any view of the matter the addition of Rs. 1,44,000/- made under the head house hold expenses on estimate basis ignoring the true facts of the case correctly is highly unjustified and illegal in the facts and circumstances of the case hence liable to be deleted.*
5. *That in any view of the matter addition of Rs. 9 Lakhs made in the hands of the assessee on protective basis by saying undisclosed income and on substantive basis in the hands of assessee's employee named Shri Naim is highly unjustified, incorrect and illegal because from very beginning the assessee is taking his stand before all the concerned authorities that the amount of Rs. 9 Lakhs belongs to the assessee and not to said Sri Naim. The said amount is assessee's owned money from definite and recorded sources and likewise said Sri Naim has also stated in his statement before the income tax authorities that the said sum of Rs. 9 Lakhs belonged to Sri Ghanshyam Jaiswal (Assessee), therefore consideration of Rs. 9 Lakhs in the hand of the assessee on protective basis is totally wrong, hence the same should be given to the assessee only. On this count addition made as unexplained income is also wrong because the amount is from definite and recorded source of the assessee.*
6. *That in any view of the matter entire approach of the assessing officer is not a judicious approach as a result the additions were made without any valid ground and material brought on record and even assessing officer's*

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observations and findings in the order are general and vague therefore additions are unjustified and illegal hence liable to be deleted.

7. *That in any view of the matter interest as charged under different sections of the income tax act is highly unjustified.*
8. *That in any view of the matter the appellant reserves his right to take nay fresh grounds of appeal before hearing of appeal.*

During appellate proceedings Shri Ramjeet Yadav, Advocate attended and filed written submissions. Matter was discussed. The written submission of the appellant is placed on record.

Through these grounds of the appellant has raised objection regarding the validity of the assessment made by the AO. It was contended by the appellant that the seizure was made on 06/05/2008 and the assessment has been made on 31/03/2014 which is barred by limitation of time. Further, it was submitted that no notice u/s 153A of the Act was served on the appellant and notice u/s 153(2) dated 14/02/2014 was issued. It was alleged that notice u/s 153A dated 19/03/2013 was issued but it did not contain any information regarding the A.Y. for which it was issued. The submissions of the appellant were sent to the AO who vide his report dated 15/03/2018 has submitted the following-

“ Notice u/s 153C of the IT Act was issued on 19.03.2013, for furnishing return of income in respect of each assessment year relevant to the period falling within 6 assessment years immediately preceding the assessment year in which search u/s 132 of the IT Act was conducted as mention in section 153 C of the IT Act dated 19.03.2013. Copy of satisfaction recorded by the AO is enclosed as Annecure ‘A-1’ and A-2 the same is relevant to ach assessment year under consideration.

Regarding passing of assessment order after three years of conclusion of the search, the factual position is as under-

Section 153B of the IT Act ascertains time limit for passing of assessment order u/s 153A/153C for ready reference the same is reproduced as under:-

A per records warrant of authorization was executed on 03.01.2011. The related case records were received from the officer of the ADIT(Inv), Gorakhpur vide F.No. ADIT (Inv)/GKP/Naim Ahmad/Appr. Report/12-13 dated 21.03. 2013. As per assessment records Notice u/s 153C of the Act was issued on 19.03.2013 in the case of Sri Radhey Shyam Jaiswal and notices u/s 153A of the Act was issued on 14.02.2014 in the case of Sri Naim Ahmad for the A.Y. 2006-07 to 2012-13. Consequently assessment orders were passed on 31.03.2014, after three years of the end of the financial year in which the last of the authorizations for requisition under section 132A was executed in the case of Sri Naim Khan and in the case of Radhey Shyam Jaiswal, after one year of the end of the financial year in which

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books of account or documents or assets seized or requisitioned are handed over under section 153C to the then Assessing Officer”.

Copy of the remand report was provided to the appellant who has submitted rejoinder which is considered and placed on record.

A perusal of the remand report and submissions made by the appellant shows that notice u/s 153C of the Act was issued on 19/03/2013 after recording the satisfaction in this regard. A copy of the same was submitted by the AO. Furthermore with regards to the time limit of passing the assessment order section 153B (1) (b) provide that –

Section 153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,-
(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;
(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :
Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in the case where the last of the authorizations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010,-
(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

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In this case the warrant of authorization was executed 03/01/2011 and the related case record were received vide letter dated 21/03/2013. The notice u/s 153C of the Act was issued on 19/03/2013 and the assessment order was passed on 31/03/2014 i.e. after three year of the end of the financial year in which the last of the authorization for requisition under section 132A was executed and after one year of the end of the financial year in which books of account are seized assets were handed over u/s 153C to the AO. Furthermore, it is a fact that notice u/s 153C were issued and the appellant had participated in the assessment proceeding and has not raised any objection on the validity and defects of the notices issued by the AO. The appellant's case is squarely covered under the provisions of section 292BB of the Act. In view of the above I find that the objections raised by the appellant are devoid of any merit and the same are rejected.

6. Ground of appeal no.4.

During the course of assessment proceeding the AO noted that the appellant had made drawing of Rs. 72,000/- during the year. The AO held that it was insufficient to fulfill the basis needs of the family consisting of four persons. The AO estimated the total household expenditure at Rs. 1,44,000/-.

During the course of appellate proceeding it was submitted that the addition made by the AO was not based on any search material and the addition was made on the basis of presumption only.

A perusal of the assessment order shows that the AO has estimated the household expenditure purely on the basis of the size of the appellant's family i.e. himself, his wife and two children. The AO had no other details regarding the standard of living of the appellant or the other regular expenditure incurred by him. The AO has not brought any evidence or material which may form the basis of the addition. The standard of living and the size of the family are relative terms and differ from person to person and circumstances. The AO was not in a position to judge the living standard of the appellant the only basis for which he had access to was the size of the family of the appellant. However, it is also a fact that the appellant has disclosed of Rs. 72,000/- only for the year under consideration which was same as the drawing made in the previous years. Considering the fact that the cost of living increases every year, hence it is not possible that the same amount is sufficient for maintenance of the life style. In view of the above i find that the addition made by the AO is on the higher side, an addition of Rs. 28,000/- would be fair in this case.

7. Ground of appeal no. 5.

Rs. 9,00,000/- was seized from the possession of one Shri Mohd. Naim by the Police authorities on 06/05/2008. In the statement before the Police authorities

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it was stated that the money recovered was of Hawala transaction and Shri Mohd. Naim was operating a mobile shop in the Dal Mandi Area of Varanasi. The matter was referred to the Enforcement Directorate. On further enquiry it was indicated that the case does not involve any violation of FEMA and subsequently was transferred to the department. Warrant of authorization was issued by the DDIT(Inv.), Kanpur and the cash recovered was deposited in the PD account of the CIT, Gorakhpur on 03/01/2011. Subsequently notices u/s 153A of the Act were issued.

During the course of assessment proceeding the AO noted that Shri Mohd. Naim had retracted his statement made before the Police authorities. Shri Mohd. Naim in his statement before the department, stated that the money belong to the appellant and the same was to be delivered to for purchase of land. The appellant also accepted the fact regarding the ownership of the fund. It was contented by the appellant that the said amount was withdrawn from his cash credit account in the months of December 2007 and January 2008 , was kept at house for purchase of land. The AO held that the appellant had no funds available with him, to give Rs. 9,00,000/- to Shri Mohd. Naim.

During the course of appellate proceeding it was once again submitted that the money seized from Shri Mohd. Naim did actually belong to the appellant and it was stated that the money was withdrawn from the cash credit account months December 2007 and January 2008. It was submitted that Shri Naim was an employee of the appellant and the money was given to him for handing over it to one Shri Lal Ji for purchase of land. It was contended that the amount was recorded in the books of account of the appellant. A copy of cash book for the period under consideration alongwith statement of the bank account was also submitted in support of the contention. The contentions made by the appellant were sent to the AO for his comments who vide his report dated 15/03/2018 has submitted his comments, the relevant portion of which are as under- the AO has reproduced the para no. 6 , 6.1, 6.2 of the assessment order in support of the addition and has further stated that ,

"In addition to this, as it can be notice in question no. 6 of the statement of Shri Ghanshyam Jaiswal dated 14.02.2011 he was specifically asked to prove the evidence of opening balance as on 31.03.2007 of Rs. 6,99,193/- of his bank account maintained. But he was not able to produce any evidence for the same. Therefore the availability of the opening cash balance remains unverified, which has been created by the assessee after through just to prove the seizure of Rs. 9.00 lacs which was claimed by him as his own money from time to time.

In view of the above facts, it has been proved that no funds are available to give Rs. 9.00 lacs for the purchase of land and no corroborative evidence is being

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submitted by him. Therefore the version of the assessee fund to be unjustified and hence not acceptable. Therefore it has been proved that the cash seized does not belong to the assessee.

As Shri Ghan Shyam Jaiswal son of Shri Lal Chand Jaiswal resident of Mohalla harvanshpur, Azamgarh claimed that the sum of Rs. 9.00 lacs as his own money and also claimed that Shri Naim Ahmad was his employee, the sum of Rs. 9.00 lacs recovered from possession of Shri Naim Ahmad on 06.05.2008 to whom Shri Ghanshyam Jaiswal is stated to have given the money is treated unexplained in the hand of Shri Ghanshyam Jaiswal on protective basis for the A.Y. 2009-10."

A copy of the remand report was provided to the appellant who has submitted his rejoinder which is considered and placed on record.

A perusal of the statement on oath, given by the appellant, on 20/03/2014 shows that the appellant has claimed that the amount was withdrawn from the bank in the month of December 2007 and January 2008. The same was recorded in the cash book of the appellant and Rs. 9,00,000/- were withdrawn in the month of May 2008 for handing over to Shri Naim Ahmad. When confronted for the reason of withdrawing the amount six months in advance it was stated that the owner of the land resided in Bikaner and since the actual date of the transaction was not confirmed hence, the amount was kept in cash. The appellant has withdrawn the amount six months in advance which is highly unusual considering the fact that no agreement, of any kind was made by the appellant for the purchase of land and it was only on the basis of an oral communication that the appellant had given Rs. 9,00,000/- to Shri Naim Ahmad for delivering it to the seller. The appellant has withdrawn the amount not in one go but as below-

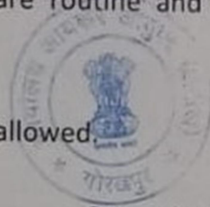
06/12/2007	Rs. 1,50,000/-
10/12/2007	Rs. 2,00,000/-
12/12/2007	Rs. 1,50,000/-
28/12/2007	Rs. 4,90,000/-

The withdrawal of the amount in piecemeal manner itself suggest that it is not for the purpose of the transaction as stated by the appellant. The money was found in the possession of Shri Naim Ahmad on 06/05/2008. The circumstances explained by the appellant does not appears to be convincing because there is a significant time gap between the withdrawal from the bank and the incident of recovery of cash and no prudent business man will like to pay interest on borrowed funds or loose the interest from the deposits and keep the money idle at his premises. The appellant had no reason what so ever for withdrawing the money and keeping with him for giving it to Shri Naim Ahmad. The entire

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contentions of the appellant are after thought. The appellant has failed to substantiate the source of funds given to Shri Naim Ahmad. In view of the above I find that the appellant has accepted the fact that these funds actually belonged to him but has failed to justify the source regarding the same. Accordingly, the addition made by the AO is upheld and ground of appeal is rejected. Grounds of appeal 6,7, & 8 are routine and general which do not require separate adjudication.

8. As a result, the appeal is partly allowed.



(Virendra Ojha)
Commissioner of Income Tax(Appeals)
Gorakhpur.

Copy to:-

1. The Principal Chief Commissioner of Income Tax, Allahabad.
2. The Commissioner of Income Tax, Gorakhpur.
3. The Addl. Commissioner of Income Tax , Gorakhpur.
4. AO Concerned
5. The appellant

(Virendra Ojha)
Commissioner of Income Tax(Appeals)
Gorakhpur.

5, Aggrieved by appellate order passed by Id. CIT(A), the assessee has filed an appeal with tribunal. None appeared on behalf of the assessee when this appeal was called for hearing before 'SMC' Bench, while adjournment application is filed for assessment year 2009-10 in ITA no. 14/Vns/2020 seeking adjournment on the grounds that the Id. Counsel of the assessee Mr. Ramjee is not well and hence not in a position to argue the appeal. No adjournment applications are filed in ITA no. 15-17/Vns/2020 for assessment year 2010-11 to 2012-13. The assessee has not enclosed any medical certificate for illness of Mr. Ramjee along with

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adjournment application. The assessee has not even furnished any Power of Attorney/Vakalatnama/ Authority in favour of aforesaid Mr. Ramjee and/or any other Counsel to appear on behalf of the assessee before Income-Tax Appellate Tribunal, Varanasi Circuit Bench, Varanasi. It is also observed from appeal file that the assessee has on similar grounds taken earlier adjournment several times which were granted by the Bench. It is observed that previously on as many as six occasions when this appeal came up for hearing before the Bench, the assessee sought adjournment, which was granted by the Bench. However, the assessee has filed written submissions before the tribunal, which is taken on record and duly considered while adjudicating this appeal. Thus, under the above facts and circumstances, no case is made by the assessee for grant of further adjournment, and hence I reject adjournment application filed by the assessee in ITA No. 14/Vns/2020 for ay: 2009-10, and proceed to adjudicate this appeal on merits in accordance with law. For ITA No. 15-17/VNS/2020 for ay:2010-11 to 2012-13, not even adjournment applications are filed. The assessee has filed as many as four grounds of appeal, and further four additional grounds of appeal are raised by the assessee, for the impugned assessment year. The assessee while raising additional grounds of appeal has stated that these additional grounds of appeal goes to the root of the matter, and prayers were made to admit the same. The ld. CIT-DR relied on orders of authorities below and prayers were made to confirm the appellate order passed by ld. CIT(A).

6. I have considered the material on record, written submissions filed by the assessee and arguments advanced by ld. CIT-DR. I have extracted the background as well details of assessment proceedings as recorded by AO

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in his assessment order, in para 3a to 3l of this order. I have also extracted the appellate order passed by Id. CIT(A) in para 4 of this order. I am not repeating the same again . From the perusal of the assessment order framed by the AO, it is abundantly clear that AO made additions to the income of the assessee on **protective basis**, with respect to recovery and seizure of an cash amount of Rs. 9.00 lacs from the possession of Mr. Naim Ahmad by Police Authorities(ATS) on 06.05.2008, while similar addition on **substantive basis** was made by the AO in the hands of Mr. Naim Ahmad from whose possession the said amount of Rs. 9.00 lacs was recovered and seized . Genesis of the addition of Rs. 9 lacs was recovery and seizure of cash of Rs. 9.00 lacs from the possession of Mr. Naim Ahmad by Police Authorities, ATS, Eastern Zone Varanasi, on 06.05.2008. At the time of recovery and seizure of aforesaid cash of Rs. 9.00 lacs from possession of Mr. Naim Ahmad , the aforesaid Mr. Naim Ahmad stated before the Police Authorities(ATS) that the money is of **Hawala Business** and was given to him by Mr. Mohan at Beria Tiraha who asked him to hand over the same to Mr. Imran of Saraimmeer. He stated that he does not know much about Mr. Mohan. The matter was referred by Police Authorities firstly to Enforcement Directorate (ED), and even when statement of Mr. Naim Ahmad was recorded by ED on 16.05.2008 , he stated that he was living at Varanasi and doing mobile business at Dalmandi, Varanasi and aforesaid sum of Rs. 9.00 lacs recovered and seized from his possession by Police Authorities(ATS) is of Hawala Business. Even in this statement recorded before ED, Mr. Naim Ahmad never stated that he was an employee of the assessee. It is only in subsequent statements recorded by ED in the year **2010** , Mr Naim Ahmad changed his statement and claimed that the amount of money amounting to Rs. 9.00 lacs recovered and seized from his possession by

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Police Authorities(ATS) belonged to the assessee. The case was later transferred to Income-tax department, who conducted further proceedings under the 1961 Act. The details of proceedings are extracted by me in the preceding para's of this order in details, and are not repeated again. The said amount of Rs. 9 lacs recovered and seized by Police Authorities(ATS) from possession of Mr. Naim Ahmad is lying with PD A/c of CIT, as is emerging from record before me. The AO disbelieved the changed version of Mr. Naim Ahmad (in the year 2010 Mr. Naim Ahmad changed his statement and stated that the amount of Rs. 9.00 lacs recovered and seized from his possession belonged to the assessee, while cash was seized on 06.05.2008 wherein Mr. Naim Ahmad stated at the time of seizure that this amount is Hawala Money) that the said amount of Rs. 9.00 lacs belonged to the assessee, and made additions to the tune of Rs. 9 lacs to the income of Mr. Naim Ahmad on **substantive basis** on the grounds that the aforesaid money recovered and seized from the possession of Mr.Naim Ahmad on 06.05.2008 by Police Authorities (ATS) belonged to Mr. Naim Ahmad which was given to him by one Mr. Mohan as Hawala Money to be handed over to Mr. Imran of Saraimmeer, and the said amount stood added as income of Mr. Naim Ahmad for ay: 2009-10 on **substantive basis** by the AO . Since Mr.Naim Ahmad later changed statement in 2010 onwards that the said amount of Rs. 9 lacs recovered and seized from his possession by Police Authorities(ATS) on 06.05.2008 belonged to the assessee and the assessee had also owned up the aforesaid cash money of Rs. 9.00 lacs recovered and seized on 06.05.2008 from the possession of Mr. Naim Ahmad by Police Authorities(ATS) , the AO made addition of the aforesaid amount of Rs. 9.00 lacs to income of the assessee on **protective basis**. The complete background as well details of assessment proceedings as well appellate proceedings before

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ld. CIT(A) are extracted in para 3a to 3l and para 4 of this order and the same are not repeated. The ld. CIT(A) while adjudicating first appeal in the case of the assessee upheld the addition of Rs. 9 lacs on account of cash recovered and seized by Police Authorities(ATS) on 06.05.2008 from Mr. Naim Ahmad in the hands of the assessee, but there is no reference in the appellate order passed by ld. CIT(A) whether he is upholding the additions in the hands of the assessee on protective basis or substantive basis, as originally the additions were made by the AO in the hands of the assessee on protective basis. Similarly, there is no reference and details in the appellate order passed by ld. CIT(A) about the fate of the first appellate proceedings before ld. CIT(A) in the case of Mr. Naim Ahmad of aforesaid addition of Rs. 9 lacs as was made by the AO on the substantive basis in the hands of Mr. Naim Ahmad. The aforesaid addition of Rs. 9 lacs was made by the AO in the hands of the assessee only on **protective basis** , while on **substantive basis** the aforesaid additions of Rs. 9 lacs were made by AO in the hands of Mr. Naim Ahmad from whose possession cash of Rs. 9.00 lacs was recovered and seized by Police Authorities(ATS) on 06.05.2008 . There is no reference in the appellate order passed by ld. CIT(A) as to whether he has upheld the addition of Rs. 9 lacs in the hands of the assessee on substantive basis or on protective basis. There is no scope of presumption, assumption or guess work by higher judicial forum as to what weigh in the minds of ld. CIT(A) while adjudicating the appeal, rather the ld. CIT(A) while passing the appellate order in the case of the assessee should have narrated complete facts expressly about his appellate decision in the case of Mr. Naim Ahmad w.r.t. aforesaid addition of Rs. 9 lacs in cash recovered and seized from the possession of Mr. Naim Ahmad on 06.05.2008 , as aforesaid addition of Rs. 9.00 lacs in the case of the assessee was made by AO merely on

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protective basis , while **substantive addition** of aforesaid amount was made by AO in the hands of Mr. Naim Ahmad. Thus, ld. CIT(A) ought to have specifically and expressly stated whether he is confirming addition of Rs. 9.00 lacs w.r.t. cash recovered and seized from the possession of Mr. Naim Ahmad on 06.05.2008 by Police Authorities(ATS) , in the hands of the assessee on protective basis as was done by the AO, or converting the addition of Rs. 9.00 lacs on substantive basis in the hands of the assessee. There is no scope of assumption , presumption or guesswork by higher judicial authority as to what weigh in the mind of ld. CIT(A), rather categorical and express finding is required from ld. CIT(A) as to the treatment meted out to the addition of Rs. 9.00 lacs while upholding the same in the hands of the assessee , viz. whether ld. CIT(A) is confirming addition on protective basis as was done by AO in the hands of the assessee, or converting it into substantive addition in the hands of the assessee. But, unfortunately, there is no reference in the appellate order passed by ld. CIT(A) in the case of the assessee about the fate of the appellate proceedings conducted by ld. CIT(A) w.r.t. substantive additions of Rs. 9 lacs made by the AO in the hands of Mr. Naim Ahmad. Even , the entire material before us in the appeal file including written submissions filed by the assessee also does not have any reference/whisper about the fate of the first appellate proceedings conducted by ld. CIT(A) in the case of Mr. Naim Ahmad in whose hands additions to the tune of Rs. 9 lacs was made by the AO on **substantive basis** with respect to cash amount of Rs. 9 lacs recovered and seized from Mr. Naim Ahmad by Police Authorities(ATS) on 06.05.2008. The ld. CIT(A) is discharging quasi judicial function while adjudicating first appeal. It was incumbent on ld. CIT(A) to have firstly adjudicated the appeal in the case of Mr. Naim Ahmad in whose hands the addition of Rs.9.00 lacs of cash recovered and

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seized from the possession of said Mr. Naim Ahmad by Police Authorities(ATS) on 06.05.2008 were made by the AO on the substantive basis, before proceeding to adjudicate the appeal in the case of the assessee in whose hand aforesaid addition of Rs. 9 lacs is made by AO on protective basis. Thus, it was incumbent on ld. CIT(A) to have stated his decision expressly in the case of Mr. Naim Ahmad w.r.t. the fate of the first appellate proceedings before ld. CIT(A) of the aforesaid addition of Rs. 9 lacs in whose hands substantive addition was made by the AO , while passing appellate order in the case of the assessee in whose hand aforesaid addition was made only on protective basis. The assessee has also not brought on record any particulars with respect to decision of ld. CIT(A) in the case of Mr. Naim Ahmad, nor ld. CIT-DR could bring on record the fate of first appellate proceedings before ld. CIT(A) in the case of Mr. Naim Ahmad. The judicial decisions passed by authorities/Courts are subject to further challenge at higher legal forums as provided under the 1961 Act as there is a hierarchy of judicial forum in place, and hence it is of utmost importance that the appellate order passed by appellate authorities should be well reasoned, detailed and speaking orders wherein all necessary details are elaborated comprehensively in the order itself expressly , so that the higher judicial forum to whom further appeals lies in the chain of judicial hierarchy can have benefit of well reasoned , detailed and speaking order passed by judicial officer who is lower in hierarchy , while adjudicating appeals. The cash of Rs. 9 lacs was recovered and seized from the possession of Mr. Naim Ahmad on 06.05.2008 by Police Authorities(ATS), and he stated in the statement recorded before Police Authorities(ATS) at the time of his interception , as well stated before ED in statement recorded on 16.05.2008, that this cash of Rs 9.00 lacs recovered and seized from his possession is Hawala

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money. It is only in 2010 , Mr. Naim Ahmad changed his version and stated that he is employee of the assessee and the said cash amount of Rs. 9.00 lacs belonged to the assessee. The AO rejected this changed version of Mr. Naim Ahmad, and made addition of Rs. 9.00 lacs in the hands of Mr. Naim Ahmad on substantive basis , while addition on protective basis was made in the case of the assessee as because in changed version Mr. Naim Ahmad stated that the said cash amount of Rs. 9 lacs belonged to the assessee , which the assessee later came forward and owned up. Thus, it was all the more incumbent on ld. CIT(A) to have expressly and elaborately narrated in the appellate order passed in the case of the assessee, his appellate decision in the case of Mr. Naim Ahmad in whose hands additions were made on substantive basis. The ld. CIT(A) ought to have clearly stated while passing appellate order in the case of the assessee while upholding addition of Rs. 9.00 lacs as to whether he is upholding the aforesaid addition on substantive basis or protective basis in the hands of the assessee. There is no scope of assumption, presumption or guess work. I have also observed that the assessee has also raised certain additional grounds of appeal which concerns itself with both the additions made by the AO viz. protective addition of Rs. 9 lacs w.r.t. cash recovered and seized by Police Authorities(ATS) on 06.05.2008 from the possession of Mr. Naim Ahmad and second addition towards low drawings towards household expenses. Thus, keeping in view totality of facts and circumstances of the case as elaborated above and in the interest of justice , I am setting aside the appellate order passed by ld. CIT(A) and restore the matter back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee. All the contentions are kept open. Thus, the matter is restored to the file of ld. CIT(A) for fresh adjudication. I clarify that I have not commented on the merits of

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the additions. The appeal of the assessee before ld. CIT(A) is restored to the original status, for denovo adjudication by ld. CIT(A) in accordance with law. Needless to say that ld. CIT(A) has powers co-terminus with the powers of the AO. Needless to say that ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in set aside proceedings. I order accordingly.

7. In the result, the appeal of the assessee in ITA No. 14/VNS/2020 for assessment year 2009-10 stands allowed for statistical purposes. I order accordingly.

8. With respect to the appeals filed by the assessee in ITA No.15-17/VNS/2020 for assessment year 2010-11 to 2012-13, the issue for adjudication before is only concerning the additions to the income of the assessee made by the AO on account of low household drawings, wherein part relief was granted by ld. CIT(A). Since, the adjudication of appeal for ay: 2009-10 may also have consequential bearing on the appeals for ay: 2010-11 to 2012-14, I am also restoring these appeals to the file of ld. CIT(A) for fresh adjudication. I clarify that I have not commented on the merits of the additions. The appeal of the assessee before ld. CIT(A) is restored to the original status, for denovo adjudication by ld. CIT(A) in accordance with law. Needless to say that ld. CIT(A) has powers co-terminus with the powers of the AO. Needless to say that ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in set aside proceedings. I order accordingly.

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9. In the result, the appeals of the assessee in ITA No. 15-17/VNS/2020 for assessment year 2010-11 to 2012-13 stands allowed for statistical purposes. I order accordingly.

10. In the result, all the four appeals of the assessee in ITA No. 14-17/VNS/2020 for assessment year 2009-10 to 2012-13 stands allowed for statistical purposes. I order accordingly.

Order pronounced on 16/01/2023 at Allahabad, U.P. in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(RAMIT KOCHAR)
Accountant Member

Dated:16/01/2023

Copy of the order forwarded to :

1. Appellant: Shri Ghanshyam Jaiswal , Harbanspur , Sadar, Azamgarh-276001,U.P.
2. The Respondent –The Deputy Commissioner of Income Tax, Circle-1, Gorakhpur, U.P.
3. Concerned CIT
4. The Guard File
5. The CIT-D.R., I.T.A.T., Circuit Bench, Varanasi
6. The CIT(A), Gorakhpur, U.P.

By order
Assistant Registrar