

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.4002 to 4009/Del/2017
Assessment Years: 2007-08 to 2014-15

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|-----------------------------------------------------------------------------------------------------------------|-----|----------------------------------------------|
| Ajay Kumar Aggarwal Flat No. 116, Maitri Apartment, 28, I.P Extn. Delhi 110092 PAN AAJPA 2819 A | vs. | The ACIT, Central Circle-13, New Delhi |
| (Appellant) | | (Respondent) |

| | |
|----------------|----------------------------------|
| For Assessee : | None |
| For Revenue : | Shri P. Praveen Sidharth, CIT DR |

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| Date of Hearing : | 15.02.2023 |
| Date of Pronouncement : | 05.04.2023 |

ORDER

PER CHANDRA MOHAN GARG, J.M.

These appeals filed by the assessee are directed against the order dated 20.03.2017 of the Ld. CIT(A), New Delhi relating to Assessment Years 2007-08 to 2014-15.

2. The grounds raised in ITA No. 4002/Del/2017 for AY 2007-08 by the assessee read as under:

1. *in passing order u/s. 143(3) r.w.s. 153A of the Income Tax Act, 1961 at an income of Rs. 4,92,11,500/- against the returned income in a sum of Rs. 2,15,054/-.*
2. *in making following additions to the return income:*
 - a) *Rs. 4,78,01,414/- on account of unexplained income:*
 - b) *Rs. 11,95,035/- on account of commission income @ 2.5%.*

Both the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

3. The grounds raised in ITA No. 4003/Del/2017 for A.Y. 2008-09 by the assessee read as under:

1. *wrongly assuming jurisdiction u/s. 153A of the Act:*
2. *in passing order u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961 at an income of Rs. 18,75,910/- against the returned income in a sum of Rs. 2,55,511/-.*
3. *in making following additions to the returned income:*
 - a) *Rs. 13,00,397/- on account of commission estimating the total commission at Rs. 18,57,710/-(0.5% on Rs. 37,15,41,801/-) against Rs. 5,57,313/- returned;*
 - b) *Rs. 3,20,000/- on account of service charges;*
4. *Charging interest u/s. 234A, 234B and 234C of the Act.*

All the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

Assessee appeal for A.Y. 2007-08

4. When the case was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite due service of notice for the today's hearing. Therefore, we proceed to adjudicate the appeal ex-party qua assessee after hearing the arguments of Ld. CIT(DR).

5. From the copy of the written submissions filed by the assessee before this bench we note that the assessee is challenging additions made by the AO on account of unexplained credit amounting to Rs. 4,78,01,414/- and amount of commission income at rate of 2.5% thereon amounting of Rs. 11,95,035/-. The main contention of the assessee is that the name of all beneficiaries was available in the seized documents no payment by cheque has been made by the assessee without receiving consideration in cash. Therefore the assessee was merely beneficiary of very small percentage of commission and entire amount of transactions cannot be held attributable to the assessee. It has also been contended that the

commission charged by the assessee was only 0.15% therefore the addition on account of commission income made kindly be reduced to the appropriate percentage and the addition made by the Assessing Officer treating the total amount of transactions pertaining to the assessee from three entities may kindly be deleted as the assessee has only earned commission income of 0.15% thereon and the assessee has nothing to do with the entire transaction except receipt of commission. Therefore both the additions may kindly be deleted. Alternatively, the Ld. AR prayed the commission at the rate of 2.5% is very high excessive and unreasonable therefore the same may kindly be reduced to 0.15%.

6. Replying to the above the Ld. CIT(DR) strongly supported the orders of authorities below and submitted that as the assessee has not been able to give the details of such credits appearing in his bank account therefore the same was rightly treated as income of the assessee as unexplained credit. The Ld. CIT(DR) also submitted that the commission at rate of 0.15% was suggested to be charged on the said amount of unexplained credits but the assessee has earned commission thereon therefore the AO was rightly in

estimating commission at the rate of 2.5% on the amount of accommodation entries provided by the assessee.

7. On careful consideration of rival submission first of all we note that the Assessing Officer is firstly made addition in the hands of assessee by treating the credit entries in the books of assessee but at the same time the AO ignored debit entries made by the assessee in his books of accounts. The proceeding against the assessee was triggered on account of search and seizure operation in the cases of BSBK Group including the assessee and all the relevant material and details of beneficiary was with the assessee therefore the AO could not lay onus of the shoulder of the assessee to alleged that the assessee has not been able to furnished the trail leading to the beneficiaries. In such a situation when the AO himself his alleging that the assessee is providing accommodation entry then if the debit and credit side of account is taking together then only a very small account would remain that is element of commission income accrued to the assessee. In our humble view the entire amount of credit entries cannot be added to the taxable income of the assessee ignoring the debit side entries and as when the assessee is receiving

cash and issuing cheques then said cheque of almost same amount then the assessee cannot be held beneficiary of entire amount or entire amount of credit entries treating the same as unexplained. Therefore the addition made by the AO and uphold the Ld.CIT(A) on account of unexplained credits cannot be held as sustainable and we direct the AO to delete the same.

8. So far as addition on account of commission income at the rate of 2.5% is concerned the assessee is consistently submitting that he has earned commission ranging between 0.05% to 0.15%; therefore, the commission income may kindly be reduced to 0.1% taking the average. However we are not in agreement with such factual submission of the assessee. On careful consideration of the totality of facts and circumstances, and *modus operandi* adopted by the assessee. We are of the view that the earning of commission income at the rate of 2.5% is very high and the assessee's claim for charging commission at the rate of 0.15% is also not sufficient to cover all possible leakage of revenue. We find that the charging of commission at the rate of 0.5% would be sufficient and appropriate. Therefore the addition made by the AO on account of commission

charged on the credit entries is reduced to 0.5% and AO's directed to recalculate the commission income accordingly.

9. In the result, the appeal of assessee for A.Y. 2007-08 is partly allowed.

10. Since facts and circumstances of A.Y. 2007-08 are identical to the facts and circumstances of other appeals pertaining to A.Ys 2008-09 to 2013-14 therefore our conclusion on the issue of charging commission at the rate of 0.5% would apply mutatis mutandis to all other six appeals and AOs directed to calculate the commission income accordingly.

Ground no. 3(b) of assessee for A.Y. 2008-09

11. Pertaining to this ground from the orders of authorities below and written submissions filed by the assessee we note that the Assessing Office made addition pertaining to claim of expenses on account of service charges paid to proprietor we note that the AO made addition by holding that the assessee was not even able to provide the names and address of onus of ten firms to whom he had paid the service charges and did not provide any supporting bills

like bills/vouchers etc. to support his contention. Therefore the AO made addition in the hands of assessee treating the same as unverifiable. From the relevant part of the first appellate order we note that the Ld. CIT(A) confirm the addition by holding that the appellant could not justify as to why he claimed service charges and he made falls and baseless claim therefore he uphold the addition.

12. The Ld. CIT(DR) supported the order of the authorities below and submitting that the AO was right in making disallowance dismissing the falls and baseless claim of assessee.

13. On careful consideration of above submissions we are of the view that it was the duty of the assessee to substantiate its claim towards expenses incurred by him on account of service charges paid to proprietors of ten firms and listed in para 4.6 of the assessment order. However despite proper opportunity of hearing the assessee failed to provide names and address of the onus of these firms to whom he paid the service charges. The Assessing officer also noted that the assessee did not provide any supporting evidence like bills/vouchers etc. to support said contention and claim of payment of service charges. In such a situation we are

inclined to hold that the AO was right in making disallowance and Ld. CIT(A) was also correct in upholding the same. **Therefore the ground no. 3(b) of assessee for A.Y. 2008-09 is dismissed.**

14. Since the facts and circumstances of A.Y.s 2008-09 to 2013-14 are similar and identical on the issue of service charges therefore our conclusion drawn for A.Y. 2008-09 would apply mutatis mutandis to other five appeals therefore **the ground no. 3(b) of assessee for A.Y.s 2009-10 to 2013-14 is also dismissed.**

Ground no. 3(c) of assessee for A.Y. 2010-11

15. Apropos this ground we note that the Assessing Officer made addition on account of disallowance 50% expenses claimed by the assessee by holding that the assessee has not provided even names of his staff members and also failed to provide any supporting evidence like bills/vouchers etc. to support his claim therefore in absence of supporting evidence etc. the AO made disallowance of 50% of total claim. The contention of the assessee in this regard is that the assessee was not able to conduct his business without support of staff and expenditure on account of telephone,

electricity, conveyance, car repair, staff welfare, printing stationery and office expenses were necessary expenses therefore no disallowance is called for in this regard.

16. Replying to the above the Ld. CIT(DR) supported the orders of the authorities below and submitted that when the assessee is not able to provide even names of his staff members and failed to submit supporting evidence like bills/vouchers etc. then the addition made by the AO has to be held as sustainable.

17. On careful consideration of the above submissions, we are of the view that the onus lay on the shoulders of the assessee to substantiate his claim on account of office expenses etc. but in the absence of names of staff member's bills/vouchers, entire claim of assessee cannot be held as allowable keeping in view a fact that without incurring such expenses the assessee cannot operate his business. In our humble understanding the AO was right in allowing 50% of claim and disallowing remaining 50% of claim of assessee on account of other expenses. We are unable to see any ambiguity perversity or any other valid reason to interfere with the

same hence **the ground no. 3(c) of assessee for A.Y. 2010-11 is disallowed.**

18. Since facts and circumstances of A.Y. 2010-11 are quite similar and identical to A.Y.s 2011-12, 2012-13 and 2013-14 on account of disallowance made by the AO on account of service charges therefore our conclusion recorded in the earlier part of this order on ground no. 3(c) of assessee for A.Y. 2010-11 would apply mutatis mutandis to other three appeals pertaining to A.Y.s 2011-12, 2012-13 and 2013-14. **Therefore ground no. 3(c) of assessee in all four appeals is dismissed.**

Ground no. 3(a) of assessee for A.Y. 2013-14

19. From the careful reading of assessment order para 5 we note that during the search proceedings on 24.05.2012 a cash of Rs. 13,92,500/- was found out of which of Rs. 12,50,000/- was seized. During the statements u/s. 132(4) of the Act dated 24.05.2012 the assessee was asked to explained the source of said cash and replying to question no. 8 and 9 the assessee submitted that 3.5 lakh is saving of Mrs. Sadhna Agarwal, Rs. 2,00,000/- is saving of

Mr Prerit Agarwal, Rs. 2,00,000/- is saving of Ms Yashika Agarwal and rest amount he received on sale of his flat. The assessee has also explained that he had advanced a sum of Rs. 10 or 11 lakh for Flat no. 11, Second Floor, Vandana Apartment and he sold his rights of his flat after taking advance of Rs. 15 lakh which is going to be registered on 2.07.2012. But the assessee did not produce any documentary evidence in this regard and the AO concluded that the assessee has failed to produce documentary evidence in support of his claim and source of cash found from his residence and the same was remained and unexplained. From the relevant part of first appellate order para 8.27 to 8.32 we note that the Ld. CIT(A) also allowed due opportunity of to explain source of cash but the assessee could not explained the factual discrepancy discernable from his statement recorded by the search team neither during the assessment proceedings nor during the appellate proceedings despite being given more than sufficient opportunity.

20. The Ld. CIT(DR) strongly supported the orders of the authorities below and submitted that the assessee in his statement u/s. 132(4) of the Act claim to have cash of Rs. 22 lakhs whereas

the cash actually found was Rs. 13,92,500/- and assessee could not explained the factual discrepancy noted by the AO even during the first appellate proceedings therefore addition may kindly be uphold.

21. On careful consideration of above submission we note that the copy of the submissions made by the assessee before Ld. CIT(A) dated 07.03.2017 available at pages 48 to 52 of assessee paper book. We note that the assessee consistently submitted that cash found during the course of search was properly explained by the assessee during the statement recorded u/s. 132(4) of the Act but the AO has not rightly appreciated the explanation of the assessee and made addition without dislodging the factual details given by the assessee in his statements recorded by the search key. It was explained that the assessee was married in the year 1990 and his wife Smt. Sadhna Agarwal was holding cash from her personal her saving and other amount received on various social and religious occasions. It was also explained by the assessee that the source of cash found during the course of search was belonging partly to his wife Smt. Sadhna Agarwal, his major son Prerit Agarwal and his

daughter - Yashika Agarwal both the children are major and aged approx. 23 to 20 respectively.

22. In our humble understanding the search team seized cash of Rs. 12.50 lakh and as per the statement of assessee recorded during the course of search and seizure operation the assessee at the very first instance replying question no. 8 explained the partial source of cash found and seized from his residence that Rs. 3 to 3.5 lakh is savings of his wife Mrs. Sadhna Agarwal, and Rs. 2 lakhs each is saving of his major son Prerit Agarwal and major daughter Ms. Yashika Agarwal. In our considered opinion in a family of four members when the assessee has wife and two major children then the amount of cash out of savings and receipts during social and religious occasions cannot be ruled out and in such a situation when the assessee is explaining that the part amount belong his wife, son and daughter then the amount of Rs. 7.5 lakh viz Rs. 3.5 lakh pertaining to wife to Rs. 2 lakh each pertaining to son and daughter has to be held as properly explained. One cannot expected to maintain or procure any documentary evidence in this regard. So far as receipt of Rs. 15 lakhs on account of sale of assessee rights in

the Flat no. 11, Second Floor, Vandana Apartment is concerned the assessee has not placed any documentary evidence in this regard to substantiate that he received Rs. 15 lakh against sale of his rights which could be easily established by way of filing documentary evidence of purchase sale of flat. In absence of such documentary evidence the reply of assessee to question no. 9 as noted by the AO in para 5 in the assessment order cannot be held as causable and acceptable. Hence remaining part of Rs. 5 lakh seized by the search team remained unexplained therefore the addition made by the AO on account cash seized during the course of search and seizure operation is reduced to Rs. 5 lakh. **Accordingly ground no. 3(a) of assessee for A.Y. 2013-14 is partly allowed.**

23. The assessee has raised following grounds of appeal for A.Y. 2014-15:-

1. *determining the taxable income of Rs. 25,48,700/- against order u/s. 143(3) of the Act against the returned income at Rs. 6,82,500/-.*
2. *making an addition of Rs. 18,66,200/- on account of jewellery found during search proceedings on 07.08.2013 treating the same as unexplained.*
3. *charging interest u/s. 234A and 234B of the Act.*

All the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

24. Apropos other above noted grounds from the copy of the written submissions filed by the assessee before the Ld. CIT(A) available at page 53 to 55 of assessee paper book we note that during the course of search and seizure operation the jewellery worth Rs. 18,13,720/- weighing approx. 850 grams was found by the search party. When the assessee was asked to submit an explanation with regard to the acquisition of the jewellery the assessee explained that the jewellery belong to his family members viz. 350 gram to his wife Smt. Sadhna Agarwal, 200 grams to his major daughter Ms. Yashika Agarwal and 100 gram each to himself, his father Shri Mohan Lal Agarwal and his major son Shri Prerit Agarwal. The assessee also placed reliance on the CBDT instruction no. 1916 dated 11.05.1994 and submitted that the jewellery found and seized was required to be accepted as properly and explained in view of CBDT circular.

25. The Ld. CIT(DR) drawing our attention towards relevant part of the assessment order submitted that the CBDT circular is only a guideline to have a common approach in respect of jewellery found and seized and it does not exempt and assessee to explain the source of jewellery found during the search. The Ld. CIT(DR) submitted that the assessee has not submitted any bills/vouchers etc. in support of his contention therefore the same was rightly added as unexplained by the authorities below.

26. On careful consideration of above factual position and allegations made by the as well as Ld. CIT(A), first of all, we note that 850 grams gold jewellery was found and seized during the course of search and seizure operation. It is also pertinent to note that in the family of assessee there are five members including the assessee viz. assessee, his wife, his father and his two major children. In such a situation as per CBDT circular 1916 it is advised to the search parties that in the case of a person not assessed to wealth-tax gold jewelry and ornaments to the extent of 500 grams, per married lady 250 grams per unmarried lady and 100 grams per male member of the family, need not to be seized.

27. In view of above we are of the considered opinion that no addition is called for in the hands of assessee on account gold jewellery found and seized from his residence during the course of search and seizure operation weighing total 850 gram in a peculiar factual situation of the family of the assessee where he has total five members out of which one married lady, one unmarried girl and three male members. These five members of assessee's family are sufficient to cover 850 gram gold jewellery found and seized during the course of search and seizure operation as per said CBDT instruction of 1994 dated 11.05.1994. Accordingly sole ground of assessee for A.Y. 2014-15 is allowed and AO is directed to delete the addition.

28. In the result appeals of the assessee for A.Y. 2007-08 and 2014-15 are allowed and other six appeals from A.Y. 2008-09 to 2013-14 are partly allowed.

Order pronounced in the open court on 05.04.2023.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 05th April, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi