

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER  
AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA Nos. 1909 & 1910/Del/2022  
Assessment Years: 2017-18 & 2018-19**

Rajeshwar Singh Yadav,  
O-6, Lawyers Colony, Bye  
Pass road, Agra.

**PAN: AEOPS8185E**  
(Appellant)

Versus DCIT, Central Circle,  
Ghaziabad.

(Respondent)

Appellant by : Sh. Gaurav Jain, Ld. Adv.  
Ms. Shweta Bansal, Ld. CA  
Sh. Sudarshan Roy, Ld. Adv  
Respondent by : Sh. T. Kipgen, Ld. CIT/DR

Date of hearing: 16.01.2023  
Date of order : 11.04.2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

These appeals have been preferred by the Assessee against the common order dated 14.07.2022, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 4, Kanpur (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2017-18 and 2018-19.

**2. First, we will decide ITA No. 1909/Del/2022 as a lead case.** In the instant case, ledger registers marked as D-1 and D-6 and loose paper marked as LP-4, were found and seized during the search and seizure operation u/s. 132 of the Act , carried out on dated 16.06.2017 at the residential premises of Shri Ajay Kumar Yadav (contractor in irrigation department of Uttar Pradesh).

**2.1** Subsequently, the search and seizure operation u/s. 132 of the Act, was also carried out on 10.11.2017 at the premises of the Assessee as well and subsequent to that, notice u/s. 153A of the Act was issued to the Assessee on 23.08.2019 for filing his return of income for the AY under consideration as well, in response to which, the Assessee on dated 30.08.2019 e-filed his return of income, by declaring total income of Rs.13,02,300/- derived from salary and other sources.

**2.2** The Assessing Officer by perusing the said Annexures marked as D-6, D-1 and LP-4 (supra), found that Shri Ajay Kumar allegedly has given more than Rs.6.00 crores as cash as extraneous consideration to the Assessee, and therefore show caused the Assessee to explain the cash alleged to have been received and also to explain the purposes of the same and as to

why the said amount should not be added to the total income of the Assessee, as his undisclosed income.

**2.3** The Assessee by filing its reply, in response to the said show cause, out rightly refused to have taken any type of money from Shri Ajay Kumar and in support of its claim furnished various details/ information/ documents including the statements of bank accounts, which were looked into by the Assessing Officer and discussed with the Assessee.

**2.4** The reply filed by the Assessee was not found tenable by the AO on the ground that said Annexures contains several names to whom payments shown to have been paid in cash as well as through RTGS and Cheques. The payments made through cheques were checked and verified from the bank of Shri Ajay Kumar (contractor) and the same were found true. Further, some of the payments recorded in the above said Annexures pertains to the payments made through RTGS and cheques to various firms, who have also accepted that they have received these payments. In view of the above, it is clear that the transactions recorded in the above said Annexures are true and correct, hence, the authenticity of the page (LP-04) is beyond doubt.

**2.5** The AO further held that by examining annexure LP-04, total amount of Rs.5,98,76,460/- is recorded to have been paid to the Assessee, during the year under consideration. But in his written reply, the Assessee has outrightly refused to have taken any type of money from Shri Ajay Kumar. Further, the circumstantial evidences are against the Assessee, as it is obvious that the aforesaid amount was received by the Assessee for favouring Shri Ajay Kumar (contractor) by awarding him contracts.

**2.6** The Assessing Officer while relying upon the judgment of the Hon'ble Apex Court in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540, *wherein it was held that the taxing authorities were entitled to look into the surrounding circumstances to find out the validity of the transactions*, ultimately held that in view of the above and considering the surrounding circumstances of the case and applying the test of human probabilities, it is concluded that the above said amount of Rs.5,98,76,460/- has been received by the Assessee from Shri Ajay Kumar during the year under consideration, hence, the said amount of Rs.5,98,76,460/- is hereby treated as unexplained cash receipts of the Assessee, in purview of section 69A of the Act and is added to the total income of the Assessee to be taxed, as per section 115BBE of the Act.

**3.** The Assessee being aggrieved with the assessment order and the said addition made by the Assessing Officer preferred first appeal before the Id. Commissioner on legal grounds as well as on merits. The Assessee before the Id. Commissioner mainly emphasised:

*That the order passed by the Assessing Officer is ex-facie arbitrary, illegal and bad in law being against the provisions of the Act and principle of natural justice. Further the Assessing Officer has erred in making addition of Rs.5,98,76,460/- u/s. 153A instead of section 153C of the Act as the documents were seized from the premises of third party and without following the mandate of circular No. 25/2015 of CBDT, the assessment order is in violation of the decision of the Tribunal at Delhi in the case of Lalit Mahajan (ITA No. 5585/Del/2015 decided on 19.03.2019 and thus, liable to be quashed. Further, the Assessing Officer erred in not allowing cross examination of Shri Ajay Kumar though specifically asked vide letter dated 23.11.2019 which is in violation of the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE (2015) 62 taxmann.com 3, wherein, it has been held that not allowing cross examination results into nullity of the order. The Assessing Officer further erred in placing reliance on the documents seized from the residence of the third party without rebutting the case laws relied in submission vide para 19 dated 14.10.2019. The Assessing Officer further erred in para No. 4.3 of the assessment order, whereby the Assessing Officer relied upon the case law in the case of CIT vs. Durga Prasad More (supra) wherein the facts and circumstances are different and consequently violated the principles of applicability of case laws, as*

*decided by Hon'ble Apex Court in the case of CIT vs. Sun Engineering, 198 ITR 297. The JCIT or the Addl. CIT also erred in giving approval in mechanical manner and without application of mind, violating the principles laid down by Hon'ble Courts and Tribunals for granting approval under section 153D which is too evident being violation of CBDT Circular No. 24/2015 apart from other matters. The Assessee also claimed that the Assessing Officer has erred in making addition of Rs.5,98,76,460/- without any cogent material and based on human probabilities, despite the fact that after the search, the assessment is to be framed based on the incriminating material only, as per decision of the jurisdictional High court in the case of Kabul Chawla, 380 ITR 573.*

**4.** The Id. Commissioner though considered the claims/contentions/replies of the Assessee and also the judgments, on which the Assessee relied, however, affirmed the assessment order and the addition on legal aspects as well as on merits. The Assessee being aggrieved is in appeal before us.

**5.** Heard the parties and perused the material available on record. The addition of Rs.5,98,76,460/- which is under consideration, was made by the Assessing Officer on the basis of some entries made in loose paper (LP-04) on different dates in the name of "R.S. Yadav". As the Assessee's name is Rajeshwar Singh Yadav and he was working as Executive Engineer, during the year under consideration in Irrigation Department of U.P., therefore it was construed by the Assessing Officer that various

amounts have been recorded in the paper seized (LP-04) from the residential premises of the Shri Ajay Kumar, wherein the name as R.S. Yadav is also depicted and some of the sites like PUL-B, PUL-A, PUL-C, FBD, OKHLA Baraj, Rotary, GZB are recorded. The total amount of Rs.5,98,76,460/- is recorded to have been paid to the Assessee during the year under consideration. The Assessing Officer by considering the reply, whereby the Assessee has outrightly refused to have taken any money from Shri Ajay Kumar, held that the circumstantial evidences are against the Assessee, as it is obvious that the aforesaid amount was received by the Assessee for favouring Shri Ajay Kumar by awarding him contracts.

The AO ultimately made the addition of Rs.5,98,76,460/- u/s 69 of the Act, in addition to making other addition(s) which are not in challenge before us.

**6.** The Id. Commissioner more or less affirmed the said addition, on the grounds:

*“That from the seized material LP-4, various ledger accounts are found, in which there are also detailed ledger accounts which are made for expenses incurred for the purpose “other than the site expenses”. From these accounts, it has been categorically found that the payments have been made to various government servants, including the Assessee. The presumption of section 132(4A) and section 292C of the Act clearly applies in the matter of seized documents, therefore, the contents of these seized material cannot be doubted. From the detailed analysis of the seized material, it has been found that various projects relates to Shri*

*Ajay Kumar and his family members who have been awarded the work of these projects as contractors. Since Shri Ajay Kumar is a contractor and has been doing the project work at various sites and since the Assessee Shri Rajeshwar Singh Yadav has been executive engineer, their relationship cannot be denied. Now, in such circumstances, onus to prove that what was apparent from these books was not real, was on the Assessee. The details written on the documents belong to the activities, i.e., projects executed by Shri Ajay Kumar, who is doing the projects works of Irrigation Department, in which the appellant has been posted. Now the onus was on the appellant to prove, as to how the contents of these documents are not correct. However, the appellant failed to discharge its onus, thus, it is concluded that the appellant failed to discharge such onus by bringing on record, some cogent evidence, to disprove the notings in the seized papers.”*

**6.1** With regard to not providing the opportunity to cross examination of Shri Ajay Kumar, the Id. Commissioner held as under”

*“That in the matter of cross explanation of Shri Ajay Kumar, from whose residential premises, the relied documents have been found and seized, the relevant seized incriminating documents have been confronted to the Assessee, therefore, no separate opportunity to further cross examination is required to be given to the Assessee. The Id. Commissioner also relied upon the judgment of the Hon’ble Apex Court in the case of Dhakeswari Cotton Mills (26 ITR 775 at 782), wherein it was held that the “Evidence Act” may have no application in tax assessment proceedings.”*

**6.2** The Id. Commissioner also held as under:

*“That since the seized Annexures D-1, D-6 and LP-4 were seized from the residential premises of Shri Ajay Kumar, during the search proceedings on dated 16.06.2017, therefore, the presumption about the seized material u/s. 132(4A) and 292C of the Act clearly apply and hence, the contents of the seized material cannot be doubted. The Investigation*

*Wing as well as the Assessing Officer have analysed the seized materials and based on the same, the additions are made by the AO, in the case of Ajay Kumar and vide appellate order dated 12.01.2022 passed in case of Shri Ajay Kumar (in appeal No. CIT(A)-KNP/10695/2019-20) for A.Y. 2017-18, the additions based on these seized Annexures i.e., D-1, D-6 and LP-04 have been upheld. Based on such ledger accounts which are prepared as ledger account in LP-04 for "site ke atirikt vyay", the additions have been made by the Assessing Officer in case of Shri Ajay Kumar and addition of Rs.20,27,19,855/- has been confirmed by the ld. CIT(A) for a document found and seized during the search proceedings conducted u/s. 132 of the Act for which two independent witnesses were engaged and detailed Panchnama was drawn, no plea of authentication can be taken. It is the bounden duty of the person in whose control and possession, the seized material has been found to disclose the name of the person, who has written the same and department cannot be expected to find out such person, who has written such detailed accounts and Shri Ajay Kumar has failed to reveal the name of such person. But the provisions of section 132(4A) and section 292C of the Act have been made as to how to handle such a situation. Therefore, in the assessment and the appellate proceedings of Shri Ajay Kumar, these seized materials i.e., 'site ke atirikt vyay', ledger accounts in LP-04 have been made the basis, to compute the undisclosed income in case of Shri Ajay Kumar. Same conclusion is made in case of the Assessee and the payments reflected in these ledger accounts in LP-04 are made the basis, for computing unaccounted income in the hands of the Assessee."*

**7.** The Assessee being aggrieved with the affirmation of the addition and the assessment order, preferred this appeal by raising following grounds of appeal:

*1. That the Ld. CIT(A) erred on facts and in law in not annulling the impugned assessment order passed by the Ld. AO u/s 143(3)/153A which is ex facie illegal, perverse, and bad in law.*

2. That the Ld. CIT(A) erred on facts and in law in not annulling the impugned assessment order passed by the Ld. AO u/s 143(3)/153A in spite of the fact that no incriminating material was found from the premises of the appellant during the course of search and no assessment proceeding was pending in the case of the appellant at the time of search.

3. That the Ld. CIT(A) erred on facts and in law in not annulling the impugned assessment order passed by the Ld. AO u/s 143(3)/153A in spite of the fact that the approval u/s 153D is mechanical.”

**“Without prejudice to the above grounds**

4. That the Ld. CIT(A) erred on facts and in law in not following the conditions precedent contained u/s 153C for making addition on the impugned issue which was based on alleged documents found from the premises of the third party.

5. That the Ld. CIT(A) grossly erred on facts and in law in confirming the assessed income at Rs. 6,11,78,760/- against the returned income of Rs. 13,02,300/-.

6. That the Ld. CIT(A) erred on facts and in law in sustaining the addition of Rs. 5,98,76,460/- made by the Ld. AO u/s 69A on the basis of certain jottings in loose papers found during the course of search upon Sh. Ajay Kumar (the third party).

7. That the Ld. CIT(A) erred on facts and in law in sustaining the addition of Rs. 5,98,76,460/- made by the Ld. AO u/s 69A in spite of the fact that the appellant was not found to be the owner of any money, bullion, jewellery or other valuable article.

8. *That the Ld. CIT(A) erred on facts and in law in sustaining addition made by the Ld. A.O. u/s 69A on the basis of certain jottings in loose papers found during the course of search upon Sh. Ajay Kumar (the third party) without appreciating the fact that the same addition was made without providing an opportunity to cross-examine Sh. Ajay Kumar even though the specific request was made by the appellant before the Ld. AO.*

9. *That the Ld. CIT(A) erred on facts and in law in holding that the contents of loose papers were to be presumed to be correct for the purpose of making addition in the hands of the appellant in terms of sections 132(4A) and 292C of the Act failing to appreciate that there was no corroborative evidence of such addition found from the premises of the appellant."*

**7.1** By **Grounds No. 1 to 3**, the Assessee challenged the validity of Assessment Order on legal aspect, however, during the course of hearing, did not press these grounds specifically, hence, we are not advertent to decide the same and therefore, the judgment passed by the Hon'ble jurisdictional High Court in the case of Raj Kumar Arora (supra) as referred to by the Id. DR, do not require any consideration.

**7.2** **Grounds No. 4 to 9** pertains to the merit of the case, and in support of same, the Assessee reiterated its contentions as raised before the authorities below. Mr. Gaurav Jain Ld. Advocate, Id. AR of the Assessee specifically claimed that the Id. Commissioner in its order though referred five contracts awarded to Shri Ajay Kumar by the Irrigation Department, however,

admittedly none of the said contracts was below than Rs. 40 lacs and therefore, Mr. Jain by drawing our attention to page No. 152 of the paper book wherein pecuniary powers of the officers of Irrigation Department have been prescribed, claimed that the Assessee being an Executive Engineer was empowered only to grant the contract(s) upto the value of Rs.40 lacs only. Therefore, the allegation of extraneous consideration is unsustainable. The Id. Counsel also drew our attention to page No. 155 of the paper book, which is reproduced herein below:

*Irrigation and Water Department*

<https://loknirmantimes.com/archives/18226>

7	LUCKNOW DIVISION SHARDA CANAL	LUCKNOW	2614338	ROOP SINGH YADAV	9808180879	EE
10	HEAD WORKS DIVISION AGRA CANAL	OKHLA	29940803	RAJESHWAR SINGH YADAV	9717282274	EE
13	IRRIGATION CONSTRUCTION DIVISION	GHAZIABAD	2759678	RAVINDER SINGH YADAV	9899135199	EE

<http://idumpis.in/en/refWhoWhoDepart?CMID=amp;cd=MQAzADYA>

*Directory of Irrigation & Water Resources, Government of Uttar Pradesh  
Bapu Bhawan Lucknow*

<i>S No</i>	<i>Office UID</i>	<i>Division</i>	<i>Name</i>	<i>Designatio n</i>	<i>Head Quarter</i>	<i>Mobile No.</i>	<i>Phone No.</i>	<i>E- Mail</i>
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1	STBP2 10	Executive Engineer Irrigation Constructi on Division Maurani	SRI RAJNATH SINGH YADAV	Executive Engineer	Mauranpur	94164 48558	051782 81037	
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The Assessee by referring the said website details emphasised that from the website of Government, it clearly appears that during the year under consideration three persons namely Roop Singh Yadav, Ramendra Singh Yadav and Rajnath Singh Yadav, are also working as Executive Engineers in the **Irrigation and Water Department, Govt. Of U.P.** whose initials also appears as 'R.S. Yadav'. Therefore, there is no substantive proof/evidence to establish that the narration depicted as 'RS Yadav' in the document recovered from the possession and control of third party, but not from the Assessee herein, can be attributed to the Assessee only. The Assessee further claimed that as the presumption is rebuttable and hence, cannot be used against the Assessee only.

**7.3** The Id. Counsel by drawing our attention to pages No. 67-73 of the paper book, which pertains to bills of quantity for construction of four lane of bridge over Agra Canal in respect of tenders dated 04.09.2015 and 05.12.2014, claimed that the Assessee was not empowered to grant contact solely, but in fact the same were required to be approved by the Superintending

Engineer as well. Therefore, the allegations of extraneous consideration, are based on conjectures and surmises.

**8.** On the contrary, the Id. DR refuted the claim of the Assessee and supported the orders passed by the authorities below. With regard to grounds no. 1 to 3, relied upon Allahabad High Court judgment in the case of Commissioner of Income Tax Vs Sri Raj Kumar Arora {Income Tax Appeal No. 56 of 2011 decided on 11 July, 2014}.

**8.1** The Id. DR further submitted that the addition in hand has been made on the basis of the papers found and seized from the residence of Shri Ajay Kumar (Contractor) and therefore, the presumption u/s. 132(4A) and section 292C of the Act is squarely applicable in the instant case.

**8.2** The Id. DR further claimed that sometime complete names and sometimes short names have been recorded in documents, but that does not absolve the Assessee from the rigors of presumption, as laid down in section 132(4A)/292C of the Act. Further from page No. 155 of the paper book, as referred to by the Assessee, it is not clear that the persons referred are connected to the contract works.

**8.3** The Id. DR further claimed that in the instant case, the search and seizure operation was carried out at the premises of the contractor on dated 16.06.2017, whereas the search in the premises of the Assessee was carried out after five months,

therefore, the onus is upon the Assessee to establish the fact of not having received any money. The Id. DR also claimed that on the same papers, which were used by the Assessing Officer some details of RTGS and Cheques Numbers have been found, which got verified by the Assessing Officer and therefore, the onus shifts upon the Assessee.

**9.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and the issue involved and therefore are of the considered view that in this case, the following questions are required to be addressed:

*(i). Whether the presumption as enumerated in the provisions of section 132(4A) and section 292C of the Act can be drawn against a third person from whose possession and control, in the course of search, no books of accounts, other documents, money, bullion, jewellery or other valuable articles etc. have been recovered ?*

*(ii). Whether, a third person, from whose possession or control, no recovery of such documents etc. as referred u/s 132(4A) and section 292C of the Act, has been made, is required to rebut the presumption drawn under the provisions of section 132(4A) and 292C of the Act ?*

*(iii). Whether the loose papers, on which entries of amounts are depicted, can be used without corroborating evidences ?*

*(iv). Where the presumption is rebuttable, then how and in what mode, the presumption can be rebutted by the third person ?*

**10.** Coming to the first question (i) *Whether the presumption as enumerated in the provisions of section 132(4A) and section 292C of the Act can be drawn against a “third person” from whose possession and control, in the course of search, “no” books of accounts, other documents, money, bullion, jewellery or other valuable articles etc. have been recovered, let us peruse the provisions of section 132(4A) and section 292C of the Act, which reads as under:*

**“132**

**(4A)** *Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—*

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*
- (ii) that the contents of such books of account and other documents are true; and*
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.”*

**“292C. (1)** *Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—*

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*
- (ii) that the contents of such books of account and other documents are true; and*
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.*

*(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.”*

**10.1** From the provisions of section 132(4A) and 292C of the Act, it reflects that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing **are or is found in the possession or control** of **“any person”** in the course of a search, it **may be presumed** that such books of account, other documents, money, bullion, jewellery or other valuable article or thing **belong or belongs to “such person”**. Further, the contents of such books of account and other documents are true. Further, the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom, it purports to have been so executed or attested.

**10.2** From the provisions referred to above, it is clear that presumption that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to a **“person”** may be drawn against **“such person”** from **whose possession or control of**, in the course of a search, such documents etc. found.

**10.3** But the question evolve “*whether the presumption as enumerated in the provisions of section 132(4A) and section 292C of the Act can be drawn against a third person from whose possession and control, in the course of search, **no** books of accounts, other documents, money, bullion, jewellery or other valuable articles etc. have been recovered .”*

**10.4** We observe that various Benches of the Tribunal in the cases of Strawpack (India) Pvt. Ltd. vs. DCIT (2003) 84 ITD 320 (Mum), Jai Kumar Jain vs. ACIT (2007) 11 SOT 61 (Jaipur)(URO)/(2006) 99 TTJ 744 (Jaipur) dated 23.09.2005, Sheth Akshya Pushpavandan vs. DCIT (2010) 130 TTJ 42 (Ahmedabad) (UO) dated 05.02.2010 and Pradeep Amritlal Runwal vs. Tax Recovery Officer, Range-3, Pune (2014) 47 taxmann.com 293 (Pune-Trib) dealt with the presumption prescribed u/s. 132(4A) and 292C of the Act and situation/issue wherein on the basis of some loose papers, the addition(s) in the hands of third person has been made. The Hon’ble Courts in the aforesaid cases clearly held that since the seized papers were not recovered during the course of search, from the possession and control of the third person (Assessee), the presumption u/s. 132(4A) and 292C of the Act, could not be invoked against the third person (Assessee) and the addition based on such documents is unjustifiable.

**10.5** We further observe that in Seth Akshya Pushpvandan and Pradeep Amritlal Runwal cases (supra), the additions on the

basis of loose papers have been made u/s. 69 of the Act, by taking refuge of the provisions of section 132(4A) read with section 292C of the Act, and the Hon'ble Courts clearly disproved such additions.

**10.6** The Hon'ble Delhi High Court as well in the case of CIT, Delhi-IX vs. Anil Khandelwal {ITA no. 247 & 248/2012 decided on 21/04/2015 } also dealt with the identical case, wherein the addition u/s. 69 of the Act was made, on the basis of materials seized from another person, but not from the possession and control of the Assessee, by taking refuge of presumption as prescribed u/s. 132(4A) and section 292C of the Act , whereas the Assessee claimed to have never received any amount as depicted in the seized papers and the person from whose possession and control, the seized documents were found also denied to have never received or paid any cash to the Assessee or those connected with him. Therefore, the Hon'ble High Court held that amounts attributed to the Assessee in fact, had not been established and that in the given circumstances, the reference of section 132(4A) and 292C of the Act was not justified.

**10.7** The Hon'ble jurisdictional High court in the case of CIT vs. Babu Mohan Arya Smarak Educational Trust (2014) 42 taxmann.com 255 (Allahabad), also came across with a identical issue, wherein on the basis of search and seizure operation,

certain documents were found, which have been used as admissible evidence, against the Assessee by drawing the presumption u/s. 292C of the Act. The presumption u/s. 292C of the Act was rebutted by denial of the Assessee. No incriminating evidence or corroborating evidence was found. Therefore, the impugned order on the basis of un-corroborative documents/seized papers and drawing presumption u/s. 292C of the Act, was set aside by the Tribunal and the action of the Tribunal was affirmed by the Hon'ble High Court.

**10.8** The Hon'ble Apex Court in the case of Chandra Kishore Jha vs. Mahavir Prasad & Ors. (1999) 8 SCC 266 also reminded "*that it is a sell settled statutory principle, if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.*"

**10.9** From the bare provisions of the Act, decisions of Hon'ble Courts and the discussion held, we are of the considered view that the presumption as prescribed, under the provisions of section 132(4A) and 292C of the Act, may be drawn against "**such person**" only from whose possession or control, the documents etc. as mentioned in the said provisions is/are found and seized or recovered but not against the third person from whose possession or control, no such document(s) etc. as mentioned in the said provisions, is/are found and seized or recovered. **We answer question no. (i) accordingly.**

**10.10** Coming to the instant case, the alleged documents, have been found in the premises of Shri Ajay Kumar and therefore, the presumption as prescribed u/s. 132(4A) and 292C of the Act, can only be drawn against Shri Ajay Kumar, which infact has already been drawn by making the addition on the basis of the seized documents including Annexure LP-04 used in this case. It is also not the mandate of law that the addition can be made in two hands on substantive basis. Hence on the aforesaid analyzations, the addition is liable to be deleted in this count itself.

**11. Next question relates to** “Whether, a third person, from whose possession or control, no recovery of such documents etc. as referred to u/s 132(4A) and section 292C of the Act, has been effected, is still required to rebut the presumption as prescribed section 132(4A) and 292C of the Act.” Our answer is **“no”** because as we already held that presumption u/s 132(4A) and 292C cannot be drawn against third party from whose possession ,no documents etc. found and seized and therefore in our considered view, such party is not under obligation to rebut the presumption.

**12.** Next question to be addressed is “Whether the loose papers, on which entries of some amounts are depicted, can be used without corroborative evidences.”

**12.1** The Hon'ble Delhi High Court in the case of CIT vs. Girish Choudhary (2007) 163 Taxman 608 (Delhi) also considered the narration found in the loose papers and held as under:

“There is no basis as to how the A.O. came to the conclusion that 44 was Rs. 44 lacs. There is no material to support such finding of the A.O. in respect of dumb documents. Addition deleted.”

**12.2** The Hon'ble Apex Court in the case of CBI vs. V.C. Shukla, 1998 (3) SCC 410 / 1998 taxmann.com 2155 popularly known as Jain Hawala case, also taken into consideration the specific facts that even the names of the persons whom the alleged payments were made do not find a mention in full, they have been shown in abbreviated forms, only certain “letters” have been written against their names, which are within the knowledge of only scribe of the said diary what they stand for and whom they refer to. The said documents can at the most be described as a memorandum kept by a person for his own benefit, which will enable him to look into the same, whenever the need arises to do for his future purpose.

**12.3** The Hon'ble jurisdictional High Court in the case of **Ajay Gupta vs. CIT {2020}** 114 taxmann.com 577(Allahabad) while dealing with the similar and identical situation qua applicability of

the presumption u/s. 132(4A) of the Act has also clearly held that the Assessing Officer while passing the assessment order had, only on the basis of loose papers found during the search, made the addition to the disclosed income of the Assessee, while the entries on the papers remained uncorroborated. The Hon'ble High Court also taken into consideration the judgment of the same High Court in the case of CIT vs. Shadiram Ganga Prasad, 2010 UPTC 840, wherein it was held that the loose purchas found during the search at the most could lead to a presumption but the department cannot draw inference, unless the entries made in the documents so found are corroborated by the evidence. The Hon'ble High Court also taken note of the fact that the presumption as provided in section 132(4A) is not in absolute terms, but is subject to corroborative evidence. The Tribunal on the basis of presumption u/s. 132(4A) of the Act, reversed the finding of the Id. CIT(A), without recording any finding as to how the loose sheets, which were recovered during the search, were linked with the Assessee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding by the CIT(A).

**12.4** The Hon'ble jurisdictional High Court (Allahabad High Court) in the case of **Pushkar Narain Sarraf vs. CIT** (1990) SOT 213 has also laid down a dictum that where the department proposes to invoke section 69 of the Act, for taxing unexplained investments, it cannot harp on the presumption u/s. 132(4A) of the Act. It will first have to prove by independent evidence that

the Assessee has, in fact, made investments which are not recorded in the books of account etc. and the onus of proving the source etc. will shift to the Assessee only, after the burden of establishing unexplained investment has been discharged by the Revenue Department. This burden cannot be said to have been discharged merely on the basis of some entries found in the books of account or documents seized in the course of search.

**12.5** The Hon'ble Apex Court in the case of CBI vs. V.C. Shukla (supra) also clearly laid down the dictum that entries in the books of account shall not alone be sufficient evidence to charge any person with liability. The corroborative and independent evidence as to the trustworthiness of those entries, is necessary to fasten the liability. Even correct and authentic entries in the books of account, cannot without independent evidence of their trustworthiness, fix a liability upon a person.

**12.6** The Hon'ble Apex Court in the case of Common Cause vs. Union of India, 394 ITR 220 has also laid down the principle that loose papers/documents recovered by authorities, had no evidentiary values.

**12.7** The Hon'ble Apex Court in the case of Kushan Chand Chela Ram vs. CIT, 125 ITR 713 (SC) also laid down the dictum that evidence collected at the back of the Assessee, has to be

confronted to the Assessee to give him an opportunity to rebut the evidence, otherwise, same is not admissible.

**12.8** On the aforesaid analysis, we are of the considered view that the suspicion, howsoever strong may be, can not take place of legal proof and the conclusion drawn, upon suspicion and surmises, is legally untenable. The noting on the note book/diary/loose sheets are required to be corroborated by other evidences, which include the statement of scriber of nothings etc., if the names and figures are mentioned in abbreviated forms or short forms or in certain letter(s) as the same would be in the knowledge of scriber only and a person, whose name though is recorded in the note book/diary/loose papers etc. but nothing found and recovered from such person.

The statements of scriber of nothings etc. and such person from whose possession and control such documents were recovered, having more importance and the statement of scriber of nothings etc. and such person, undoubtedly should be confronted to the Assessee and the Assessee has to be allowed to cross examine such persons and an opportunity to rebut the evidence.

Unless the statement/document is tested under the cross examination, the same cannot be read in evidence against the Assessee and no adverse inference can be drawn, unless the

entries made in the documents so found are corroborated by the independent evidence. The presumption as provided in section 132(4A) and 292C of the Act, is not in absolute terms, but is subject to corroborative evidence. Where the department proposes to invoke section 69 of the Act for taxing unexplained investments, it cannot harp on the presumption u/s. 132(4A) of the Act. It will first have to prove by independent evidence that the Assessee has, in fact, made investments, which are not recorded in the books of account etc. and this burden cannot be said to have been discharged merely on the basis of some entries found in the books of account or documents seized in the course of search. The onus of proving the source etc. will shift to the Assessee only, after the burden of establishing unexplained investment has been discharged by the Revenue Department.

**12.9** The loose papers, on which entries of amounts are depicted, can not be used without corroborating evidences, hence we answer question no. (iii) accordingly.

**12.10** **Coming to the instant case,** some loose papers were found *from the premises of Shri Ajay Kumar (third party) alleged to be a contractor of the Irrigation Department, wherein the Assessee was working as Executive Engineer,* in which noting of various persons, dates of transactions, amounts and names of the projects have been depicted/written. The Assessing Officer made the addition on the

basis of presumption to the effect that as Shri Ajay Kumar was contractor in the irrigation department, in which the Assessee was working as executive engineer and in the documents, the name has also been depicted as 'RS Yadav', and therefore the circumstantial evidences are against the Assessee and the cheques and RTGS shown in the said papers having been paid to various firms were, also got verified as the firms have also accepted that they have received these payments, therefore, it is clear that the transactions recorded in the above said Annexures are true and correct, hence, authenticity of the page (LP-04) is beyond doubt.

**12.11** In this case, the Assessee also allegedly claimed that as per notings u/s. 142(1) dated 27.09.2019 issued by the Assessing Officer to the Assessee, the Assessee was confronted with certain scanned copies of loose sheets seized from the premises of Shri Ajay Kumar, which pertains to the alleged amount as depicted to the extent of Rs.1,00,00,000/- only. However, in the assessment order, the Assessing Officer by making the addition taken into consideration the figures to the extent of Rs.5,98,76,460/-, the details of remaining Annexures were never provided to the Assessee, during the course of assessment proceedings.

**12.12** We observe further that the Revenue neither recorded the statement of the scribe of the notings on the loose sheets,

nor even inspite on specific request made vide letter dated 23.11.2019, allowed any opportunity to the Assessee to cross examine Shri Ajay Kumar, from whose possession such documents have been recovered. Admittedly, the documents relied upon by the Revenue Department are neither in the handwriting of the Assessee nor has signature of Assessee and no corroborative evidence/document related to the Assessee, which could be connected with the documents relied by the Revenue Department, found from the possession or control of the Assessee, in spite of certain search and seizure operation carried out in his premises.

**12.13** It is also well settled law that the dumb documents having no evidentiary value and cannot be taken as sole basis for determination of undisclosed income of the Assessee. Wherever, the Revenue Department wants to make use of dumb documents alike involved in the instant case, then the onus rests on the Revenue Department to collect cogent evidence qua the person whose name appears in notings, to corroborate the notings therein. Simply the reason *“that cheques and RTGS shown in the said papers having been paid to various firms were also got verified and therefore, the transactions recorded in the said are true and correct, hence, authenticity of the page (LP-04) is beyond doubt,”* as considered in this case, is not sufficient to draw any adverse inference against such person (Assessee herein) whose short name depicted in the document.

**12.14** The Hon'ble jurisdictional High court of Allahabad in the case of Mumar Trading Co. Vs. Commissioner of Trade Tax, 2008 taxmann.com 1672 (Allahabad) as well, also clearly held that it is settled principle of law that if the Revenue wants to rely upon the entries of the document, seized from the premises of third party, the burden lies upon the Revenue Authorities to prove the genuineness and authenticity of the said entries to connect the said entry with the dealer, in case the dealer denies to have any connection with such entry. In the instant case the Assessee as well as Sh. Ajay Kumar from whose possession documents found and seized, denied to have any connection with payments as noted in the notings/documents, which have been used by the Revenue, against the Assessee in making the addition in hand.

**12.15** It is also a fact that the department failed to prove/bring on record the author of the writings on the loose papers, on the basis of which the addition under consideration has also been made. It is also a fact that the Assessee was never provided an opportunity to cross examine the scribe of the notings and even the other persons whose names have also been narrated in short form and Mr. Ajay Kumar from whose possession and control, the alleged documents were recovered.

**12.16** On the aforesaid analyzations as well, the addition in hand is also un-sustainable.

**13.** Coming to (iv) question "Where the presumption is rebuttable, then how and in what mode, the presumption can be rebutted by the third person."

**13.1** A presumption is an inference of fact drawn from other known and proved facts. It is a rule of law under which Courts are empowered to draw a particular inference by considering a particular fact. Presumptions are of three types (i) may presume; (ii) shall presume and (iii) conclusive proof. 'May presume' always leaves it to the discretion of the Courts to make the presumption according to the circumstances of the case, however, 'shall presume' leaves no option with the courts not to make the presumption and the court is bound to take the fact as proof until evidence is given to disprove it. In this sense, such a presumption is also a rebuttable. But 'conclusive proof' gives an artificial probative effect by the law to certain facts and to controvert, no evidence is allowed to produce with a view to combating that fact. Meaning thereby, it is an irrebuttable presumption.

**13.2** We observe that the phrase used in the provisions of section 132(4A) and 292C of the Act is “may be presumed” which has been defined in section 4 of the Evidence Act, which reads as under:

**“Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.”**

**13.3** From the provision of section 4 of the Evidence Act, it is clear, the presumption is not final or conclusive, but is a rebuttable one that may be disproved by the person from whose possession and control, the items mentioned in section 132(4A) and Sec. 292C of the Act, have been recovered. For better understanding, we are quoting an example that if some documents are recovered during the search and seizure operation, then the presumption may be drawn that such documents are in the hand writing of the person, from whose possession and control, the said documents have been recovered, but still, the presumption can be disproved by declining and showing that such documents are not in the hand writing of that person.

**13.4** It is not the mandate of law as provided u/s. 132(4A) and 292C of the Act that whenever the documents etc. as prescribed in the said provisions are seized with, the court shall necessarily bring the presumption irrespective of the other factors which may dissuade the court from doing so.

**13.5** The question also arise, what kind of evidence would rebut a legal presumption in the given set of facts, in fact there is no rigid rule. In our opinion, the evidence can be direct or indirect or circumstantial or in combination, however, in certain cases/ situation, a mere statement of the Assessee (third person) can suffice or may be enough to rebut the legal presumption. **We answer question no. (iv) accordingly.**

**14.** Though we have decided that the presumption can only be drawn against such person from whose possession and control, the documents etc. as mentioned in the provisions of section 132(4A) and section 292C of the Act. However, still without dwelling into the merits of the contentions raised by the Assessee, we are inclined to see, as to whether in this case, the Assessee has rebutted the presumption raised against him.

**A.** First, the Assessee clearly denied to have received any alleged money as depicted in the loose paper and also

denied to have any connection with such paper (LP-04) on the basis of which impugned addition has been made.

- B.** This is also a fact that Shri Ajay Kumar from whose possession and control, the documents have been found, on the basis of one of such documents, the addition under consideration has been made, also denied to have made any such alleged payments to the Assessee, as recorded in the loose paper(s).
- C.** Further, the Assessee also drew our attention to the details gathered from websites wherein details of three different persons also depicted, whose names are also, if considered in short form, then comes to 'RS Yadav' who during the year under consideration, were also working on the same post of Executive Engineer, as of the Assessee. Though authenticity of said document (Pg. 155 of PB) remained un-substantiated, however the Assessee prima facie rebutted the presumption.

Hence, in our considered opinion, though the Assessee is not liable to rebut the presumption drawn by the Assessing Officer, however, still rebutted the same by raising aforesaid pleas and therefore, the presumption drawn against the Assessee is un-sustainable.

**15.** We also observe as held by the Hon'ble Courts that presumption can only be drawn after establishing the addition under the substantive provisions of section 69 of the Act as involved in this case and before fulfilling the conditions of section 69 independently, the presumption cannot be drawn, which in the instant case is missing. Hence, on this aspect as well the addition in hand is unsustainable.

**16.** We further observe that the Assessing Officer has also observed in the assessment order that the circumstantial evidences are against the Assessee, as it is obvious that the aforesaid amount was received by the Assessee for favouring Shri Ajay Kumar by awarding him contracts. As we have already considered the circumstantial evidence, and it is admitted fact that the Assessee was not empowered to grant any contract of value of more than Rs. 40 lacs and as alleged contracts were of more than the prescribed limit of Rs.40 lacs, then the circumstantial evidence as construed by the Assessing Officer having no value, as the same is based on surmises and conjectures.

**17.** The Assessing Officer while making addition, also relied upon the judgment in the case of CIT vs. Durga Prasad More (supra), wherein, the Assessee was actually found to be owner of

money which was treated as her income and therefore, the same was affirmed by the higher courts, but it is not the case here in hand, as no recovery of any documents as used by the Assessing Officer, has ever been effected from the Assessee's possession or control and even otherwise, no corroborative evidence against the Assessee has been established. Therefore, the adverse inference drawn, against the Assessee is unsustainable.

**18.** By considering peculiar facts and circumstances of this case specifically, on the aforesaid deliberations and analyzations, the addition of Rs. 5,98,76,460/- is deleted and the appeal filed by the Assessee is allowed.

**19. ITA Nos. 1910/Del/2022 (Assessment Years: 2018-19)**

In this case also, the addition of Rs. 25 Lakhs which is under consideration before, was made by the AO and affirmed by the Ld. Commissioner, on the same footing as done in 1909/Del/2022 (Assessment Years: 2017-18), hence in view of our judgement in 1909/Del/2022, the addition of Rs. 25 Lakhs is also deleted and consequently the appeal filed by the Assessee is allowed.

**20.** In the result, both the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 11.04.2023

Sd/-

**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-

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