

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No. 3107/DEL/2014
[Assessment Year: 2009-10]**

**ITA No. 3887/DEL/2014
[Assessment Year: 2010-11]**

Shri S.K. Gupta
4827/24, Ansari Road
Darya Ganj, New Delhi

Vs.

The A.C.I.T
Circle - 17
New Delhi

PAN : AAOPG 8888 N

**ITA No. 3201/DEL/2014
[Assessment Year: 2009-10]**

**ITA No. 3991/DEL/2014
[Assessment Year: 2010-11]**

The A.C.I.T
Central Circle - 17
New Delhi

Vs.

Shri S.K. Gupta
4827/24, Ansari Road
Darya Ganj, New Delhi

PAN : AAOPG 8867 H

Assessee By : Shri Anil Jain, Adv

Department By : Shri H.K. Choudhary, CIT-DR

ITA No. 6259/DEL/2014
[Assessment Year: 2010-11]

ITA No. 4055/DEL/2014
[Assessment Year: 2009-10]

Shri Vinod Gupta
119 F.I.E, Industrial Area
Patparganj, Delhi

Vs.

The D.C.I.T
Central Circle - 17
New Delhi

PAN : AAOPG 8867 H

ITA No. 6473/DEL/2014
[Assessment Year: 2010-11]

ITA No. 3989/DEL/2014
[Assessment Year: 2009-10]

The A.C.I.T
Central Circle - 17
New Delhi

Vs.

Shri Vinod Gupta
119 F.I.E, Industrial Area
Patparganj, Delhi

PAN : AAOPG 8867 H

(Applicant)

(Respondent)

Assessee By : Shri Raj Kumar, CA
Department By : Shri H.K. Choudhary, CIT-DR

Date of Hearing : 12.04.2023
Date of Pronouncement : 27.04.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by two separate assesseees are directed towards the order of the first appellate authority CIT[A] - 03, New Delhi pertaining to Assessment Years 2009-10 and 2010-11.

2. Since the underlying facts in the captioned appeals are identical, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. We will first address to the cross appeals for A.Y. 2009-10 bearing ITA Nos. 3107/DEL/2014 and 3201/DEL/2014.

4. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides

5. Briefly stated, the facts of the case are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] was conducted by the INV Wing of the department on 30.07.2009 in the case of Standard Watch Group. Search also included residential premises of the members of the group. During the course of search proceedings, various documents were impounded which included financial statements of the assessee group which were not fully incorporated in the regular books of account of the assessee group. Trading profit and loss account and balance sheet from 1.4.2001 to 30.9.2008 were found and the same are exhibited at pages 201 to 217 of the paper book. These financial statements are consolidated financial statements which contain details of the members of the group including their bank accounts.

6. In the above background, the assessee has raised five substantive grounds of appeal. Ground Nos, 1, 2 and 3 are taken up together for disposal as the same are covered against the assessee and in favour of the Revenue by order of the co-ordinate bench in assessee's own case for A.Ys 2006-07 and 2007-08 in ITA No. 6764/DEL/2023 and Others followed

by the coordinate bench in ITA nos. 2718/DEL/2014 and 2038/DEL/2014 for A.Y 2008-09.

7. In so far as Ground Nos 1 and 2 are concerned, a similar issue was considered by the coordinate bench [supra] vide para 13 of its order and the findings read as under:

“We have heard both the parties and have carefully gone through the material available on record and the case laws cited before us. In our considered opinion, as the Assessing Officer has completed the assessment on the basis of the first notice for which the learned counsel for the assessee has not raised any legal objection with regard to its validity, there is no defect in the validity of the assessment as held by the Commissioner of Income Tax (Appeals). So far as the issuance of the second notice is concerned it may be treated as having been issued by way of clerical mistake covered u/s 292B of the Act and it cannot discard the sanctity of the first notice. If the Assessing Officer had completed the assessment on the basis of the second notice then the position would have been different. Although there is no direct authority with regard to the issue involved in this case, we can take the shelter of the decisions, as relied upon by the learned DR, which have been pronounced in the cases of section 148 proceedings viz. KLM Royal Dutch Airlines v. Assistant Director of Income Tax: 292 ITR 49 and CIT vs. K.M. Ranchayappan; 304 ITR 264. The judgments relied upon by the learned AR are not applicable to the facts of the case. In these

judgments only one notice was issued and the same also was not as per the procedure prescribed under the Act whereas in the present case there is no defect in the first notice and the assessment has been completed on the basis of the first notice. We, therefore, find no force in this legal ground of the assessee and accordingly reject the same.”

8. In so far as the issues raised vide Ground No. 3 is concerned, the same were considered by the coordinate bench at para 21 of its order and the same read as under:

“21. On careful consideration of the above rival submissions and vigilant and careful perusal of the material available on record and on respectful consideration of the case laws cited at bar before us. we observe that the documents and consolidated balance sheet, as available in the assessee’s paper book-1 from pages 196 to 22 1 it is vivid that these consolidated balance sheets reflect the assets in the shape of bank balance, investment in properties in the names of various group members and companies relating to the present assessees i.e. Shri S.K. Gupta and Shri Y.K. Gupta. We further observe that the debtors, stock, loans, advances and creditors of various group companies belonging to the present assessees and bank borrowings show that the loans have been taken in the names and Smt. Madhu Gupta wife of Shri S.K. Gupta and Smt. Meena Gupta, wife of Shri V.K. Gupta. Therefore, the income arising or, account of these assets cannot be exclusively attributed or held as belonging to late Shri Suraj Bhan Gupta only. The charging section 4 of the Income Tax Act provides that the tax is to be charged on

the income of a person to the extent it belongs to him. In the present case, the income belongs to various individuals and group companies from the assets, investments, etc. which cannot be held as exclusively belonging to late Shri Suraj Bhan Gupta and the same belongs to various family members including the present assesseees, their wives and children. We may also point out that as the seized documents are cash book, ledger account, consolidated balance sheets and other documents and these have been maintained just to briefly record the assets and liabilities of the family members and group companies, therefore, various complexity and uncertainties are there in the identification of exact income, which belongs to the individual members of the group companies and thus it is not possible to allocate the income therefrom personwise and companywise. Therefore, we are inclined to agree with the findings of the Commissioner of Income Tax (Appeals) that the income should be allocated between Shri S.K Gupta and Shri V.K. Gupta as they are the key players after death of Shri Suraj Bhan Gupta and they also agreed before the Company Law Board vide order dated 13.1.2009 to divide the assets of the family and group companies in the ratio of 60:40 respectively among them. Hence, we decline to agree with the contention of the assessee that the entire income discernible from the consolidated balance sheets should be assessed in the hands of late Shri Suraj Bhan Gupta.

22. So far as the alternative prayer of the assessee is concerned that the income should be assessed in the hands of AGP is concerned, we do not find any force in this contention as there was no AOP in existence during the relevant assessment years and it is also not clear as to which AOP the income should be assessed. At this juncture, we again point out that vide Company Law Board order dated 13.1.2009 both the assesseees have agreed to divide

the assets of the group which was headed by late Shri Suraj Bhan Gupta between them in the ratio of 60 : 40 and being a beneficiary of the assets in such ratio, the authorities below were right in taxing the income therefrom in the same ratio in the hands of respective assessee-appellant. Consequently ground No. 3 of the assessee is dismissed.”

9. Respectfully following the findings of the coordinate bench, Ground Nos. 1, 2 and 3 are dismissed.

10. Ground No. 4 in assessee's appeal relates to the addition of Rs. 51 lakhs on account of undisclosed loans and advances.

11. The underlying facts are identical to Ground No. 1 in Revenue's appeal wherein the deletion of addition of Rs. 3,28,70,000/- has been challenged by the Revenue.

12. While scrutinizing the seized documents, the Assessing Officer formed a belief that the assessee has given loans and advances outside the books of account. Relevant seized papers on the basis of which addition is made are in the form of ledger seized as per Annexure A-28, A-10, A-30 & A-13, which are for the period 01.10.2007 to 30.09.2008.

13. Basis the notings in this seized ledger, the Assessing Officer made addition of Rs. 4,13,70,000/- for loans and advances given to the following persons outside the books of accounts:

Sl. No.	Name	Amount
(i)	Anil Bhatti [Amit ji]	Rs. 65,00,000
(ii)	Anil Bhatti	Rs. 50,00,000
(iii)	Anil Bhatti	Rs. 87,00,000
(iv)	Binay Thottam	Rs. 32,00,000
(v)	Panwar [Satish]	Rs. 2,70,000
(vi)	Rajesh Aeran	Rs. 62,00,000
(vii)	Sanjay Gupta	Rs. 65,00,000
(viii)	Mahesh Panwar	Rs. 35,00,000
(ix)	Definite Technology [Amit ji]	Rs. 15,00,000
	Total	Rs. 4,13,70,000

14. When the assessee was asked to explain the aforementioned transactions, the assessee replied that the loans and advances made in the year under consideration were out of repayment of loans and advances given in earlier year and sources of which have already been examined in A.Ys 2006-07 to 2008-09.

15. The assessee supported its contention by referring to various entries in the seized documents.

16. The explanation of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the benefit of rotation cannot be allowed to the assessee as the assessee could not establish the source of surplus amount of loans and advances which were given by the assessee.

17. The Assessing Officer also rubbished the explanation of the assessee that loans and advances have been given out of opening capital which was continuously coming as opening balance from earlier year and the income earned during the year.

18. When the addition was challenged before the Id. CIT(A), the assessee took same arguments which were taken before the Assessing Officer and the Id. CIT(A) was convinced with the contention of the assessee and allowed the benefit of rotation qua the opening capital continuously coming from earlier A.Y. However, at the same time, the

ld. CIT(A) found that loan of Rs. 65 lakhs shown in the name of Shri Sanjay Gupta is the amount which is received by the assessee outside the books of account and not the amount paid. Since no documents have been placed on record to show the identity, credit worthiness of Shri Sanjay Gupta, Rs. 65 lakhs was upheld to be added as undisclosed income of the assessee.

19. Similarly, loan of Rs. 62 lakhs was shown in the name of Shri Rajesh Aeran. The ld. CIT(A) found that out of Rs. 62 lakhs, a sum of Rs. 42 lakhs pertains to A.Y 2008-09 and balance Rs. 20 lakhs was not paid by the assessee. Rather, it was received by the assessee in the year under consideration.

20. Since the identity and credit worthiness of Shri Rajesh Aeran could not be proved, the same is also held to be income from undisclosed sources and balance loan of Rs. 3,28,70,000/- was deleted by giving benefit of rotation of repayment of loans given in the earlier year. Thus, addition of Rs. 85 lakhs stood confirmed and the assessee got relief of Rs.

3,28,70,000/-, for which both the sides are in appeal as mentioned hereinabove.

21. The ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that since presumption u/s 132(4A) /292C of the Act is that whatever is seized or found in the possession of a person searched, it is presumed that the same belongs to that person and the entries found to be recorded in the seized documents are presumed to be belonging to the searched person.

22. It is also the say of the ld. counsel for the assessee that since the entries mentioned in the seized documents show the amount as loans, therefore, the same cannot be treated as undisclosed income of the assessee as loan is a capital receipt.

23. Strong reliance was placed on the decision of the co-ordinate bench in the case of Vatika Greenfield Pvt Ltd 315 ITR 113 and also of the Pune

Bench in 71 ITD 245. The ld. counsel for the assessee continued by saying that provisions of section 68 cannot be applied in the case of search assessment framed u/s 153A of the Act.

24. Continuing his arguments in reference to Revenue's appeal, the ld. counsel for the assessee stated that in the earlier years, the Tribunal has accepted and given benefit of rotation of loans and advances and have also given credit of opening capital continuously coming from earlier years. Therefore, to that extent, there is no error or infirmity in the findings of the ld. CIT(A).

25. Per contra, supporting the assessment order, the ld. DR stated that Kaccha - Pucca Register found and seized at the time of search are for F.Ys 2001-02 to 2004-05 and, therefore, there is a gap between the documents/balance sheets/financial statements found and the A.Y under consideration. Therefore, without there being demonstrative fund flow statement, benefit of rotation cannot be given to the assessee and this aspect has not been considered by the co-ordinate bench in the earlier A.Ys.

26. We have given thoughtful consideration to the rival submissions. It is an undisputed fact that in the Kaccha-Pucca Register, the assessee has meticulously maintained financial statements/financial transactions of the group members of the family and group companies wherein the capital is reflected continuously from the earlier years. Therefore, it can be safely concluded that there was continuous flow of repayment of loans and advances given in earlier years which benefit cannot be denied to the assessee and has been given rightly so by the first appellate authority.

27. However, in so far as additions sustained by the CIT(A) are concerned, we are a bit confused by the contention/submissions of the ld. counsel for the assessee vis a vis the decisions relied upon by him. It is true that presumption u/s 132(4A) /292C of the Act is that whatever is found and seized during the course of search proceedings has to be accepted as such but the contention of the ld. counsel for the assessee that if in the seized document the amount is written as "Loan", then it should be accepted as loan and cannot be examined u/s 68 of the Act and cannot be accepted because it would make the entire scheme of Act redundant.

28. Moreover, in none of the cases referred to and relied upon by the ld. counsel for the assessee have given any findings on the non applicability of section 68 on the seized document. The finding is in respect of presumption u/s 132(4A)/292C of the Act and there is no denial of such presumption but the issue under consideration is whether provisions of section 68 can be made applicable on such mentioning of “Loan” in the seized document.

29. Then, in our considered opinion, even if the mention is of ‘loan’ then also the assessee has to prove that it is a loan and, therefore, provisions of section 68 squarely apply on such notings and the onus is on the assessee to establish the identity, capacity of the lender and genuineness of the transaction as is applicable in normal assessment proceedings. Since the assessee has grossly failed in all the three counts, we decline to interfere with the findings of the ld. CIT(A). Accordingly, Ground No. 4 of the assessee’s appeal and Ground No. 1 of Revenue’s appeal are dismissed.

30. Ground No. 5 of assessee's appeal relates to addition of Rs. 57,90,944/- on account of undisclosed interest and the underlying facts being identical to deletion of addition of Rs. 1,09,70,081/- on account of undisclosed interest challenged vide Ground No. 2 of Revenue's appeal.

31. The underlying facts in the issue are that the Assessing Officer, after analyzing the documents seized from the assessee's premises, examined the aspect of undisclosed interest income from two counts:

- (i) Based on record in the Kaccha ledger for F.Y. 2007-08
- (ii) Estimated interest for F.Y. 2007-08.

32. The Assessing Officer made addition of Rs. 6,14,57,988/- being Rs. 2,06,21,355/- pertaining to first part and Rs. 4,08,36,333/- pertaining to second part. Interest of Rs. 4,08,36,333/- is on the loans and advances of Rs. 13.61 crores for which the Assessing Officer has made addition in A.Y 2006-07 Rs. 51.49 crores and for A.Y 2008-09 Rs. 8.12 crores.

33. Without going into any further detail, since these additions have been deleted by this Tribunal in the earlier A.Ys, therefore, no addition on account of interest of Rs. 4,08,36,333/- needs to be made and has been rightly deleted so by the ld. CIT(A) and, therefore, calls for no interference.

34. In so far as interest of Rs. 2,06,21,655/- is concerned, it would be pertinent to refer to the findings of the co-ordinate bench in ITA No. 2718/DEL/2014 and 2038/DEL/2014 for A.Y 2008-09 which read as under:

“17. We have given thoughtful consideration to the orders of the authorities below and with the assistance of the ld. Counsel, we have carefully considered the relevant documentary evidences brought on record in the form of paper books in the light of Rule 18(6) of the ITAT Rules. There is no denying that voluminous documents were impounded during the search proceedings. It is equally true that the seized material contained financial statements of the assessee and its group members. As mentioned elsewhere, these financial statements were in the form of consolidated trading profit and loss account and balance sheet of the assessee and its family members. There is no denying that on the basis of notings found in these seized material, the Assessing Officer has made various additions.”

18. *The Hon'ble Jurisdictional High Court of Delhi in the case of Indigo Airways P. Ltd in Tax Appeal No. 1620 & 1622 of 2010 has held that :*

“Full effect of the presumption should be given effect to whenever the statute directs a particular non existent state of affairs to be assumed. Under these circumstances, the effect of presumption which bade the Revenue when it chose to invoke it, to presume that the contents of such books of account and other documents are true. Therefore, in the absence of any material in the form of documents, the revenue could not have denied the benefit of any expenses which would otherwise have inured to the assessee as an allowable deduction u/s 37(1) of the Act.”

19. *In our considered opinion, when seized financial statements were made the basis for making additions, then the entries relating to expenditure in the form of interest payment and also bad debt written off cannot be ignored. The Revenue cannot add the credit side and ignore the debit side of the same document.*

20. *The coordinate bench in the previous assessment year i.e. 2006-07 and 2007-08 in ITA Nos 6764/DEL/2013 [supra] have taken a view which reads as under:*

“In our considered opinion for arriving at the net interest income, as discernible from the entries recorded in the consolidated balance sheet, the amount of interest paid to State Bank of India and Allahabad Bank amounting to Rs.78,72,708/- should also have been deducted therefrom. At

the same time we further observe that when the Assessing Officer wants to tax the amount of interest income earned by the assessor from loans and advances then the amount of bad debt of Rs.30,79,835/- as appearing in the debit side of the P&L act aunt should also have been allowed to the assessee as deduction because the amount of bad debts pertain to the activity of financial business of the assessee wherein loans and advances are given b\ the assessee on which the impugned interest income has been earned It is a well accepted proposition that the amount of bad debts is incidental 10 the financing business and the same should have beer, allowed fully u/s 37(1) of the Act. As laid down by the Hon'ble High Court of Delhi in the case of CIT vs. Indigo Airways Pvt. Ltd. [supra] the document has to be accepted or rejected in toto. It is not proper and justified approach to accept part entries of the documents favouring the revenue and rejecting the part entry of the same document favouring the assessee. Therefore, we direct the Assessing Officer to recompute the amount of undisclosed interest income by giving credit of the amount of interest paid it State Bank of India and Allahabad Bank and the amount of bank debt shown in the consolidated balance sheet. After allowing credit of interest paid and bad debts, the remaining part of interest income should be allocated in the ratio of 60 : 40 between the present assesseees, Shri S.K. Gupta and Shri Y.K. G pm Consequently, ground no. 4-of the assessee is partly allowed in the manner as indicated above and ground no. 2 of the revenue is dismissed.”

21. Respectfully following the findings of the coordinate bench [supra] we direct the Assessing Officer to allow the expenditure relating to the payment of interest and bad debts, as per Annexure A-10 page 93 back [internal pg 180] & Annex A-5 pg 14 [both party X-I]. The AO is further directed to allocate the balance interest income if any in the ratio of 60:40 as done in the earlier year between the assessee and his brother Shri V.K. Gupta. Thus, Ground No. 4 of assessee's appeal is treated as allowed for statistical purposes."

35. Respectfully following the findings of the co-ordinate bench [supra], we direct the Assessing Officer to allow expenditure relating to payment of interest and bad debts and allocate balance interest income, if any, in the ratio 60:40 as done in earlier years between the assessee and his brother Shri Vinod Gupta. Accordingly, Ground No. 5 of the assessee's appeal is allowed for statistical purposes. Ground No. 2 of Revenue's appeal is dismissed.

36. Now coming to the remaining grounds in Revenue's appeal in ITA No. 3201/DEL/2014, Ground No. 3 is against the deletion of addition of Rs. 1,07,11,921/- on account of investment in jewellery.

37. The underlying facts in this addition are that on the basis of seized documents, the Assessing Officer found that the assessee has purchased jewellery to the tune of Rs. 1.07 crores.

38. The assessee was asked to explain the source of payment and its accountability.

39. It was explained that the notings on these documents do not relate to the purchase of jewellery in its entirety. The said jewellery was received from jewellers on approval basis during the marriage preparation of his son. It was explained that the jewellery purchased was only to the tune of Rs. 67 lakhs and the same is reflected in the Day Book seized.

40. The Assessing Officer dismissed the contention of the assessee solely on the ground that no bills from jewelers were purchased and went on to make addition of Rs. 1,07,11,921/-.

41. Before the Id. CIT(A), the Id. counsel for the assessee reiterated what has been stated during the assessment proceedings.

42. After considering the facts and submissions, the ld. CIT(A) was of the opinion that the document seized from the premises of the assessee has to be read and analyzed in entirety and presumption drawn u/s132(4A) and 292C of the Act should be given to the entries recorded in the seized documents.

43. The ld. CIT(A) further observed that the marriage of son of the assessee was solemnized on 29.11.2008 and seized document Annexure A-9 and A-13 show that the assessee has purchased jewellery to the tune of Rs. 67 lakhs only and to that extent, entries are duly reflected in the Day Book, thereby accepting the source of investment went on to delete the addition.

44. Before us, the ld. DR strongly supported the findings of the Assessing Officer and vehemently stated that the entries claimed as jewellery received on approval has not been substantiated by the assessee, therefore, the ld. CIT(A) erred in deleting the addition.

45. On the other hand, the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A).

46. We have carefully perused the orders of the authorities below. It is not in dispute that it is customary in affluent families to get jewellery on approval basis. All that we have to see is how much of the jewelry was purchased and whether the assessee has successfully demonstrated the source of investment. The seized document A-9 and A-13 contains the entries of payment made to the jewelers with reference to the entries made in Day Book and the same is as under:

<u>Date</u>	<u>Amount</u>	<u>Annex No.</u>	<u>Page No</u>
		<u>Seized</u>	
25.09.2008	5,00,000	A-13	65
24.11.2008	15,00,000	A-9	47
24.11.2008	10,00,000	A-9	46
30.11.2008	20,00,000	A-9	56
24.06.2009	7,00,000	A-9	14
10.07.2009	10,00,000	A-9	15

47. It can be seen from the above chart that only jewellery of Rs. 67 lakhs was purchased with necessary entries in Day Book clearly explaining the source of investment. On these facts, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 3 is accordingly dismissed.

48. Ground No. 4 relates to the deletion of addition of Rs. 1,79,91,000/- on account of alleged undisclosed investment.

49. The underlying facts are that on the basis of seized documents, being Annexure A-5, which is consolidated balance sheet as on 30.09.2008, the Assessing Officer found that there are credit entries in the capital account which were on account of sale of two properties of Rs. 1,43,95,000/- and Rs. 50,01,000/-. After reducing the purchase price of Rs. 14,05,000/-, the balance amount was added as undisclosed sale consideration.

50. The addition was challenged before the ld. CIT(A). It was strongly contended that the impugned property belonged to M/s Standard Enterprises in which Smt. Madhu Gupta and Smt. Veena Gupta are partners.

51. After considering the facts and submissions and on going through the sale deed, the ld. CIT(A) found that the same was executed on 06.07.2007 and hence the property was sold in A.Y 2008-09. The ld. CIT(A) further found from the sale deed that the said property was owned by Standard Enterprises which is a partnership firm. On these facts, the ld. CIT(A) deleted the addition.

52. Before us, the ld. DR could not point out any factual error in the findings of the ld. CIT(A) nor could bring any evidence on record to show that the property was actually owned by the assessee.

53. We have carefully considered the orders of the authorities below. The undisputed fact is that the impugned property was owned by Standard Enterprises which is a partnership firm having two partners,

namely, Smt Madhu Gupta and Smt. Veena Gupta. It is also an undisputed fact that sale deed was executed on 06.07.2007 falling in F.Y. 2007-08 pertaining to A.Y 2008-09. On these undisputed facts, the Id. CIT(A) has rightly deleted the impugned addition, which calls for no interference. Accordingly, Ground No. 4 is dismissed.

54. Ground No. 5 relates to the deletion of addition of Rs. 1.50 crores on account of undisclosed investment.

55. This addition was made on the basis of seized document A-8 pages 42 to 66 from which it was found that one Shri V.K. Bansal of Sora Marketing Pvt Ltd had sold shares to the assessee for a consideration of Rs. 1.50 crores.

56. During the course of assessment proceedings, Shri V.K. Bansal was examined who admitted to have purchased shares of appellant group Standard Watch Company Pvt Ltd and intended to sell the same to the owner of Standard Watch Company as he was promised 10% return at the

time of purchase of these shares by the owners of Standard Watch Company.

57. The assessee explained that this deal could not materialize and the assessee never purchased the shares.

58. The explanation of the assessee did not find any favour with the Assessing Officer who made addition of Rs. 1.50 crores on account of alleged undisclosed payment made to Sora Marketing Pvt Ltd.

59. Before the Id. CIT(A), the assessee submitted list of share holders as on 31.03.2009 and pointed out that the shares are still in the name of Sora Marketing Pvt Ltd which means that the assessee never purchased the shares and the deal mentioned in the seized documents never materialized.

60. After considering the facts and submissions, the Id. CIT(A) was convinced that the Assessing Officer has made addition only on the basis of blank share transfer deed found during the search whereas the share

holders register shows that the shares were never sold by Shri V.K. Bansal of Sora Marketing Pvt Ltd and the shares are still in the name of Sora Marketing Pvt Ltd. On these facts, the Id. CIT(A) deleted the impugned addition.

61. Though the Id. DR strongly supported the findings of the Assessing Officer, but could not point out any factual error in the findings of the Id. CIT(A).

62. We find that the undisputed fact is that as on 31.03.2009, Shri V.K. Bansal of Sora Marketing Pvt Ltd was still the registered share holder of the impugned shares which means that the share transfer deal never materialized and the impugned transaction never took place. We, therefore, decline to interfere with the findings of the Id. CIT(A). Ground No. 5 is accordingly dismissed.

63. Ground No. 6 relates to the deletion of interest u/s 234A of the Act for the period upto which the assessee was not provided copy of seized material.

64. An identical issue was considered by the coordinate bench in assessee's own case for assessment year 2006-07 and 2007-08 in ITA No. 6764/DEL/2013 and others [supra]. The relevant observation of the bench is as under:

“Apropos this ground, on careful consideration of the rival submissions, we have no hesitation to hold that in view of the decision of the Hon'ble Supreme Court in the case of Anum M.H. Ghaswala vs. CIT; 252 ITE 01 (SC) charging of interest u/s 234 of the Act is mandatory and consequential to the . appeal effect order. However, in the present case, the Commissioner of Income Tax (Appeals) has held that the interest u/s 234A not to charged for the period upto which the assessee was not provided copy of the seized material and in our humble understanding of law, this conclusion of the Commissioner of Income Tax (Appeals) is in accordance with the provisions of the Act and, therefore, we are unable to see any valid reason to interfere with the same and hence, we uphold the same. Accordingly, ground No. 3 of the revenue is dismissed.”

65. Respectfully following the same, we direct accordingly. Ground No. 6 is accordingly dismissed.

66. In the result, appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is dismissed.

ITA No. 3887/DEL/2014 [A.Y. 2010-11] Assessee's appeal

67. The grievances of the assessee read as under:

1. *That the Ld CIT Appeal has failed to appreciate that impugned assessment order passed by the learned assessing officer is against the principles of Dlnatural justice and has been passed without affording reasonable opportunity of being heard.*
2. (i) *That on the facts and circumstances of the case and the provision of law the Ld CIT Appeal has erred in ignoring the fact that the entire income belong to the father of the assessee Shri Suraj bhan Gupta Ji and the said fact is clearly mentioned in the Balance Sheet found and seized during the course of search on the basis of which additions have been made.*
(ii) *Without prejudice to the above, the learned CIT Appeal has erred in sustaining the addition of income as per the seized documents in the form of the Balance Sheet in the individual capacity of the appellant along with his brother Sh. V.K.Gupta despite the fact that as per the said documents the income is to be assessed in any case in the hands of the entire family as association of persons (AOP).*
3. *That on the facts and circumstances of the case and the provisions of law the Ld CIT Appeal has erred in sustaining an addition of Rs. 18,32,091/- on account of undisclosed interest.*

4. That on the facts and the circumstances of the case the learned assessing officer has erred in initiating the proceedings us 271(1)(c) of the Income Tax Act,1961.

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68. In so far as Ground Nos. 1 and 2 are concerned, identical grievance have been considered by us in ITA No. 3107/DEL/2014 [supra]. For our detailed discussion given therein, Ground Nos. 1 and 2 are dismissed.

69. In so far as Ground No. 3 concerned, identical issue has been considered by us in ITA No. 3107/DEL/2014 [supra]. For our detailed discussion given therein vide Ground No. 5 of that appeals, Ground No. 3 is allowed for statistical purposes with similar directions.

70. In the result, appeal of the assessee is partly allowed for statistical purposes.

ITA No. 3991/DEL/2014 [A.Y. 2010-11] Revenue's appeal

71. The grievances of the Revenue read as under:

“1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 5,96,25,897/- out of total addition of Rs. 6,14,57.988/-made by the Assessing Officer on account of unexplained interest income..

2. That the Commissioner of Income Tax (Appeal) erred in law and on facts of the case in deleting the addition of Rs. 1,02,00,000/- made by the Assessing Officer on account of income from trading commission.

3. That the Commissioner of Income Tax (Appeal) erred in law and on facts of the case in directing the AO to re-compute interest under section 234A of the Income Tax Act, 1961 from the date of handing over the seized material to the assessee.

4(a) The order of the CIT (A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

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72. Issue raised vide Ground No. 1 are identical to the issue considered by us in ITA No. 3991/DEL/2014 [supra]. For our detailed discussion given this, Ground is dismissed.

73. Ground No. 2 relates to the deletion of addition of Rs. 1.02 crores made by the Assessing Officer on account of income from trading commission.

74. This addition has been made on the basis of Annexure A-8 Party X1 Page No. 133 of the seized document as in this seized document, the Assessing Officer found a note which reads as under:

*“Current year income from trading and commission upto 31.07.2009
- Rs. 1,02,00,000/-“.*

75. When asked, the assessee explained that this entry was made forcibly by the search party on 01.08.2009 at 3.30 AM. It was strongly contended that nothing emerges out of the said sheet as to from which trading commission of Rs. 1.02 crores has been earned by the assessee.

76. The plea of the assessee was dismissed by the Assessing Officer who was of the firm belief that whatever is written on that piece of paper is sacrosanct and went on to make addition of Rs. 1.02 crores.

77. Before the Id. CIT(A), the contention was reiterated by the assessee.

78. The ld. CIT(A) found that addition of Rs. 1.02 crores is made entirely on the basis of confession and it is not based on any material having evidentiary value. In these circumstances, the ld. CIT(A) deleted the impugned addition.

79. Before us, the ld. DR supported the findings of the Assessing Officer but could not bring any corroborative evidence other than the confession made by the assessee.

80. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

81. The undisputed fact is that the entire addition is based upon the confession made by the assessee at the time of search. Other than this, there is no evidence brought on record to suggest that the assessee was doing some trading business from which he earned commission. It is also not in dispute that no excess cash or jewellery was found where this alleged unaccounted income must have been invested. Since the addition is not backed by any supporting evidences, the ld. CIT(A) has rightly

deleted the said addition which calls for no interference. Ground No. 2 is accordingly dismissed.

82. Ground No. 3 relates to the interest u/s 234A not to be charged from the date of handing over the seized material to the assessee.

83. Issue raised vide Ground No. 3 is identical to the issue considered by us vide Ground No. 6 in ITA No. 3201/DEL/2014 [supra]. For our detailed discussion given therein, Ground No. 3 is dismissed.

84. In the result, the appeal of the Revenue is dismissed.

SHRI VINOD KUMAR GUPTA

85. Before considering the merits of the impugned appeals, it would be pertinent to understand the underlying facts on the basis of which the additions have been made. The checkered history of the captioned two assessees is that right from A.Y 2006-07, additions have been split into the ratio 60:40 between Shri S.K. Gupta and Shri Vinod Kumar Gupta.

86. In the earlier part of this order, we considered the appeals of Shri S.K. Gupta which pertains to 60% of the additions and appeals of the assessee Shri Vinod Kumar Gupta pertain to remaining 40% of the impugned additions.

87. ITA No. 4055/DEL/2014 [A.Y. 2009-10] Assessee's appeal

88. The grievances of the assessee read as under:

"1. That the Asstt. Order passed u/s. 153 A/143 (3) is unsustainable in law as well as on merits.

2A. That the impugned Asstt. is unsustainable in law and without jurisdiction as it has been framed in pursuance to notice u/s. 153 A dated 21.04.2010 issued by ACIT, CC-3, New Delhi, which notice did not survive after issuance of fresh notice u/s. 153 A dated 06.06.2011 issued by ACIT, CC-17, New Delhi, after the jurisdiction stood t.f.d. and conferred on him vide order u/s. 127 dated 21.02.2011.

B. That under the facts, findings of CIT (A) that issuance of second notice u/s 153 A is clerical mistake and curable u/s. 292 B are unsustainable. Also, Sec. 292 B is not at all applicable to the facts of the

case and does not cover such kind of situations and jurisdictional aspects

3. That the complete additions since made on the basis of seized material found and seized from Sh. S.K. Gupta, brother of the assessee and since, no satisfaction has been recorded us. 153 C (1) of the Act in the absence of which no cognize of seized material found from a 3rd party can be taken and thereafter in the absence of complying with the mandatory requirements of Sec. 153 C, no cognize of said material could had been taken. Therefore, the use of said seized material for the impugned Asstt. is without jurisdiction and illegal and the addition made on the basis of such material needs to be deleted threshold.

4A. That under the facts and circumstances, Ld. CIT (A) erred in law as well as on merits in not altogether deleting the addition of Rs. 2,06,85,000/- made on protective basis as alleged un-accounted loans and advances.

B. That the Ld. CIT (A) further erred in sustaining addition of Rs. 34,00,000/- on substantive basis out of protective addition of Rs. 2,06,85,000/- and further erred in estimating alleged total such un-disclosed loans and advances at Rs. 85,00,000/- and also erred in holding that 40% thereof i.e. Rs.34,00,000/- belongs to assessee on substantive basis, which all findings have been given in the case of Sh. S.K. Gupta (brother of the assessee) on the basis of submissions made by Sh. S.K. Gupta in his own case and the way the same have been appreciated by the Ld. CIT (A) and stands imported and applied in the case of assessee without making assessee a party to the proceedings undertaken in the case of Sh. S.K. Gupta.

C. That even on merits the relevant findings given in the case of Sh. S.K. Gupta, so far as and to the extent the same relates and affects the assessee are un-sustainable and erroneous.

D. That without prejudice, under the facts and circumstances, no undisclosed loans and advances belongs to and is related to assessee.

E. That without prejudice, after making substantive addition in the hands of S.K. Gupta, there remains no occasion for making protective addition by the AO in the hands of assessee and in that case, there would not had been any occasion for this issue in appeal in the case of assessee.

F. That without prejudice, in the absence of issuing any show cause notice and without giving any opportunity of hearing on this specific issue, the Ld. CIT (A) erred in transferring the protective addition into substantive addition. Further, to make substantive addition tentamounts to enhancement and in the absence of notice u/s, 251 (2), this transformation is illegal

5A. That under the facts and circumstances, Ld. CIT (A) erred in law as well as on merits in not altogether deleting the addition of Rs. 3,07,28,994/- made on protective basis as alleged interest income.

B. That the Ld. CIT (A) further erred in sustaining addition of Rs. 38,60,630/- on substantive basis out of protective addition of Rs. 3,07,28,994/- and further erred in estimating alleged total such interest income at Rs 96,51,570/- and also erred in holding that 40% thereof i.e Rs 38,60,630/- belongs to assessee on substantive basis, which all findings have been given in the case of Sh. S.K. Gupta

(brother of the assessee) on the basis of submissions made by Sh. S.K. Gupta in his own case and the way the same have been appreciated by the Ld. CIT (A) and stands imported and applied in the case of assessee without making assessee a party to the proceedings undertaken in the case of Sh. S.K. Gupta.

C. That even on merits the relevant findings given in the case of Sh. S.K. Gupta, so far as and to the extent the same relates and affects the assessee are un-sustainable and erroneous.

D. That without prejudice, under the facts and circumstances, no loan and no interest thereon belongs to and is related to assessee.

E. That without prejudice, after making substantive addition in the hands of S.K. Gupta, there remains no occasion for making protective addition by the AO in the hands of assessee and in that case, there would not had been any occasion for this issue in appeal in the case of assessee.

F. That without prejudice, in the absence of issuing any show cause notice and without giving any opportunity of hearing on this specific issue, the Ld. CIT (A) erred in transferring the protective addition into substantive addition. Further, to make substantive addition tentamounts to enhancement and in the absence of notice u/s. 251 (2), this transformation is illegal.

6. That under the facts and circumstances, no interest u/s. 234 B should have been charged. Without prejudice, in any case, the calculations are erroneous and excessive”

89. Issues raised vide Ground Nos. 1, 2 and 3 have been considered by us in ITA No. 3107/DEL/2014 [supra]. For our detailed discussion given therein, Ground Nos. 1, 2 and 3 are dismissed.

90. Issue raised vide Ground No. 4 is similar to the issue raised vide Ground No. 4 in ITA No. 3107/DEL/2014 [supra]. For our detailed discussion given therein, the impugned addition is directed to be deleted.

91. Issue raised vide Ground No. 5 is similar to the issue raised vide Ground No. 5 in ITA No. 3107/DEL/2014 [supra]. For our detailed discussion given therein, we direct accordingly.

92. In the result, appeal of the assessee is partly allowed for statistical purposes.

ITA No. 3989/DEL/2014 [A.Y. 2009-10] Revenue's appeal

93. The grievances of the Revenue read as under:

"1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 1,72,85,000/- made by Assessing Officer on account of undisclosed loan and advances.

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 2,68,68,364/- made by the Assessing Officer on account of unexplained interest income.

3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 89,95,500/- made by the Assessing Officer on account of undisclosed amount received on sale of property.

4. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in directing the AO to recomputed interest under section 234A of the Income Tax Act, 1961 from the date of handing over the seized material to the assessee.

5. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

94. Issues raised vide Ground No. 1 & 2 are identical to the issue considered by us in ITA No. 3991/DEL/2014 [supra] vide Ground Nos. 1 and 2 of that appeal. For our detailed discussion given therein, we decide accordingly.

95. Ground No. 3 relates to the deletion of addition of Rs. 89,95,500/- made by the Assessing Officer on account of undisclosed amount received on sale of property.

96. Similar issue raised vide Ground No. 4 in ITA No. 3201/DEL/2014 [supra] in Revenue's appeal has been considered by us. For our detailed discussion given therein, this ground is dismissed accordingly.

97. Ground No. 4 relates to the deletion of interest for the period from the date of handing over the seized material to the assessee.

98. Similar issue raised vide Ground No. 6 in ITA No. 3201/DEL/2014 [supra] has been considered and decided by us. For our detailed discussion given therein, this ground is dismissed accordingly.

99. In the result, the appeal of the Revenue is dismissed.

ITA No. 6259/DEL/2014 [A.Y. 2010-11] Assessee's appeal

100. The grievances of the assessee read as under:

“1. That the Asstt. Order passed u/s. 143 (3) is un-sustainable in law as well as on merits.

2A. That under the facts and circumstances, Ld. CIT (A) erred in law as well as on merits in not altogether deleting the addition of Rs. 3,07,28,994/- made on protective basis as alleged interest income.

B. That the Ld. CIT (A) further erred in sustaining addition of Rs. 12,21,378/- on substantive basis out of protective addition of Rs. 3,07,28,994/- and further erred in estimating alleged total such interest income at Rs. 30,53,495/- and also erred in holding that 40% thereof i.e. Rs.12,21,378/- belongs to assessee on substantive basis, which all findings have been given in the case of Sh. S.K. Gupta

(brother of the assessee) on the basis of submissions made by Sh. S.K. Gupta in his own case and the way the same have been appreciated by the Ld. CIT (A) and stands imported and applied in the case of assessee without making assessee a party to the proceedings undertaken in the case of Sh. S.K. Gupta.

C. That even on merits the relevant findings given in the case of Sh. S.K. Gupta, so far as and to the extent the same relates and affects the assessee are un-sustainable and erroneous.

D. That without prejudice, under the facts and circumstances, no loan and no interest thereon belongs to and is related to assessee.

E. That without prejudice, after making substantive addition in the hands of S.K. Gupta, there remains no occasion for making protective addition by the AO in the hands of assessee and in that case, there would not had been any occasion for this issue in appeal in the case of assessee.

F. That without prejudice, in the absence of issuing any show cause notice and without giving any opportunity of hearing on this specific issue, the Ld. CIT (A) erred in transferring the protective addition into substantive addition. Further, to make substantive addition tentamounts to enhancement and in the absence of notice u/s. 251 (2), this transformation is illegal.

6. That under the facts and circumstances, no interest u/s. 234 B should have been charged. Without prejudice, in any case, the calculations are erroneous and excessive.”

101. Issues raised vide Ground No. 2(a) and 2(b) have been considered by us in ITA No. 3107/DEL/2014 [supra] vide ground No. 5 of that appeal. For our detailed discussion given therein, these grounds are allowed for statistical purposes.

102. In the result, the appeal of the assessee is partly allowed for statistical purpose.

ITA No. 6473/DEL/2014 [A.Y. 2010-11] Revenue's appeal

103. The grievances of the Revenue read as under:

“1. The Ld Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs 2,95,07,616/- out of total addition of Rs 3.07 28.994/-on account of undisclosed sources.

2. The Ld Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that interest u/s 234A be charged from the date on which the appellant was provided the copy of the seized material.

2. (a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

104. Similar issue raised vide Ground No. 4 in ITA No. 3107/DEL/2014 [supra] has been considered and decided by us. For our detailed discussion given therein, this ground is dismissed accordingly.

105. Ground No. 2 relates to the charging of interest excluding upto the period of handing over the seized material to the assessee.

106. Issue raised vide Ground No. 2 is identical to the issue considered by us vide Ground No. 6 in ITA No. 3201/DEL/2014 [supra]. For our detailed discussion given therein, Ground No. 2 is dismissed.

107. In the result, both the appeals of both the assesseees are partly allowed for statistical purposes and those of the Revenue are dismissed.

The order is pronounced in the open court on 27.04.2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: April, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi