

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.546/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2017-18)

DCIT Central Circle-1(1), Chennai.	बनाम/ Vs.	Mr. N. Shahjahan, 6/69, Laskar Street, Alandur Chennai-600 015.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. BSJPS-0767-C		
(पीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Clement Ramesh Kumar (CIT) – Ld. DR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri T. Vasudevan (Advocate) - Ld. AR
सुनवाई की तारीख/Date of Hearing	:	24-08-2023
घोषणा की तारीख /Date of Pronouncement	:	30-08-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax Appeals)-18, Chennai [CIT(A)] dated 17-08-2021 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 153B(1) r.w.s 153A of the Act on 30-12-2018. The grounds taken by the revenue read as under:

“1.The order of the Id. Commissioner of I.T. (Appeals) is erroneous on facts of the case and in law.

2.1. The Id. CIT(A) erred in deleting the addition of Rs.2,09,48,927/- made towards unexplained investment and assessed u/s.69 of the I.T. Act, 1961, by holding that the liability side found in the seized document containing capital of Rs.76,64,320/- and

creditors of Rs.1,71,95,480/- explains the source of the investment, as the assessee has not furnished the details of creditors, such as names, addresses, PANs, I.T. particulars, confirmation letters of the creditors, mode of receipt of the amounts, creditworthiness of the creditors in respect of the credit of Rs.1,71,95,480/-, nor the basis for capital balance of Rs.76,64,320/-.

2.2. The Id. CIT(A) failed to note that the source for the unexplained investment of Rs.2,09,48,927- has not been explained by the assessee with reference to cash flow statement with appropriate evidence.”

As is evident, the revenue is aggrieved by deletion of addition made by Ld. AO u/s 69 of the Act.

2. The Registry has noted delay of 17 days in the appeal, the condonation of which has been sought by Ld. CIT-DR. The Ld. AR did not object to the condonation of delay. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The Ld. CIT-DR advance argument and submitted that the impugned addition was made on the basis of seized material found during the course of search action on the assessee. The Ld. CIT-DR submitted that the assessee did not file the requisite details of sundry creditors. To support the same, our attention has been drawn to the material found during the course of search action and conclusions drawn by Ld. AO on the basis of the same. The Ld. AR, on the other hand, submitted that the document had to be accepted in full and there was no justification on the part of Ld. AO to accept the same partially. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

4.1 The assessee being resident individual is stated to be engaged in purchase and sale of foreign currency. The assessee was subjected to

search action on 12-05-2016 which resulted into impugned assessment in the hands of the assessee. During the course of search, certain loose papers numbering 1 to 248 were found and seized as per Annexure ANN/KN/Shahjahan/LS/1-248.

4.2 The Ld. AO made impugned addition on the basis of page no. 84. The same contained balance sheet of the assessee as on 03-05-2016. In this document, the assessee reflected stock of foreign currency for Rs.33.45 Lacs, cash balance of Rs.129.28 Lacs and other receivables for Rs.93.81 Lacs. The same aggregated to Rs.256.55 Lacs. The assessee was directed to explain the source of the same. The assessee submitted that the liability side of the Balance Sheet may also be considered wherein the assessee's capital was shown as Rs.76.64 Lacs and sundry creditors were reflected as Rs.171.95 Lacs which form the source of the these three items. The assessee also submitted that Balance Sheet drawn on 03-05-2016 had no relevance since the balance sheet as on 11-05-2016 (a day prior to date of search) was available at the time of search itself. The assessee also submitted that there were transactions on all days and these items vary according to the transaction carried out on each date.

4.3 However, Ld. AO rejected the same on the ground that the assessee was liable to furnish complete details of creditors viz. name and addresses, PAN, Income tax particulars, confirmation letters, mode of receipts of amount, creditworthiness of the creditors with necessary documentary evidences etc. The assessee was also required to explain the capital balance which was not done. Therefore, the amount of Rs.256.55 Lacs was held to be unexplained. Since the assessee already offered income of Rs.47.06 Lacs which include an amount of

Rs.19.80 Lacs being cash seized from the assessee and another sum of Rs.27.26 Lacs as offered by the assessee on account of stock, the balance amount of Rs.209.48 Lacs was added to the income of the assessee u/s 69 and 69A of the Act.

Appellate Proceedings

5.1 The assessee assailed the impugned additions with partial success before Ld. CIT(A). During appellate proceedings, the assessee submitted that the books of accounts were not maintained properly. All the transactions were noted in the form of loose sheets. It was also submitted that the balance sheet was drawn incorporating the closing balances of 11-05-2016 and the income was arrived at Rs.50.67 Lacs which was admitted in the return of income. The Ld. AO only considered those figures which were favorable to the department. It was further submitted that Balance Sheet as on 11-05-2016 was available in the seized document. On the date of search in the evening, the cash was found for Rs.19.80 Lacs and stock was computed as Rs.27.26 Lacs. The reason for differences in balances was that the assessee was carrying on the business activity from the morning onwards till the time of search. Based on seized material and considering the transaction that took place between the close of 11-05-2016 till the time of search on 12-05-2016 evening, the assessee computed the Balance Sheet which was submitted to Ld. AO. However, the same was rejected without any valid reasons. Accordingly, the assessee assailed the impugned additions.

5.2 After considering assessee's submissions, Ld. CIT(A) deleted the impugned addition by observing as under: -

8. The appellant had contended that he had based on the jottings seized by the department and as per the documents and details available prepared account and had produced his accounts before the AO during the assessment proceedings:

Balance Sheet as on 11.05.2016

Particulars	Liability Amount	Particulars	Assets Amount
Shajahan	77,19,670	Sundry Debtors	54,84,340
Sundry Creditors	99,75,017	Cash	1,05,84,590
		Stock	16,63,780
Total	1,76,94,687	Total	1,77,32,710

9. The appellant had further contended that when the search started at the premises on next day (i.e. on 12.05.2016) in the evening, the cash found was Rs.19,80,000/- and stock of foreign currency in INR was found at Rs.27,26,500/- and attributed the difference to his trading activity from morning onwards till the time the search started, resulted in cash balance of Rs.19,80,000/- and stock of Rs.27,26,500/-. It is not disputed that the appellant had computed his balance sheet as under Balance Sheet as at 12.05.2016 based on the seized materials and after considering the transaction that took place between the close of 11.05.2016 to the time of search till 12.05.2016, as shown in the table overleaf.

Particulars	Liability Amount	Particulars	Assets Amount
Shajahan	12,77,962		
Add: Income	50,66,561	Sundry Debtors Net	13,36,280
Admitted	63,44,523		
Less: Drawings	3,01,682		
	60,42,841		
Total	60,42,841	Total	60,42,841

10. It is to be noted that the jottings in the seized documents have not been denied by the appellant. The appellant in his sworn statement given on 30.9.2016 has vide answer to Q.No.8 has deposited as under:

"Q.8. I am showing you the pages numbered from 229-243 of the loose sheets seized vide ANN/KN/SHAHJAHAN/LS/1-248. Please explain that what indicates the left side, right side and back side written items of the loose sheets.

Ans. There are paper noting regarding foreign exchange transactions. The left side of the noting indicates what has been received and right side indicates what has been given. The numbers mentioned in the paper notings will sometimes be in Indian currency and sometimes in foreign currency. The back side shows the rate at which the foreign currencies are purchased."

The appellant has explained the nature of transaction mentioned in the seized documents. It is settled position of law that there is presumption u/s 132(4A) of the Act and the said presumption cannot be extended beyond its legitimate field. It is relevant to observe that the appellant has to explain the entries found in a document that was recovered during search proceedings and it is the equal responsibility of the AO to establish specific nexus between the narration in the jottings and the accounts. In the instant case, the appellant has stated that he was carrying on trading in forex and that the seized documents represented a kind of balance sheet inasmuch as the jottings represented both the receivables and the liabilities including the capital and the creditors

that go to explain the receivables including cash, forex and debtors in the instant case. It is common knowledge that the position may change from day to day and from the start of the business activity up to and until the close of the business activity each day. The appellant has drawn this position and the AO has, apparently not rebutted / brought any adverse inference with reference to the submitted position.

11. The AO has relied on the maximum receivables/ asset position and has added the difference between the said figure and the admitted income to tax. It is not correct on the part of the AO to utilize certain jottings that appear on the loose sheets against the appellant and to ignore certain other corresponding jottings that are not favorable to him. It is worthwhile to mention that the seized document as such should be considered and read as a whole. The AO cannot resort to cherry picking. The AO has relied on the entries to work out the quantum of receivables by the appellant on a particular date i.e. 03.05.2016 but has conveniently chosen to ignore the liabilities that go to explain the sources. When the asset side is taken for determining income of the appellant, it is incumbent on the AO to equally consider the liability side as well, for asset in excess of liability alone would represent the income of the appellant. The documents as a whole will have to be considered taking into account the totality of the facts of the case of the appellant and the AO cannot depict a picture out of the seized documents to infer fanciful and convenient result.

12. In view of the fact that the appellant is only a trader in forex and is entitled to get margin as his income pursuant to the trading activity; and in view of the fact that the it is necessary to consider the entries in the documents as a whole, the AO's action in picking and choosing the figure of receivable, sans the liabilities, and that too on a particular day (3.5.2016) reasons for which have not been stated and remains justified by him is untenable. Therefore, his action is not justifiable in the eyes of law. Accordingly, the AO is directed to delete the addition. The appellant's grounds on this issue are allowed.

5.3 The Ld. CIT(A) noted that the seized material was not denied by the assessee. The Ld. CIT(A) also appreciated the latest Balance Sheet of the assessee as seized and the Balance Sheet prepared by the assessee till the date of search. It was noted that Ld. AO did not brought any adverse inference against the same. Further, the seized document was to be considered as a whole and Ld. AO could not resort to cherry picking. The Ld. AO relied on the entries to work out the impugned additions but conveniently chose to ignore the liabilities that go on to explain the sources thereof. When assets side is taken to determine the income of the assessee, it was incumbent for Ld. AO to equally consider the liability side as well since asset in excess of liability alone would represent the income of the assessee. The

document as a whole was to be considered and not in a piecemeal fashion as done by Ld. AO. Therefore, the impugned addition was deleted.

5.4 Proceeding further, Ld. CIT(A) noted that the assessee's capital as on 11-05-2016 was Rs.77.19 Lacs and as on 12-05-2016, it was shown as Rs.60.42 Lacs and therefore, there was discrepancy to the extent of Rs.16.76 Lacs. The assessee also did not reflect any income for rest of the period after search which was to be estimated @15000/- per month for 11 months. Accordingly, Ld. CIT(A) made enhancement and directed Ld. AO to add back these two items to the income of the assessee. It has been submitted that the same has been accepted by the assessee and it is not in further challenge. However, the revenue is in further appeal against deletion of impugned addition of Rs.209.48 Lacs.

Our finding and Adjudication

6. It is admitted fact that on the date of search, certain loose sheets were found which contained date wise Balance Sheet of the assessee. The assessee has not maintained any regular books of accounts and dealing as a trader of foreign currency. The loose sheet, inter-alia, contain Balance Sheet as on 03-05-2016. However, Balance Sheet as on 11-05-2016 i.e., a day prior to date of search was also available on record which has totally been ignored by Ld. AO. It could be seen that the Balance Sheet is prepared day wise considering the transaction of the each of the day. Therefore, the most relevant Balance Sheet, in our considered opinion, would be the Balance Sheet as available on latest date i.e., on 11-05-2016. The Ld. CIT-DR has argued that there is not substantial difference in the Balance Sheet. Even if the said argument

is accepted, we find that Ld. AO is only accepting a part of the Balance Sheet and putting onus on assessee to substantiate the other part of the Balance Sheet. The liability side of the Balance Sheet contains the capital account of the assessee and details of sundry creditors which constitute source of sundry debtors, stock and cash in hand. A presumption would arise that the documents belong to the assessee and the entries made therein are correct and true. Therefore, the assessee could not be obligated to substantiate only one part of the Balance Sheet while accepting the other part of the Balance Sheet which is favorable to the department. The approach of Ld. AO, in this regard, is clearly erroneous and the same could not be held to be justified. We concur with the aforesaid adjudication of Ld. CIT(A) in the impugned order. Considering the Balance Sheet as a whole, the impugned addition of Rs.209.48 Lacs is not sustainable in law.

7. Proceeding further, we find that the adjudication of Ld. CIT(A) is based on appreciation of correct factual matrix. The latest Balance Sheet as seized by the department has been compared with the Balance Sheet prepared till the date of search and discrepancy in the capital account has already been added to the income of the assessee. The estimated income for post search period has also been added. Therefore, whatever addition was required to be made, has already been made in the impugned order. Nothing more is required to be added. Therefore, no fault could be found in the impugned order. We concur with the same.

8. The appeal stand dismissed.

Order pronounced on 30th August, 2023.

Sd/-
(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 30-08-2023
DS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5.
गार्ड फाईल/GF