

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2502/Kol/2019
Assessment Year: 2005-06**

Salarpuria Properties Pvt. Ltd., C/o, M/s. Salarpuria Jajodia & Co., 3 rd floor, 7, Chittaranjan Avenue, Kolkata-700072. (PAN: AAGCS8492P)	Vs.	Deputy Commissioner of Income-tax, Circle- 1, Kolkata.
(Appellant)		(Respondent)

&

**ITA No.736/Kol/2022
Assessment Year: 2005-06**

Deputy Commissioner of Income-tax, Central Circle-3(2), Kolkata.	Vs.	Salarpuria Properties Pvt. Ltd.,
(Appellant)		(Respondent)

&

**C.O. No.3/Kol/2023
In ITA No.736/Kol/2022
Assessment Year: 2005-06**

Salarpuria Properties Pvt. Ltd.,	Vs.	Deputy Commissioner of Income-tax, Central Circle-3(2), Kolkata.
(Cross objector)		(Respondent)

Present for:

Assessee by : Shri S. Jhajaria, AR
Revenue by : Shri G. Hukugha Sema, CIT

Date of Hearing : 27.04.2023
Date of Pronouncement : 24.05.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These captioned appeals filed by the assessee and the revenue are against the order of Ld. CIT(A)-6, Kolkata vide Appeal No. CIT(A), Kolkata-6/10628/2016-17 dated 11.10.2019 against the order of Ld. DCIT, Circle-1, Kolkata u/s.143(3)/115JB/147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.03.2013. And the Cross Objection preferred by the assessee against the appeal of revenue in ITA No. 736/Kol/2022.

2. During the course of hearing, it has been brought to our knowledge that earlier, assessee had filed appeal in ITA No.2502/KOL/2019 which was dismissed as withdrawn on 28/11/2022. However, due to some technical error in the order regarding the names of the Members, the said order dated 28/11/2022 was recalled and it was ordered to pass a fresh order by the Bench on the withdrawal of appeal. In the meantime, Department has also filed appeal for the same assessment year against which the assessee has filed cross objections. However, assessee's appeal which was reinstated was not listed with these appeals nor a fresh order of dismissal was passed. Therefore, the registry was directed to attach the assessee's appeal with the appeal of the Revenue and its Cross Objection to avoid any complications at a later stage. Matter was listed on 27/04/2023 for further hearing for which approval was granted by the Hon'ble Vice President (KZ) for clubbing of the two appeals and cross objection to be heard together in Bench "C".

3. First, we take up ITA No.2502/Kol/2019 which was recalled vide order dated 28.11.2022 to pass the order afresh.

3.1. At the outset, ld. Counsel for the assessee has invited our attention to the impugned order of Ld. CIT(A) to submit that he has dismissed the legal ground taken by the assessee regarding the validity of reassessment order passed u/s 147 of the Act. However, Ld. CIT(A) has given relief to the assessee on merits. The Hon'ble Bench vide order dated 29.08.2022, considering the above fact, enquired from the ld. DR as to whether the Revenue has filed any appeal contesting the relief granted by the CIT(A) to the assessee. The contents of the order dated 29.08.2022 of this Tribunal, for the sake of ready reference, are reproduced as under:

"The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax A.Y. 2005-06.

The assessee has challenged reopening of assessment. Its ground regarding reopening has been rejected by the ld. CIT (Appeals) in the impugned order. However, Ld. CIT(Appeals) has allowed the appeal of the assessee on merit. According to the ld. Counsel for the assessee, an addition of Rs.7,23, 97, 500/- was made by the ld. Assessing Officer u/s 69C of the Income Tax Act. The tax effect by virtue of relief given by the ld. CIT(Appeals) is more than monetary limit and, therefore, Revenue must have come up in appeal.

On the other hand, ld. D.R. was unable to lay his hand on the information whether Revenue has filed an appeal or not? He seeks further time for verification of this fact. The appeal is pending in the Tribunal from the last more than three years. It is already on the Board since December, 2021. More than eight months have expired but Department failed to collect the information about the status of its appeal.

