

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT &  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. 2602/Del/2018**  
Assessment Year: 2014-15

DCIT, Central Circl-6, New Delhi.	<b>Vs.</b>	Shri Mahesh Chand Goyal, E-11/8, Vasant Vihar, New Delhi.
<b>PAN :AAEPG4460C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/Sh. K. Sampath & Rajkumar, Advs.
Respondent by	Shri Dilip Singh, CIT DR

Date of hearing	14.06.2023
Date of pronouncement	28.07.2023

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

The aforesaid appeal has been filed by the Revenue against order dated 31.01.2018 passed by the learned Commissioner of Income-Tax (Appeals)-24, New Delhi for the quantum of assessment passed under Section 143(3)/153 of the Income-Tax Act, 1961 for the assessment year 2014-15.

2. In the grounds of appeal, the Revenue has raised the following grounds:

“1. On the facts and circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs.5,50,00,000/- made by the A.O on account of undisclosed cash loan advanced to M/s. KAD Housing Pvt. Ltd.

2. On the facts and circumstances of the case, the Ld.CIT(A) has erred in law in deleting the addition of Rs.14,20,240/- made by the A.O on account of unexplained cash found during the search operation.”

3. The brief facts raised in ground no.1 are that the search and seizure operation under Section 132 of the Income-Tax Act,1961 was carried out on 27.06.2013 wherein the assessee was also covered. During the course of search at the business premises of the assessee, undated cheques of Rs.5.50 crores in the name of Shri Mahesh Chand Goyal issued by M/s. KAD Housing Pvt. Ltd. was found. The details of the various cheques had been incorporated in the assessment order at page 2 of the assessment order which agreed to Rs.5,50,00,000. The learned Assessing Officer has referred to statement of Shri Amit Jain who was MD of M/s. KAD Housing Pvt. Ltd. wherein he has been asked as the transaction relating to the issue of undated cheques to Rs.5,50,00,000 in favour of Mahesh Chand Goyal. In reply to the

specific question, he stated that he will check his account, then, he will give the details within a week. Learned Assessing Officer has referred to a show cause notice issued by the investigation wing assuming that these cheques were kept as security of cash of equal amount advanced by the assessee to Shri Amit Jain, MD of KAD Housing Pvt. Ltd. The assessee had replied that M/s.KAD Housing Pvt. Ltd. wanted to borrow money and in this connection had approached the assessee who had principally agreed to lend the money and assessee had issued cheques in favour of M/s. KAD Housing Pvt. Ltd. and in turn the said company had issued return of loan by undated cheques in its favour. The assessee then submitted that later on, he did not lend the money to M/s. KAD Housing Pvt. Ltd. and has referred the decision which was also conveyed to them and, therefore, none of these cheques issued by him as well as issued by M/s. KAD Housing Pvt. Ltd. had even been presented in the bank. Even, during the course of assessment proceedings kept on reiterating that assessee was not extended cash loan or any loan of Rs.5.50 crores to KAD Housing Pvt. Ltd. nor any cheque issued by him or issued by the said party in return was ever in cash. It was further pointed out that all these cheques of Rs.5.50 crores

become stale and these were none CTS cheques which discontinued by the bank regularly after 31.12.2012. Thus, there was no possibility that a sum of Rs.5.50 crores exchanged hand nor there is any documentary evidences which were confronted to the assessee.

4. However, still the Assessing Officer held that since undated cheques were found from the office premises of the assessee and the cheques issued by the KAD Housing Pvt. Ltd were not found in their search proceedings, therefore, the assessee might have given cash loan of equivalent amount. He further held that it is beyond human probability that a person issuing security cheques without receiving the loan and accordingly he had made the addition of Rs.5.50 crores. The learned Commissioner of Income-Tax (Appeals) has deleted the said addition holding that it was purely a guess work that assessee might have given a cash loan of Rs.5.50 crores and for securities of the same, these cheques were issued. His relevant finding is given as under:

*“3.9 However, it is beyond human probabilities that a person will issue security cheques without receiving the loan. The security cheques are issued in business only for the purchase of securing the cash loan. The submission furnished by the assessee as well as KADA Housing are mere afterthoughts to avoid the rigors of law. In view of the above discussion, it is clear that the*

*assessee had advanced cash loan of Rs.5.50 Cr to KAD Housing Private Ltd. which in turn had issued cheques of equal amount as security. Further, there is variation in the statements of the assessee made during the search proceedings & now. There is variation in the explanation given by the assessee and that given by KAD Housing Pvt. Ltd. Hence it can be concluded that these submissions are mere afterthought to cover up the loan amount of Rs.5.5 crores extended to KAD in cash. Accordingly, the mount of Rs.5,50,00,000/- is treated as unexplained investment and added to the income declared.*

*3.10 It is noted that since these cheques were undated and no documentary evidence regarding exact year of transaction was furnished, the addition is being done on substantive basis in A.Y. 2014-15, the year of search. However, KAD Housing Pvt. Ltd., the issuer of cheques has submitted in its reply that the cheques were issued in the year 1010-11 (though no documentary evidence has been furnished in this regard), addition is being done on protective basis in A.Y. 2011-12. In view of above discussion, it is evident that the assessee has undisclosed income according to the provisions of Sec.271(1)(c) of the Act. Thus, the undersigned is satisfied that the assessee has furnished inaccurate particulars of his income. Accordingly, penalty proceedings u/s 271(1)(c) is initiated.”*

5. After hearing both the parties and perusal of material placed on record, we find that the entire basis for making the addition by the Assessing Officer is that certain undated cheques in favour of the assessee issued by M/s. KAD Housing Pvt. Ltd was found from the possession of the assessee which Assessing Officer has assumed that assessee might have given a cash loan in lieu of which he has received these cheques for security. From the record, it has been pointed out

that the assessee had earlier invested Rs.10,00,00,000 in M/s. KAD Housing Pvt . Ltd. which is not in dispute and the said party had requested for further loan which initially assessee agreed and had issued cheques o f Rs.5.50 crores to the said party and in lieu of that, the said party had given undated cheques to the assessee by way of security of such loan. Later, the assessee decided not to give the said loan to M/s. KAD Housing Pvt. Ltd. and, therefore, the cheques lying with the assessee which were not deposited in the bank account remained stall. Once, the factum of issuing cheques to the KAD Housing Pvt. Ltd. has not been in cash by the said party nor the cheques issued by the said party to the assessee have not been encashed, then, we do not find any reason as to why Assessing Officer has presumed that assessee might have given a cash loan at least they have to be some basis or material to prove that there was some cash transactions found during the course of search or any statement recorded. The aforesaid finding of the learned Commissioner of Income-Tax (Appeals) has not been rebutted and, therefore, we do not find any reason to deviate from such a finding. Accordingly, the order

of learned Commissioner of Income-Tax (Appeals) deleting the addition is confirmed. Ground raised by the Revenue is dismissed.

6. Coming to the addition of Rs.14,20,000 on account of unexplained cash found during the course of search and seizure operation, assessee before the Assessing Officer stated that cash was held in personal capacity and the copy of cash book for the month of June, 2013 was also found during the course of search which is also a part of seized document. These documents itself contained draft balance sheet and the cash in hands was Rs.24,50,189. The learned Assessing Officer has simply made the addition that no further evidence has been provided as to how much amount was utilized out of cash in hand and how much amount remained balance.

7. Learned Commissioner of Income-Tax (Appeals) has deleted the addition holding that once the Assessing Officer accepted the availability of cash of Rs.24,53,189 and there is no evidence of any utilization of the same, then, no addition on account of cash found can be made.

8. After considering them, the impugned finding given in the impugned order as well as material before us that the assessee was

maintaining cash books and on the date of search, the cash book for the month of June was seized on 27.06.2013 which itself reflects cash in hand of Rs.24,53,189 . Once the cash in hand was duly reflected in the seized books and without there being any material or evidence on record that the cash shown in the books had been utilized elsewhere, then, cash found from the possession of the assessee for sum of Rs.14,20,240, the same cannot be held to be unexplained. Accordingly, the finding of the learned Commissioner of Income-Tax (Appeals) is confirmed and the addition made by the Assessing Officer is directed to be deleted.

9. In the result, the appeal is partly allowed.

***Order pronounced in the open court on 28<sup>th</sup> July, 2023.***

***Sd/-***  
**( G.S. PANNU )**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> July, 2023.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi