

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.7930/DEL/2019
Assessment Year 2016-17

Anil Ram Sutar A-2, Sector-19, Noida.	v.	The Deputy Commissioner of Income Tax Central Circle, Noida.
TAN/PAN: ABJPS2044L		
(Appellant)		(Respondent)

Appellant by:	Shri Manoj Kumar, CA		
Respondent by:	Shri P. Praveen Sidharth, CIT-DR		
Date of hearing:	16	01	2023
Date of pronouncement:	13	04	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-IV, Kanpur ('CIT(A)' in short) dated 25.07.2019 arising from the assessment order dated 30.12.2017 passed by the Assessing Officer(AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

2. The grounds of appeal raised by the assessee reads as under:

That on the facts and in the circumstances of the appellant's case, the learned Commissioner of Income tax (Appeals) erred both in facts and in law in upholding the addition of Rs

12,16,40,000/- as undisclosed income of the appellant which is made by the assessing officer only on the basis of confessional statement recorded under section 132(4) of the Income tax Act, 1961 of the appellant by ignoring the circular issued by CBDT in this regard and also without appreciating the explanation furnished by the appellant that the said surrendered incomes are not related to the appellant.

3. Briefly stated, the assessee an individual is a director of various companies during the financial year 2015-16 relevant to Assessment Year 2016-17 in question. A search and seizure operation under Section 132 of the Income Tax Act, 1961 was conducted at the premises of the Airwill Group of cases including the assessee on 30.09.2015 and also on lockers on subsequent dates. Subsequent to search, the assessee e-filed his Return of income (ROI) for AY 2016-17 on 5/8/2016 declaring total income at Rs. 38,41,130/-. The ROI so filed was subjected to assessment by issuance of notice under S. 143(2) of the Act. As per paragraph 4 of the assessment order, the assessee attended the proceedings before the Assessing Officer from time to time and submitted the details as called for. While making assessment, the income returned by the assessee was substantially enhanced by *inter alia* making additions of Rs.12,16,40,000/- on account of undisclosed income. The impugned addition was primarily made in the light of admissions and confessions made in the statement recorded under Section 132(4) of the Act in the course of the search. Certain other additions were also made on account of interest earned and undisclosed investment in jewellery etc. which are not under challenge before us by either side.

4. Aggrieved, the assessee preferred appeal before the CIT(A).

5. Before the CIT(A), the assessee filed its counter-defense by way of detailed submissions on the impugned additions of Rs.12,16,40,000/- and *inter alia* submitted that the confessional statement made under Section 132(4) cannot be relied upon in the absence of tenable corroboration thereof and the additions made solely on the basis of statement obtained in the course of search is not justified and such action is also in contravention of Instruction Number - F.No.286/2/2003-IT (Inv. II) dated 10.03.2003. It was contended that the additions made on the basis of a statement are not backed by any concrete underlying evidence and such additions are also in the nature of double additions. Several entries of various amounts aggregating to impugned undisclosed income of Rs.12,16,40,000/- were attempted to be explained before the CIT(A). In conclusion, it was essentially contended that the assessee has rightly not included the income declared in statement recorded under Section 132(4) of the Act in the ROI. It was broadly contended that the income computed on the basis of various entries apparently do not pertain either to the assessee or not relatable to AY 2016-17 in question otherwise. It was further contended that such income has been already assessed in the hands of appropriate assessee in appropriate assessment years and thus no income has ultimately escaped assessment. The assessee also furnished explanation on other additions/ disallowances made in the

assessment. The CIT(A) however discarded the detailed submission made on behalf of the assessee primarily on the ground that additions made by the Assessing Officer is not solely based on sworn statement but is also corroborated by incriminating documents and unexplained cash found as a result of search. The CIT(A) thus endorsed the action of the Assessing Officer and declined to interfere with the additions of Rs.12,16,40,000/-. The CIT(A) however found merit in the plea of the assessee towards certain other additions/disallowances and granted relief with which we are not concerned at present.

6. Aggrieved by the additions of Rs.12,16,40,000/- as sustained by the CIT(A), the assessee preferred appeal before the Tribunal.

7. Before the Tribunal, the assessee vociferously placed its arguments in length and referred to various documents placed before the lower authorities as filed by way of voluminous paper books and contended that wherever the alleged unaccounted income has actually accrued to the assessee or to other connected parties, such income has already been declared under direct tax Vivad Se Vishwas Scheme 2020 (VSVS) by the assessee or by the respective connected parties in the relevant assessment years. It was essentially submitted that no escapement of income has resulted at the end of assessee when seen holistically along with group cases and appropriate assessment years. We shall deal with the

arguments placed on behalf of the assessee in succeeding paragraphs at appropriate place while adjudicating the issue.

8. The ld. DR for the Revenue, on the other hand, referred to and relied upon the averments made in the assessment order and the first appellate order and reiterated the opinion expressed in the first appellate order.

9. We have carefully considered the rival submissions and perused the assessment order and the first appellate order. We have also given our dispassionate considerations to the material/documents referred to and relied upon by the respective sides in the course of hearing in terms of Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963.

10. The short controversy before hand is justification of additions of Rs.12,16,40,000/- to the returned income alleging undisclosed income of the assessee detected in the course of search and assessment framed subsequent thereto for the Assessment Year 2016-17.

11. The facts in the case are quite peculiar and the issue involved is essentially a question of fact. Thus, it would be desirable to briefly recapitulate the important facts governing the issue.

11.1 A search and seizure operation under Section 132 of the Act was conducted at the premises of Airwill Group of cases including the assessee on 30.09.2015. The group is engaged in the business of real estate at Noida. The group is headed by

Shri Chittar Singh and his sons Shri Manoj Kumar Choudhary and Shri Sanjay Kumar Choudhary. The assessee in the instant case is associated with the business activities of the group and derives salary income in the capacity of director in various companies. The premises of assessee were also covered by search operations.

11.2 In the course of search, certain incriminating documents in the form handwritten loose papers were found and seized from the premises of the assessee at Noida. A statement of the assessee was recorded under S. 132(4) of the Act in the course of search. Statedly, the assessee *inter alia* conceded to have earned unaccounted income aggregating to Rs.12,16,40,000/-. As per para 6 of the assessment order, the impugned unaccounted income comprises of ;

- (i) Unaccounted Cash allegedly given to Shri Manoj Kumar Choudhary, Director (Airwill Group of Companies) aggregating to Rs.10 crore by the Assessee.
- (ii) Cash payment of Rs.47,50,000/- towards unaccounted expenses.
- (iii) Cash found of Rs.1,68,90,000/- at the Noida premises of the assessee and declared as undisclosed income in the course of search.

11.3 The basis of additions towards undisclosed income is the statement of the Assessee in the course of search and certain loose papers and jottings found in the course of search.

11.4 The copy of statement of the assessee recorded under S. 132(4) of the Act on 30/09/2015 in the course of search is

placed at page 162-194 of the paper book. Likewise. Copy of panchnama drawn on closure of search proceedings on 1/10/2015 along with annexures of documents, loose papers, jottings etc, found/seized as inventorised is placed at page 241-250 of the paper book. As per Annexure A to panchnama, 42 no. loose papers were found / seized from the premises of the Assessee marked as LP-I. Significantly, the loose papers as per this annexure (page 243 of Paper book) are noted to be relatable to period between 2008 to 2014 i.e. upto financial year ending 2014.

12. We shall now delineate on the controversy.

12.1 As regards the alleged undisclosed income component of Rs.10 crore noted above, the assessee contends that the basis for the aforesaid addition is loose paper / jotting Page 27 to Annexure LP-1 found in the course of search and scanned at page 3 of the assessment order. As per the loose paper scanned read with statement of the assessee recorded under Section 132(4) of the Act, the assessee submits that it is the case of revenue that the aforesaid amount was allegedly given to Shri Manoj Kumar Choudhary in the month of June, 2013 as demonstrable from the loose paper itself as well as from question no.13 of the statement recorded under Section 132(4). On the basis of loss paper (LP-1 Page 27) which is the genesis of the addition, the assessee essentially makes two fold submissions as follows;

(a) The loose paper found is wholly vague, ambiguous and

non-descript and thus unreliable. As contended, except two figures of 7 cr. and 3 cr. June, 2013, nothing else is mentioned. Hence, no adverse inference can be drawn based on such non-descript loose paper. This notwithstanding, the impugned amount is categorically recorded in the loose paper to be transaction occurred in June, 2013 and therefore relates to FY 2013-14 relevant to AY 2014-15 and thus cannot be subject matter of assessment in FY 2015-16 relevant to AY 2016-17 in question. The Assessee further submits that Annexure LP-1 consists of 42 pages only found and seized at the residential premises of the assessee which as per panchanama drawn, all pertains to Financial Years 2008 to 2014 and thus action of AO in making assessment of undisclosed income in the hands of Assessee in contrast to the entries in so called loose paper is grossly unjustified only on the basis of statement extracted from the Assessee.

(b) Rs.8 crore (out of 10 crore) was also assessed in the hands of assessee on the basis of excel sheet correspondingly found in the premises of Manoj Choudhary of Airwell group showing receipt of cash on various dates in Assessment Year 2014-15 vide assessment order dated 30.12.2017 passed under Section 153A r.w. Section 143(3) of the Act. The assessee contested the aforesaid addition before the CIT(A) in that year. The CIT(A) vide order dated 25.07.2019 relevant to Assessment Year 2014-15 granted relief to the assessee. Despite the relief granted by

the CIT(A), the assessee availed 'Vivad Se Vishwas Scheme 2020' and paid taxes thereon in accordance with law. As a corollary, the additions to the extent of Rs.8 crore is clearly a case of double addition made in both AYs 2014-15 as well as AY 2016-17 in question. Such act of the Assessing Officer is not permissible to the extent of Rs.8 crore. Hence, as contended, neither the loose paper supports the year in which the income is liable to be assessed nor the Revenue is prejudiced any longer to this extent owing to settlement of taxes under VSVS.

12.2 As further contended on behalf of the assessee, another amount of Rs.12,25,000/- was also added in AY 2014-15 towards undisclosed cash income by the AO. The CIT(A) has given relief on this amount and Revenue has not filed appeal for the Assessment Year 2015-16 in question. Similarly, an amount of Rs.1,47,00,000/- towards unaccounted income in cash has also been added in FY 2014-15 relevant to AY 2015-16 in question against which the assessee has similarly availed 'Vivad Se Vishwas Scheme 2020' and thus taxes has been collected the revenue. On similar footing, an amount of Rs.61,25,000/- has been added in AY 2016-17 in question towards unaccounted cash for which the CIT(A) has given appropriate relief. Thus, as contended, the unaccounted income is already assessed in other assessment years and is being assessed yet again as undisclosed income in this un-relatable and wrong assessment year without corroborative basis.

13. We straightaway find merit in the plea of the Assessee. The loose paper which is the foundation for assessment of Rs. 10 cr. as unaccounted income clearly speaks that purported transaction occurred somewhere in June 2013. Thus, without engaging into the debate of truthfulness of loose paper or credibility of additions, the undisclosed income could be possibly assessed only in the assessment year 2014-15 at best and thus the addition in the wrong AY 2016-17 in question is wholly untenable being opposed to the scheme of Act. Besides, the averments made in the statement cannot be read as gospel truth and at any rate, do not operate as estoppel against statute. The AO is required to assess the income in the correct assessment year. As per loose paper found, the impugned income in the instant case is identifiable to AY 2014-15 and could not be assessed in AY 2016-17 in question. Notwithstanding, the impugned income is demonstrated to have already been assessed in other assessment year and is a case of double assessment of same disclosure. Hence, the action of AO is not tenable on this score also. In first appeal, the CIT(A) has also misdirected himself in law and on facts in confirming the additions solely on so called confession of the Assessee without taking cognizance of content and quality of loose papers and attendant circumstances. In totality, the plea of assessee deserves acceptance on this score.

14. The second component of undisclosed income is alleged to be cash payment of Rs.47,50,000/- towards alleged unaccounted expenses on the basis of loose paper scanned at

Page 4 of the Assessment order.

14.1 In this regard, the Assessee submits that relevant page no.14 of LP-1 contains some written receiving note of Rs.47,50,000/-. It is further submitted that as per the said note, an amount of Rs.47,50,000/- has been received by Shri Akshay Sharma from M/s. Shikhar Fincap Pvt. Ltd. The assessee contends that the said page do not relate to the assessee at all but relates to M/s. Shikhar Fincap Pvt. Ltd. Hence, the aforesaid receipt of Rs.47,50,000/- forming part of the impugned addition is not attributable to the case of the assessee and thus not relevant for the purposes of making impugned addition.

14.2 On a bare perusal of the loose paper/ jotting, the plea of Assessee appears to be well founded. The loose paper represents some receipt dated 4/7/2011 where one 'Akshay Sharma' seems to have acknowledged money Rs. 47,50,000/- from M/s Shikhar Fincap'. Thus, neither the transaction concerns AY 2016-17 in question nor does it concern the Assessee herein. The addition on this amount is thus totally uncalled for.

15. We now turn to third component of alleged undisclosed income amounting to Rs. 1,68,90,000/-.

15.1 This addition is statedly made on account of unexplained cash found of Rs.1,68,90,000/- from the premises A-2, Sector, 19, Noida in the course of search operation. The assessee on

its part submits that cash aggregating to Rs.3,85,90,000/- was found during the course of search operation at the residential premises and lockers of the assessee. The summary of cash aggregating to Rs.3,85,90,000/- found during the course of search operation from the premises/lockers of the assessee is as follows.

- a. cash found on residential premises Noida – Rs.1,68,90,000/-
- b. cash from locker no.5579 - Rs.1,17,00,000/-
- c. cash from locker no.7142 - Rs.1,00,00,000/-

15.2 As against the aforesaid amount of Rs.3,85,90,000/- {including Rs.1,68,90,000/- which is subject matter of addition}, Rs.3 crore belongs to M/s. Sutar Buildcon Pvt. Ltd. (SBPL) and duly assessed in the hands of the company in the Assessment Year 2016-17 vide Assessment Year dated 30.12.2017 passed under Section 143(3) of the Act. Thus, the Revenue has already collected taxes on the alleged undisclosed income to the extent of Rs.3 crore from associate co. namely SBPL.

15.3 The cash amount of Rs.76,18,373/- in aggregate represents cash in hand on the date of search and belongs to different cos. Namely ; M/s. Utopian Infratech Pvt. Ltd. - Rs.65090 ; M/s. Sutar Buildcon Pvt. Ltd.(SBPL) - Rs.11,28,796/- ; M/s. Shikhar Fincap Pvt. Ltd. - Rs.30,43,515/-; M/s. Ram Sutar Art Creation Pvt. Ltd. - Rs.11,01,184/- and Ram Sutar Fine Arts Pvt. Ltd. - Rs.22,79,788/-. In all these five companies, the assessee is a director and kept the cash belonging to these companies at his

custody in fiduciary capacity. The cash of Rs. 76,18,373/- thus relates to these cos as pointed out in the post search enquiries as well at the time of assessment and first appellate proceedings as can be noticed from page 96 of the paper book. The ld. counsel further contends that the remaining amount of Rs.9,71,327/- in aggregate belongs to assessee and its family members as their combined cash in hand. The assessee thus contends that there is no justification for making separate addition of Rs. 1,68,90,000/- as undisclosed income where the total cash found itself emanates from record or in the alternative taxes have been paid in appropriate hands. The assessee thus contends the action of the revenue is marred by vice of double addition once in the hands of pvt. Cos. and again in the hands of the Assessee.

15.4 The explanation offered by the assessee towards cash found and seized is self explanatory. The facts suggested on behalf of the assessee emanates from record. Admittedly, the unaccounted cash of Rs. 3 cr. has been assessed in the hands of Pvt. Co. SBPL. Likewise, the source of remaining cash in hand is explained with reference to cash availability in other Pvt. Cos.. The addition made is thus in the nature of double addition and can not be sustained on facts & circumstances of the case.

16 To sum up, the explanation offered by the assessee towards undisclosed income in question is self explanatory and plausible. The course adopted by the Revenue is thus clearly not permissible in law. It may be pertinent to observe that the CIT(A) has mainly relied upon the statement recorded under Section 132(4) wherein the assessee has surrendered the

aforesaid amount of Rs.12,16,40,000/-. The CIT(A) has proceeded on the footing that statement recorded under Section 132(4) is *sacrosanct* where the assessee failed to demonstrate any coercion and duress and hence confirmed the action of the Assessing Officer. As recorded in the preceding paragraphs, the assessee has clearly demonstrated on facts that the various components of alleged undisclosed income are fully explainable on the grounds of either payment of taxes in other assessment year to which such alleged undisclosed income relates to or the addition is in the nature of double taxation or the undisclosed income do not relate to the assessee as demonstrable from the loose paper found and seized forming the basis for addition. The CIT(A) has totally ignored the factual position and has simply relied upon the statement made by the assessee on standalone basis in departure to the Instruction No.286/2/2023-IT (INV.II) dated 10.03.2003. The assessee to our mind has contested the action of the Revenue successfully. We are thus inclined to agree with the plea of the assessee having regard to the factual matrix noted above. Hence, the order of CIT(A) is set aside and the impugned additions stands cancelled.

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

Order pronounced in the open Court on 13/04/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /04/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**