In view of the above situation, we grant one more adjournment, which is a last opportunity to the Revenue for ascertaining the status of its appeal, if any, filed before the Tribunal. Hearing is adjourned to 11th October, 2022."

3.2. Thereafter, the case has been adjourned several times at the request of the ld. DR to furnish information as to whether the Revenue has filed any appeal against the impugned order of the CIT(A). On 3rd November 2022, Ld. DR submitted that though the matter was

enquired but there could not be found any record from which it could be gathered that the Revenue has filed any appeal in this case.

3.3. Ld. AR submitted that assessee had filed the present appeal on the legal ground regarding the validity of reassessment order passed u/s 147 of the Act, whereas on merits, the assessee had already been granted relief by the CIT(A). At this stage, since the Revenue has not filed any appeal, therefore, the issue involved in this appeal has been rendered academic in nature. He, therefore, by way of separate letter dated 24.11.22 has requested that he may be allowed to withdraw the present appeal with liberty to file cross-objections, if, the Revenue chooses to file any appeal at the later stage. He has further submitted that in case, it transpires later on that the Revenue has already preferred an appeal against the impugned order of the CIT(A) then, leave may be granted to the assessee for restoration of the present appeal.

Ld. DR did not object to the same.

3.4. In view of above submissions, appeal of the assessee is dismissed as withdrawn being rendered academic in nature, however, with the liberty that if at a later stage it is found that the Revenue's appeal is also pending before this Tribunal against the impugned order of the CIT(A), then the appeal of the assessee will be restored. Further, if the Revenue choose to file any appeal against the impugned order of the CIT(A) at a later stage, then the assessee will be at liberty to file cross-objections to the said appeal on the relevant issues including the issue relating to the validity of the assessment framed u/s 147 of the Act. Subject to above observation, the appeal of the assessee is, hereby, dismissed as withdrawn.

3.5. In the result, the appeal of the assessee is dismissed as withdrawn.

4. Now we take up the appeal in ITA No. 736/Kol/2022 and CO No. 3/Kol/2023

5. This appeal is filed by the department on 16.12.2021 which is after the date of recalling the order in ITA No. 2502/Kol/2019. Ld. Counsel for the assessee submitted chronology of events in respect of various events which took place and are listed as under:

(1)	Order of CIT(A)	21.10.2019
(2)	Approval of PCIT (after consideration of ASR by AO)	19.12.2019
(3)	-	From 20.12.2019 to 20.03.2020 (No action by revenue)
(4)	-	From 21.03.2020 to 28.02.2022 (Covid – Hon’ble Supreme Court judgment)
(5)	-	29.08.2022 (Order sheet noting by Hon’ble ITAT)
(6)	-	29.11.2022 (Order by Hon’ble ITAT)
(7)	Appeal filed by Revenue	20.12.2022

(A)	From 22.10.2019 to 20.12.2019	60 days	Statutory period
(B)	From 20.12.2019 to 20.03.2020	100 days	No explanation for delay
(C)	From 21.03.2020 to 28.02.2022	709 days	Covid
(D)	From 01.03.2022 to 20.12.2022	295 days	No explanation for delay
		1164 days	

5.1. Appeal filed by the revenue is delayed by 1063 days. It is important to note in this respect that initially, assessee had filed its appeal against the impugned order of Ld. CIT(A) which is dated 21.10.2019 and revenue had not chosen to file its appeal or cross objection as noted in the order disposing appeal in ITA No. 2502/Kol/2019. Now, revenue has come up in appeal against the order of Ld. CIT(A), challenging the merits of the case.

5.2. For condoning the delay of 1063 days by the revenue, a letter is placed on record from which it is noted that approval from the office of Ld. PCIT, Central-2, Kolkata was accorded on 19.12.2019. Despite having his approval on 19.12.2019, no steps were taken to file the appeal. The pandemic of Covid-19 commenced from March 2020. For this period from getting approval of Ld. PCIT upto the commencement of Pandemic, the explanation given is general and vague in nature by stating that Ld. AO was burdened with time barring assessment work and, therefore, appeal could not be filed within the stipulated limitation. Revenue has claimed the stipulated limitation to be expiring on 11.01.2020 as it is submitted in the petition that the impugned order passed by Ld. CIT(A) was received by the office of Ld. Pr. CIT on 19.11.2019. Even if we consider this, date of 11.01.2020 is the stipulated date for limitation for filing the appeal. Then also from January to March, 2020, no compliance was done in this respect. Further, Hon'ble Supreme Court in its suo moto decision had given a waiver from 01.03.2022 upto 90 days for considering the limitation. From this date of 01.03.2022 upto which waiver has been given by the Hon'ble Supreme Court, thereafter also, the appeal has eventually been filed by the revenue on 16.12.2022. Thus, there is again no explanation for the delay from the date 01.03.2022 to 16.12.2022, comprising of 200 days. For this further delay of 200 days, it is stated in the petition that there was change of incumbency on couple of occasions and the undersigned had taken over the charge in the middle of August 2022 and, therefore, resulted into a further delay.

5.3. We also take note of the submission made by Ld. Sr. DR on the specific query by the Bench while hearing the matter in ITA No. 2502/Kol/2019 on 03.11.2022 wherein it was stated by the Ld. Sr. DR that "*though the matter was enquired but there could not be found*

any record from which it can be gathered that the revenue has filed any appeal in this case.” Considering this submission by the Ld. Sr. DR, this ITA No. 2502/Kol/2019 was allowed to be withdrawn by the assessee and dismissed accordingly.

5.4. We also note that there is no affidavit placed on record by the concerned authority to take the ownership for the delay and provide adequate justification worth considering for the purpose of condoning the delay. The department has all the where-whittle to ensure that regulatory compliance and the relevant actions are taken within the prescribed limitation, with all sense of responsibility. The petition filed under the signature of DCIT, Central Circle-3(2), Kolkata provides for general and vague explanations covering broader terms of period for explaining the delay. We note that there has been a delay both, prior as well as after the Pandemic Covid 2019, totalling to 1036 days, in filing the instant appeal.

5.5. Assessee had been diligent and active to take its course of action as can be seen from the proceeding referred above. The present approach of casualness reflected in filing the appeal by the revenue cannot be appreciated. Since in our view, the delay caused remained unexplained with proper justifiable reasons, owing to this unexplained and unjustifiable delay, more so, filing of this appeal after the disposal of the appeal filed by the assessee as withdrawn wherein opportunity was given to the revenue, does not convince us to adjudicate on the matter. However, without prejudice to our aforesaid observations and findings, Ld. Counsel assisted the Bench to understand the jurisdictional issue raised in respect of reassessment proceedings initiated by issuing notice u/s. 148 and passing a reassessment order u/s. 147 which is deliberated hereon.

6. Before delving on to the issue in hand, the brief facts of the case are as under:

6.1. Assessee is engaged in real estate business. Income-tax Return reporting total income of Rs.2,51,20,880/- was filed on 31.01.2005 which was accompanied with audited financial statements and tax audit report u/s. 44AB and various other details. Subsequently a revised return was filed on 27.12.2005 reporting total income of Rs. 2,53,31,970/-.

6.2. Details called for by Ld. AO were duly complied with. Assessment was completed on 23.05.2007 with assessed total income of Rs. 2,57,60,790/-. While assessing the total income, Ld. AO made various additions and disallowances against which assessee had preferred an appeal before the Ld. CIT(A)-I/Kolkata, who allowed it.

6.3. Later, on 29.03.2012, the case of the assessee was re-opened u/s 147 and the reasons to believe recorded for initiating proceedings u/s 147 are as below:

"In continuation of a search & seizure operation in the case of Sri P. Dayananda Pai, a survey was conducted in the Office premises of M/s. Salarpuria Properties Pvt. Ltd. at 4th & 5th floor, Salarpuria Windsor No.3, Ulsoor Road, Bangalore on 27.6.2011. M/s. Salarpuria Properties Pvt. Ltd. is engaged in the business of real estate. Sri Bijay Agarwal is the Managing Director, Sri Pradeep Kumar Dhandhanian is the Vice-President - Finance.

Several documents seized from residence of one Mrs. Kagoo, a trusted employee of Sri P. Dayananda Pai. The documents contain details of receipts & payments both by cash and by cheque, by M/s. Salarpuria Properties Pvt. Ltd. The transactions in cash are denoted by the letter 'C' Page 187 shows details of cash receipt of Rs.50 lacs from Salarpuria Group on 10.04.2004 under the account name General Transactions, Page 189 shows details of cash payments of Rs.4.5 lacs on various dates in FY 2004-05 and 2005-06 under the group name Other Transactions. Page 190 shows details of cash receipt of Rs.1,70,40,000/- from Salarpuria Group on 05.03.2005 and payment of Rs.35 lacs on 11.10.2005 under the account name Devanahalli 300 acres. Page 191 shows details of cash payments made by Salarpuria Group to the tune of Rs.4.85 crores on various dates in FY 2004-05 under KIADB account. Page 192 contains details of cash receipts of Rs.1.75 crores received from Salarpuria Group in respect of Banerghatta Road property.

Likewise page 200 contains details of cash receipts of Rs.65 lacs in FY 2004-05 against HSSR Layout property. Page 205 shows details of cash receipts of Rs. 73,57,500 in FY 2004-05 under Kodihalli account. In this way total payment in cash of Rs.10,18,97,500 and total receipt in cash of Rs.39,50,000 in the hands of Salarpuria Group.

In view of the above facts, the source of cash payment as mentioned above and taxability of cash receipts are required to be verified. Hence there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, I have reason to believe that the income chargeable to tax has escaped assessment.”

7. In the course of reassessment proceedings and the first appellate proceeding, it was contested by the assessee that the reassessment proceedings have been initiated without any application of mind and only on the basis of certain documents seized from one of the employees of Shri P. Dayanand Pai at the time of search and seizure proceeding in his case. Also, there was no incriminating material found and impounded during the survey proceedings conducted at the premises of the assessee in respect of which additions have made. It was also claimed that there was no failure on the part of the assessee to disclose all the material facts necessary for assessment at the time of original assessment, completed u/s. 143(3) of the Act. Assessee also submitted in that the books of account have been audited and were produced in the course of assessment proceedings which have been verified. Ld. AO has simply relied on certain seized documents and has not applied his own mind for initiating the reassessment proceeding. Ld. AO did not examine Shri P. Dayanand Pai and his trusted employee Mrs. Kagoo from whom the documents were seized. Further, assessee contended that no opportunity was given to the assessee to cross examine either Shri P. Dayananda Pai and his trusted employee. It was also contested that the material which forms the basis for initiating the reassessment proceeding has been seized during the course of search operation in the case of Shri P. Dayanand Pai and, therefore, the provisions of section 292C does not apply on

the assessee since the presumption as to books of accounts, assets etc. is in respect of the person from whose possession or control the said material is found and seized. In the present case assessee is not a person searched u/s. 132 of the Act.

8. Ld. AO completed the assessment u/s. 143(3)/143JB/147 of the Act on 30.12.2013 by making an addition of Rs.7,23,97,500/- in respect of unaccounted cash u/s. 69C of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A), who on merits of the case gave relief to the assessee by deleting the addition so made.

8.1. The meritorious finding given by the Ld. CIT(A) while deleting the addition are reproduced as under:

"Finding and decision : Ground No. 7, 8, 9 & 10 are against the action of the AO in making addition of Rs. 7,23,97,500/- u/s 69C as unaccounted cash expenditure.

From a perusal of the facts in the matter, I find that such addition has been made by the AO on the ground that during the course of search & seizure of "Sri P. Dayanand Pai" certain documents were recovered and statements were also recorded which indicated towards some transactions having been undertaken by the "Sri P. Dayanand Pai" with the appellant-assessee and which has stated to have escaped assessments.

5.1 On a perusal of the facts and material on record, it is observed that the documents in the matter was seized from the premises of "Sri Dayanand Pai" and his employees and it nowhere mentions the name of the appellant and indeed the name of Salarpuria Properties Pvt. Ltd. do not appear anywhere except the name "Salarpuria". Hence, the reliance on the statement of P. Dayanand Pai so recorded u/s 132(4A) by the AO looks prima facie as without conducting any enquiry. The said documents which are part of the impugned order [under appeal] contain number of names including that of "Salarpuria". However, such noting by itself cannot implicate one unless the corroborating evidences are brought on record or the alleged document is proved to be part of the transaction carried on by the appellant. Here, I would like to mention that the "presumption" u/s. 292C can only be in the case of the assessee where from such documents are found (i.e. in case of P. Dayanand Pai it applies and not to any other person) and such presumptions does not apply to other persons. Having mentioned so I also find that in a number of Judgements by several courts wherein it has been held loose document by itself cannot be a piece of incriminating and implicating documents unless the relevant evidence linking such document with the appellant are placed / brought on record which in this case the AO has failed. The appellant also brought my attention to the judgment of the Hon'ble Bangalore Tribunal in the

case of ACIT v. Dr. Ranjan Pai reported in (2019) 109 taxmann.com 90 [Bangalore, ITAT] and who is incidentally the brother of "Sri P. Dayanand Pai" and was searched along with the said person and the addition in the case of such assessee were made on the basis of the documents so recovered from "Sri P. Dayanand Pai" and his Secretary, Mrs. Adlene Kagoo. The Hon'ble Bangalore Tribunal considered the documents so recovered and relied upon in that assessee's case as "dumb document" for the reasons stated in its judgment. Since the higher appellate authority has also treated the impugned document as "dumb document", I find enough reason to treat the same accordingly in the appellant's case as well. Unless the relevant materials and evidences are brought on record by the AO which he has failed to, I find no reason to believe the content of such impugned document. Indeed, the AO failed to conduct any enquiry either on the searched person "Sri P. Dayanand Pai" or Mrs. Kagoo and merely relied on the impugned documents. As stated above, I humbly follow the decision of the Hon'ble Bangalore ITAT in the case of Dr. Ranjan Pai (Supra) and hence treating the impugned document as "dumb document", Hence, the attempt on part of AO to consider such document and also consider amounts mentioned therein as part of appellant's income cannot be upheld. I draw support in respect of such observation from judgments which are as follows: -

- a) Gyankumar Agarwal v. ACIT (2013) 30 taxmann.com 114 (Hyd-ITAT) ,*
- b) CIT Vs. S. M. Agarwal (2007) 162 Taxman 3 (Delhi High Court),*
- c) CIT V. Jaipal Aggarwal – 28 taxmann.com 269 (Delhi High Court),*
- d) PCIT v. Ajanta Footcare (India) Private Ltd., (2017) 84 taxmann.com 109 (Calcutta High Court),*
- e) Vivek Kumar Kathotia v. DCIT (2013) 32 taxmann.com 331 (Kol AT)*

In the background of such observation, the addition so made cannot be upheld. It may not be out of place to mention that the AO has blindly relied upon the statement so recorded u/s 132(4A) of "P. Dayanand Pai" without allowing any cross - examination to person / persons which itself is violation of natural Justice and as such hits the root of the matter. Hence, the addition so made by the AO is deleted. Hence, these grounds of the appellant are allowed."

9. Grounds raised by the assessee before the ld. CIT(A) on the jurisdictional issue on sec. 147 were dismissed by him. Thus, the revenue is in appeal on the merits of the case and the assessee is in cross objection on the jurisdictional issue of the case by taking legal grounds. We first take up the Cross Objection filed by the assessee since legal issue has been raised therein.

10. From the impugned assessment order, Ld. Counsel for the assessee referred to the reasons to believe, recorded for issuing notice

u/s. 148 of the Act wherein it was pointed that it is an incomplete reproduction since the copy of reasons recorded and placed at page 77 of the paper book contains one more para which reads as *“in view of the above facts, the source of cash payment as mentioned above and taxability of cash receipts are required to be verified. Hence, there is a failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. Therefore, I have reasons to believe that the income chargeable to tax has escaped assessment.”*

10.1. Ld. Counsel also submitted that in a statement recorded of Shri Vijay Kumar Agarwal , Managing Director of the assessee company, u/s. 131 of the Act in the course of survey on 27.06.2011, in answer to question no. 3, it was categorically submitted that there are various sister concerns of the ‘Salarpuria Group’, details of which assessee furnished as Annexure I. He also referred to the answer given by the Managing Director that he knew Shri P. Dayanand Pai and explained the business dealings with him, none of which were with the assessee company. It was also submitted by the Ld. Counsel that the seized documents are in the hand writing of Mrs. A. Kagoo who is a trusted employee of Shri Dayanand Pai, fact of which is also noted by the Ld. AO in the reasons to believe recorded by him.

10.2. Objections were filed against the initiation of reassessment proceeding in terms of the order of Hon’ble Supreme Court in the case of GKN Driveshaft (2003) 259 ITR 19. Objections raised by the assessee against the reassessment proceedings have been reproduced in the order of Ld. CIT(A). In this respect, claim of the assessee is that objections raised by the assessee have not been disposed of as mandated by the Hon’ble Supreme Court in the case of GKN Driveshaft (supra). It was thus claimed by the assessee by referring to

several judgments of various Hon'ble High Courts that the impugned assessment order is liable to be quashed since no order disposing of the objections filed by the assessee has been communicated to the assessee before the completion of the impugned reassessment.

10.3. Ld. Counsel reiterated the submission in respect of non-applicability of presumption on the assessee u/s. 292C of the Act, since the document relied upon in the order for making addition in the hands of the assessee were seized from the trusted employee of Shri Dayanand Pai in his search proceedings. In the case of first appellate proceedings, the matter was remanded to the AO on 04.09.2014 for which it is noted by Ld. CIT(A) that several reminders were issued but remained uncomplied by the Ld. AO. Thus, Ld. CIT(A) proceeded to dispose of the appeal based on material available on record.

10.4. Ld. Counsel also placed on record before the Ld. CIT(A) a decision of coordinate bench of ITAT, Bangalore in the case of Dr. Rajen Pai (2019) 109 taxmann.com 90 (Bang.) was also searched along with Shri P. Dayanand Pai, being his brother wherein similar additions were made on the basis of document recovered from Shri P. Dayanand Pai and trusted employee Mrs. A. Kagoo. The Coordinate bench had considered the documents as "dumb documents" while giving relief.

11. Ld. Counsel for the assessee referred to the reasons to believe recorded wherein Ld. AO has noted that the source of cash payments and taxability of cash receipts is required to be verified. According to the Ld. Counsel, the reassessment proceedings have been initiated for the purpose of verification as noted in the reasons to believe which is not permissible as it amounts to making fishing and roving enquiries.

12. A case law compilation is placed on record by the assessee. Various judgments relied on by the Ld. Counsel on the contentions raised before us is tabulated as under:

Serial No	Issue	Case Reference	Citation/ Appeal No
1(a)	Reopening of assessment not allowed for mere verification of claim	IN THE ITAT DELHI BENCH 'E' Income-tax Officer v. On Exim (P.) Ltd	61 SOT 12 (Delhi – ITAT)
1(b)	- Do -	HIGH COURT OF DELHI Sarthak Securities Co. (P.) Ltd. V. Income-tax Officer- Ward 7(3)	[2010] 329 ITR 110 (Delhi)
1(c)	- Do -	HIGH COURT OF DELHI Commissioner of Income-tax v. Sfil Stock Broking Ltd	[2010] 325 ITR 285 (Delhi)
1(d)	- Do -	HIGH COURT OF DELHI Signature Hotels (P.) Ltd. v. Income-tax Officer	[2011] 338 ITR 51 (Delhi)
2(a)	Reassessment notice issued under section 148 by Assessing Officer just to verify validity of information is illegal and abinitio void and the entire reassessment proceedings is to be quashed	HIGH COURT OF GUJARAT Principal Commissioner of Income-tax-5 v. Manzil Dinesh Kumar Shah	[2018] 405 ITR 326 (Guj)
2(b)	- Do - affirmed by Supreme Court SLP dismissed against High Court ruling that reassessment notice issued under section 148 just to verify information received by Assessing Officer from VAT Department relating to purchase made by assessee from hawala dealers, was not justified	SUPREME COURT OF INDIA Principal Commissioner of Income-tax-5 v. Manzil Dinesh Kumar Shah	[2019] 101 taxmann.co m 259 (SC)
3(a)	Presumption Section 292C is applicable in favour of assessee also and, therefore, the transaction	ITAT Mumbai	ITA No. 4522/Mum/2 Q12 date of

	recorded in loose papers/books of account seized/impounded has to be accepted as true unless proved with cogent evidence, as untrue by the party claiming so. -	Dharmesh Manibhai Patel Vs. ITO 17(1)(2)	order 14.7.2013
3(b)	- Do -	ITAT Mumbai Asstt. Commissioner of Income Tax Central Circle-25, Mumbai Vs. M/s. Metro Construction Company	ITA no. 4811/Mum./2010 date of Order 10.7.2013
3(c)	- Do -	ITAT Kolkata Deputy Commissioner of Income Tax, Central Circle-XXI, Kolkata, Vs. Sri Sanjay Jhunhunwala	I.T .(S.S.)A. Nos .: 86, 87 & 88/Kol. / 2013 date of order 26.11.2013
4(a)	Additions is not sustainable on the basis of Dumb Documents	High Court at Calcutta Pr. CIT Vs. Ajanta Footcare	[2017] 84 taxmann.co m (Cal)
4(b)	- Do -	Hyderabad ITAT Gyan Kumar Agarwal Vs. ACIT	146 TTJ 334 (Hyd)
4(c)	- Do -	High Court at Delhi CIT Vs. Jai Pal Agarwal	28 taxmann.co m 269 (Delhi)
4(d)	- Do -	ITAT Bangalore – “B” Bench ACIt Vs. Dr. Ranjan Pai	178 ITD 647 (Bangalore)
4(e)	- Do -	High Court at Delhi CIT Vs. SM Agarwal	[2007] 162 Taxman 3 (Delhi)
4(e1)	-	High Court at Delhi CIT Vs. SM Agarwal	[2007] 162 Taxman 3 (Delhi)
4 (f)	- Do -	ITAT Kolkata Vivek Kumar Kathotia VS DCIT	150 TTJ 432 (Kol)

5(a)	Opportunity of cross examination is mandatory	High Court of Rajasthan CIT Vs. - A.L. Lalpuria Construction (P) Ltd.	32 taxmann.com 384 (Raj)
5(b)	- Do -	High Court at Delhi CIT Vs. Ashwani Gupta	322 ITR 396 (Delhi)
5(c)	- Do -	High Court at Madhya Pradesh Prakash Chand Nahta VS. CIT	301 ITR 134 (M)
5(d)	- Do -	High Court at Delhi CIT Vs. Pradeep Kumar Gupta	303 ITR 95 (Delhi)
5(e)	Objections raised against reopening of assessment has to be disposed off by a speaking order	High Court at Bombay Allana Cold Storage Ltd Vs. ITO	287 ITR 1 (Bom)
5(f)	- Do -	High Court at Madras Home Finders Housing Ltd Vs. ITO	248 Taxman 133 (Madras)
5(g)	- Do -	High Court at Gujarat Mgm Exports Vs. DCIT	323 ITR 331 (Gujarat)
5(h)	- Do -	High Court at Bombay Rabo India Finance Vs. DCIT	346 ITR 81 (Bombay)

13. Ld. CIT, DR vehemently argued and submitted that the Managing Director of the assessee himself has accepted in the statement recorded during the course of survey that there have been business dealings with Shri P. Dayanand Pai and that the material seized during the course of search had entries with the notation "Salarpuria a/c" which formed the basis for recording the reasons to believe by the Ld. AO in respect of cash payments made. Ld. CIT, DR placed reliance on the order of ld. AO and stated that onus is on the

assessee to provide explanations and evidences to rebut the contentions raised by the Ld. AO.

14. We have perused the material placed on record and carefully considered the submissions made by both the parties. From the perusal of the reasons to believe recorded by the Ld. AO, it is noted that by initiating the impugned proceedings, Ld. AO wanted to verify the source of cash payments and the taxability of cash receipts in respect of documents seized from the residence of Mrs. A. Kagoo, a trusted employee of Shri P. Dayanand Pai in the search operation of Shri P. Dayanand Pai. From the reasons to believe, it is evident that the documents relied upon for the purpose of initiating the reassessment proceedings are seized documents which have been seized in the course of search from a third person, unrelated to the assessee.

14.1. Further, from the seized documents, one of which is reproduced in the order of Ld. AO, we observe that the documents contain the mention of "Salarpuria a/c" which could denote any company within the Salarpuria Group and need not necessarily be the assessee itself. Even in the reasons to believe, ld. AO has mentioned about the transactions of cash in reference to "Salarpuria Group".

14.2. We also find that assessee had raised objection on the initiation of proceedings u/s. 148 by filing its objection petition before the Ld. AO in terms of the decision of Hon'ble Supreme Court in the case of GKN Driveshaft (supra) which has not been communicated to the assessee by giving a speaking order on the disposal of the objection petition.

15. We do find force in the submission made by the Ld. Counsel claiming that nothing incriminating was found in the course of survey proceeding conducted in the case of the assessee in relation to the addition made. It is also observed that Ld. AO has not examined or taken any action to verify the details recorded in the seized documents by calling Shri P. Dayanand Pai and his trusted employee Mrs. A. Kagoo. Further, assessee had requested for cross examination of the searched person i.e. Shri P. Dayanand Pai and his trusted employee in respect of the allegation raised on the assessee in the reasons record, which was not made available for rebuttal.

15.1. On going through the provisions of section 292C of the Act, we note that the presumption as to seized material is in respect of the person searched. In the present case, assessee is not the person searched u/s. 132 of the Act. From the perusal of order of Ld. CIT(A), it is also observed that Ld. CIT(A) had called for a remand report from the Ld. AO who failed to respond for the same. We also take note of the decision of Coordinate Bench of ITAT, Bangalore in the case of ACIT Vs. Dr. Rajan Pai (supra) on which Ld. CIT(A) has placed his reliance since Dr. Rajan Pai is incidentally the brother of Shri P. Dayanand Pai and was also searched along with him and the addition made on the basis of documents seized from Shri P. Dayanand Pai and his Secretary Mrs. A. Kagoo were held to be “dubbed document”.

16. Considering the above observations and discussion as well as submissions made by the Ld. Counsel, fortified by

various judicial precedents tabulated above, we unhesitatingly allow the cross objection of the assessee wherein grounds of cross objection from 1 to 4 are in respect of delay in filing the appeal by the revenue of 1063 days and ground nos. 5 to 9 are in respect legality of the reassessment proceedings initiated u/s. 148 of the Act and reassessment order passed u/s. 143(3) read with section 147 of the Act. Further, from the findings and decision given by the Ld. CIT(A) on the merits of the case, we note that issues raised by the assessee have been dealt meritoriously as reproduced above, for which discussion has already been made while dealing with the cross objection of the assessee. Accordingly, we do not find any reason to interfere with the findings given by the Ld. CIT(A) in this respect as reproduced above. Thus, the Cross objection filed by the assessee is allowed and the appeal of the revenue is dismissed.

17. In the result, appeals of the assessee as well as of the revenue are dismissed and cross objection of the assessee is allowed.

Order is pronounced in the open court on 24th May, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24th May, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-6, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata