

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1907/DEL/2022 [A.Y. 2014-15]
ITA No. 1908/DEL/2022 [A.Y. 2015-16]

Clavecon India P Ltd.
H - 401, Jaipuria Sunrise Greens
Near CISF, Indrapuram, Ghaziabad

Vs

The D.C.I.T
Central Circle
Ghaziabad

PAN: AAFCC 2403 F

(Applicant)

(Respondent)

Assessee By : Shri Gaurav Jain, Adv
Ms. Shweta Bansal, CA
Shri Sudharshan Roy, Adv

Department By : Shri P.N. Barnwal, CIT- DR

Date of Hearing : 25.09.2023
Date of Pronouncement : 06.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the assessee are preferred against the common order of the ld. CIT(A) - Kanpur -4, dated 14.07.2022 pertaining to Assessment Years 2014-15 and 2015-16.

2. Since the first appellate authority has disposed of both these appeals by a common order and since the underlying issues are identical, therefore, both these appeals were heard together and disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both these appeals relates to the addition made by the Assessing Officer by considering various jottings and notings on loose papers found during the course of search as unexplained investment by alleging that the assessee has made expenditure out of books for purchase of land and construction of the factory thereon. Quantum may differ.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Judicial decisions considered wherever necessary.

5. Briefly stated, the facts of the case are that body corporate, incorporated on 25.03.2013 with the main object of manufacturing Automated Aerated Concrete Blocks. A.Y 2014-15 is the 1st year after

incorporation of the company, though the assessee has not commenced its business during the captioned A.Ys and, therefore, did not earn any revenue from whatever source but was only engaged in the setting up of business by way of purchase of land and construction of factory building thereon with other civil work relating to the installation and acquisition of plant and machinery. The assessee purchased land from different parties for setting up project to manufacture fly ash bricks near NTPC.

6. A search and seizure operation u/s 132 of the Income-tax Act, 1961 [the Act, for short] was conducted on 10.11.2017 at the premises of the assessee and Rajeshwar Singh Yadav Group of cases. Proceedings u/s 153A of the Act were initiated and accordingly, statutory notices were issued and served upon the assessee, in response to which, the assessee filed its return of income declaring NIL income.

5. During the course of search and seizure operation, scanned pages were found and seized pertaining to A.Y 2014-15. Scanned copies are exhibited at pages 3 to 6 of the assessment order. Taking a leaf out of the entries/jottings/notings made in the loose sheets, the assessee was

asked to explain the nature of all the transactions recorded in the scanned pages.

6. In its reply, the assessee explained that it has engaged one Shri Sanjeev Garg who was an expert in setting up industrial units and offered help to establish the industrial units and land was purchased through Shri Sanjeev Garg who also helped in supervising and managing the construction of factory building. It was explained that the figures contained in the loose sheets are estimates made by Shri Sanjeev Garg.

7. The Assessing Officer was of the firm belief that the manner in which the entries in the scanned loose sheets have been made cannot be believed that they are just estimates. The Assessing Officer observed that in the loose sheet, amount of Rs. 3,67,32,240/- included cash payment of Rs. 3,50,27,240/- and bank draft of payment of Rs. 17.05 lakhs. All the payments were made to Shri Garg of Dadri and other contractors/labourers from which the Assessing Officer deduced that the cash payments have been made on construction.

8. The Assessing Officer also noted that majority of cash payments have been made to Shri Garg of Dadri who happens to be Shri Sanjeev Garg. Though the Assessing Officer made an attempt to examine Shri Sanjeev Garg but could not examine him as he did not appear before the Assessing Officer. The Assessing Officer was of the strong belief that the loose sheet found at the time of search were inter-linked and contained over all expenses/payments made in cash and, therefore, relying upon seized papers summarized the expenses aggregating to Rs. 3,91,91,756.37 for A.Y 2014-15 and made addition thereof u/s 69 of the Act alleging the same to be unexplained investment on the basis of seized material.

9. After conclusion of search proceedings, the DDIT, Investigation, Ghaziabad referred the matter to the DVO to estimate the fair market value of the land and factory building and the DVO submitted his report making the following estimate:

Sl. No	F.Y.	Declared by the Appellant		Estimated by Office		% of difference
		On Construction	On purchase of land	On Construction	On purchase of land	
1.	2013-14	1468274	9915000	1751171	11029500	11%
2.	2014-15	41401850	-	49378888	-	16%
		42870124	9915000	51130059	11029500	

10. Surprisingly, in A.Y 2014-15, the Assessing Officer made addition of Rs. 3,92,91,756/- on the basis of summary of expenses in the loose sheets and in A.Y 2015-16, the Assessing Officer adopted the difference of Rs. 79,77,038/- as mentioned by the DVO and made addition as unexplained expenditure within the meaning of section 69 of the Act.

11. When the matter was agitated before the Id. CIT(A), the Id. CIT(A) confirmed addition for A.Y 2014-15 and 2015-16 modified the addition to be in line with the expenses for cash written on the loose sheets and made addition of Rs. 1,72,37,565/-. The entire controversy revolves around the following summary of alleged expenses which is page 91 of the seized material and page 20 of the Supplementary Paper Book:

91

in 2013 → ✓ 5,63,34,562 = 00

Expense 2013 → 1,70,42,805 = 63

Expense 2013 ✓ 3,92,91,756 = 37

Expense → ✓ 6,87,76,777 = 00
+ 2014

Total 10,80,68,533 = 37

Expense in 2014 - 1,72,37,565 = 00

Expense in 2014 12,53,06,098 = 37

Expense in 2015 ✓ 71,86,587 = 00

Total Expense in
till 2015 January. 13,24,92,685 = 37

Bank Expense - ✓ 12,35,447 = 00

13,37,28,132 = 37

~~77~~ ~~Bank~~

12. The above loose sheet is neither signed by any person nor it contains any stamp and it is not known in whose handwriting it has been made. It appears that it is a working sheet of Shri Sanjeev Garg. But Shri Sanjeev Garg was never examined by the Assessing Officer though he has mentioned of issuing summons which was not responded but we are of the considered view that the Assessing Officer has all the powers in forcing the attendance of any witness he wants to.

13. The assessee has purchased land on which construction was commenced in respect of factory building. The matter was referred to the DVO and the DVO has very categorically mentioned in his report which reads as under:

"Any Special Observations:

The subject property is factory for AAC block production, situated in village Patadi Near NTPC, Dadri. It comprises land having area 30,300 Sqm in irregular shape. The land IS although registered under the agricultural land yet most of the land pieces in the vicinity are perhaps non-fertile land pieces. The subject land pieces were a/so non-cultivated agricultural land pieces. Entire land was purchased in 7 pieces ie, through seven different sellers. The plot is having a frontage of mere 8 meter.

The subject land is situated almost 8 km from the municipal limits. Total 30,300 Sqm land purchased through seven deeds. Most of the deeds are from co-owners. The only connecting road comes under NTPC jurisdiction who allows only, restrictive entry into it. Only those persons who maintain a good repo with NTPC or having business relations with NTPC can reach the subject land. This restrictive approach limits the no. of buyers drastically."

14. Even while estimating the fair market value, the DVO has not taken the circle rate as he was absolutely clear about the market value of the impugned lands as the same were under the mercy of NTPC. Ironically, the Assessing Officer has not even examined any seller of the land nor any person has been examined relating to the construction activity of the factory building.

15. The entire assessment has been made solely on the basis of scribbling/notings/jottings made in the loose sheet mentioned elsewhere.

16. A careful perusal of the loose sheet shows that it is nothing but a dumb document, whose author is not known. The Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla 3 SCC 410 dated 02.03.1998 has held as under:

"Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do for his future purpose.

... Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to. "

" In the present case there is no evidence against the petitioners except the diaries note books and the loose sheet with regard to the alleged payments (vide MR Nos. 68/91. 72/91 and 73/91). The said evidence is of such a nature which cannot be converted into a legal evidence against the petitioners"

"Section 34 of the Act reads as under:-

" Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability. "

From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book. that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are

fulfilled and the entry becomes admissible as relevant evidence. still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability."

S.34. Evidence Act, lays down that the entries in books of account, regularly kept in the course of business are relevant, but such a statement will not alone be sufficient to charge any person with liability. That merely means that the plaintiff cannot obtain a decree by merely proving the existence of certain entries in his books of account even though those books are shown to be kept in the regular course of business. he will have to show further by some independent evidence that the entries represent real and honest transactions and that the moneys were paid in accordance with those entries. The legislature however does not require any particular form or kind of evidence in addition to entries in books of account, and I take it that any relevant facts which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished. by entries in books of account if true. "

While concurring with the above observations the other learned Judge stated as under:

" If no other evidence besides the accounts were given, however strongly those accounts may be supported by the probabilities, and however strong may be the evidence as to

the honesty of those who kept them, such consideration could not alone with reference to s.34, Evidence Act, be the basis of a decree."

17. The Hon'ble Delhi High Court in the case of Praveen Juneja ITA No. 56/2017 dated 14/07/2017 held that addition cannot be made on the basis of a document which is silent as to the payer and payee of the amount in question and does not disclose that the payment was made by cheque or cash nor it is proved that the document is in the handwriting of the assessee or at least bears his signature.

18. The Hon'ble Supreme Court in the case of Common Cause & Others Vs. UOI in Civil Writ Petition 505 of 2015 order dated 11.01.2017 has held that loose sheet of papers are wholly irrelevant as such evidence is not admissible u/s 34 of the Act. These transactions mentioned therein have no evidentiary value.

19. If we consider the entire factual matrix relating to the impugned additions apart from the impugned loose sheets, there is no further corroborative evidence suggesting undisclosed investment was available on record.

20. It would be pertinent to understand the fact that A.Y 2014-15 is the first year of incorporation. Therefore, by no stretch of imagination it can be said that the assessee company has brought in its own unaccounted funds for making the unaccounted purchases. Since the business has not even commenced in the subsequent A.Y. i.e. 2015-16 also, the assessee company had no funds on its own, whether accounted or unaccounted from revenue operation. There is nothing on record to suggest that the Assessing Officer has taken any action against the promoters/directors of the assessee company.

21. On similar facts, the Hon'ble High Court of Delhi in the case of Satkar Infrastructure Ltd 145 Taxmann.com 461 declined to interfere with the findings of the Tribunal given in ITA No. 1198/DEL/2019.

22. Similar view was taken by the Hon'ble High Court of Allahabad in the case of Lal Mohar 88 Taxmann.com 260 wherein the Hon'ble High Court has held that since it was the first year of business of the AOP, and no business activity having shown to have been conducted by it that could lead to generation of unaccounted income on the first day of relevant accounting period itself, the Tribunal has not committed

any error in deleting the impugned addition. The relevant findings read as under:

"22. .Having considered the arguments so advanced by learned counsel for the parties, we find, in the case of *Abhyudaya Pharmaceuticals (supra)*, this Court considered the decision in the case of *CIT v. Jaish Finance*[1983] 141 ITR 706(All.) as also the *Kapur Brothers. (supra)* and thereafter concluded authorities below had committed an error as they failed to take into account the fact that it being the first- of business, no addition could have been made to the undisclosed income of the assessee, that partnership firm.

23. Similarly, in the case of *India Rice Mills (supra)* also, this Court has held that the Tribunal had fallen into a serious error in making the addition under Section 68 of the Act in the hands of the firm with reference to amount that was found credited in its account before commencement of the business. In view of the afore discussions, it cannot be disputed that no addition can be made under Section 68 of the Act in the hand O - firm or any artificial person in the first year of business that too on a day which is the first day of its business. The underlying reason for such conclusion is self apparent that no undisclosed investment can arise in absence of any activity or business which may provide the source to generate such income."

23. Again, in the case of *Abhyudaya Pharmaceuticals* 32 Taxmann.com 68, the Hon'ble High Court of Allahabad has taken a similar view. Relevant findings read as under:

"6. It may be noted that the appellant is a registered partnership firm and the relevant assessment year 1991-92 was its first year. It filed return declaring the income of Rs. 3,59,6201-. The return was filed on 24th of October, 1991. The partnership firm consisted of eight partners. During the previous year relevant to the assessment year in question, the partners contributed capital of Rs. 25,31,8701/. One of the partners namely *Master Shishir Garg* introduced Rs. 2,62,0001- as capital. There appears to be no dispute with regard to the other partners who brought their capital in the firm. The dispute is confined to the capital contribution made by *Master Shishir Garg* (*Shishir Kumar Garg*).

16. On the facts and circumstances of this case, we are of the considered opinion that the authorities below have committed error as they have failed to take into account that this was the first year of the business of the assessee firm. The partnership firm was formed on 5.7.1990 and on 7.7.1990 *Master Shishir Garg* deposited Rs. 1,90,000/- and Rs. 72,000/- as capital money with the Firm through bank clearance of two bank drafts. The accounting period being financial year i.e. ending on 31st of March, 1991, the Firm could not have any income at the time of its formation. The identity of the depositor i.e. *Master Shishir Garg* was not in issue at any point of time

before the Income Tax Authorities. They treated the said deposit by Master Shishir Garg. This being so, if for one reason or the other, they were not satisfied with the financial capability of Master Shishir Garg, the amounts could have been added at the hands of Master Shishir Garg and not at the hands of Firm.

18. It may be noted that the decision given in the case of Jaiswal Motor Finance (supra) is being constantly followed by this Court in the subsequent decisions. Reference can be made to Surendra Mohan v. CIT [1996]221 ITR 239 (All.)

19. The Rajasthan High Court in CIT v. Kewal Krishna & Partners [2009] 18 DTR 121 has also taken similar view. 20. In view of the above, we are of the considered opinion that on the facts of the present case, the Tribunal was not justified in holding that the unexplained cash credit recorded in the assessee's book be added in the hands of the assessee. We, therefore, hold that there was no material before the Tribunal in holding that Rs. 1,90, 000/- introduced by Master Shishir Garg at the time of starting of the business, as income of the assessee Firm. The Tribunal erroneously came to the conclusion that the deposits represented undisclosed income of the assessee firm. All the three authorities below committed the same mistake and in this regard their orders cannot be allowed to stand."

24. Considering the facts of the case in totality from all possible angles, we do not find any merit in the additions made by the Assessing Officer. Therefore, in the interest of justice, we direct the Assessing Officer to delete the impugned additions from both the A.Ys under consideration.

25. In the result both the appeals of the assessee in ITA Nos. 1907 & 1908/DEL/2022 are allowed.

The order is pronounced in the open court on 06.10.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th OCTOBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	