INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI

BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 981/Del/2023
Asstt. Year: 2020-21

Chandra Pal C-8/8787, Vasant Kunj, New Delhi – 110 070 PAN AINPP1209K	Vs.	ACIT, Central Circle-11, Noida, 2nd Floor, ARTO Complex, Sector-33, Noida Uttar Pradesh 201301
(Appellant)		(Respondent)

Assessee by:	Shri Harish Choudhary, CA Shri Mohit Choudhary, CA Ms. Neetu Jain, CA Ms. Mitika Choudhary, Advocate
Department by:	Shri T. James Singson, CIT-DR
Date of Hearing:	19.09.2023
Date of pronouncement:	12.12.2023

O R D E R

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 27.02.2023 of the Ld. Commissioner of Income Tax (Appeals), Kanpur-4 **("CIT(A)")** pertaining to Assessment year **("AY")** 2020-21.

2. The assessee has raised the following grounds:-

"1. That Ld. CIT(A) erred in facts and in law, in sustaining addition of Rs.30,00,000/-in order passed under section 250 of the Income Tax Act, 1961 as against the addition of Rs.37,00,000/- made by the Learned Assessing Officer vide assessment order dated 29.05.2022. The order suffers from perversity as the order has been framed completely ignoring the material on record and is arbitrary and is against the law and facts on record and the order passed by the Ld.

CIT(A) is illegal, void abinitio and barred by the limitation and is contrary to the principles of natural justice and has been passed by recording Incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds. Hence, liable to be deleted.

2. *That having regards to the facts and circumstance to the case the alleged investigation carried out by the investigation wing of the Income Tax Department were carried out at the back of the appellant and Ld CIT(A) has neither brought any material, statement/ outcome of any enquiry conducted to the knowledge of the assessee and without bringing any cogent material on record (if any collected) and without providing an opportunity to confront the same.*

3. *That on the facts and circumstances of the case and in law the LD. CIT(A) while making the above addition arbitrarily and mechanically rejected the explanations and evidences tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.*

4. *The Commissioner of Income Tax(Appeals) - 4, Kanpur (hereinafter referred to as CIT(A)) erred in law and in facts in sustaining the addition of Rs. 30,00,000 u/s 69C of the Income Tax Act, 1961 in the order passed under section 250 of the Income Tax Act without assuming jurisdiction as per law and the order passed by the Ld. CIT(A) is illegal, void-ab- initio and barred by limitation and is contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving an adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.*

5. *That having regard to the facts and circumstances of the case, LD. CIT(A) has erred in passing order u/s 250 of the Income tax Act, 1961 without disposing off the objections filed by the appellant and as such consequent addition made to the declared income is not sustainable and liable to be deleted.*

6. *The appellants crave leave to add to, alter or amend the afore stated grounds or appeal."*

3. It is a search case.

4. Search and seizure operation under section 132 of the Income Tax Act, 1961 **(the "Act")** was conducted on 27.11.2020 on M/s. Shiv Shakti Construction Group of cases and the case of the assessee was also covered. Notice under section 153A of the Act was issued and duly served upon the

assessee. In response, he e-filed return for AY 2020-21 on 25.01.2022 declaring income of Rs. 17,52,040/-. During assessment proceedings statutory notices were issued and complied with. Requisite details have been filed, examined/verified and placed on record.

5. During search it was found that the assessee had made cash payments aggregating to Rs. 30 lakhs in three equal instalments of Rs. 10 lakhs each to one Shri Deepak in October, November and December, 2019. He was confronted and his statement under section 132(4) of the Act was recorded in which he deposed that Mr. Deepak provides knowledge to him regarding his farm and that cash transaction was made through Mr. Deepak for the purchase of cows. Regarding source he deposed that details will be declared later.

6. During the course of assessment proceedings the assessee explained that cash was actually Rs. 10 lakhs which was given and received back from Shri Deepak thrice, the final time through one Shri Rahish Pal Singh. The Ld. Assessing Officer **("AO")** considered the explanation on afterthought as no such claim was made in statement under section 132(4) and no evidentiary proof regarding to and fro payment done three times nor source thereof is given. The Ld. AO stated that during the post search investigation summon under section 131(1A) of the Act was issued to provide details of transactions with the assessee which was replied to saying that he has not entered into any transaction with the assessee in his personal capacity either in cash or the banking mode. Based on this, the Ld. AO concluded that the explanation given by the assessee is not corroborated independently. Since source of cash remained unexplained, he added Rs. 30 lakhs to the income of the assessee under section 69C and completed the assessment accordingly on 29.05.2022 under section 153A r.w.s. 143(3) of the Act.

7. Aggrieved, the assessee filed appeal before the Ld. CIT(A). It was submitted that the actual cash paid is Rs. 10 lakhs for purchase of livestock and that the said cash was obtained from Mrs. Preeti Singh (wife of the assessee). The same cash has been rotated thrice as the purchase of livestock could not materialize. Confirmation dated 14.05.2022 received from Mr. Deepak was also submitted. It was contended that there is no evidence on record that the assessee paid part of Rs. 30,00,000/- to Mr. Deepak. Assessment cannot be based on assumptions and presumptions as held in the case of Umacharan Shaw & Bros (37 ITR 271) by the Apex Court.

8. The Ld. CIT(A) was not convinced with the above submission of the assessee and confirmed the impugned addition by observing, interalia as under:-

"In the appellate proceedings Ld. AR submitted that there was only one cash amount of Re 10,00,000/- which was given to Sh. Deepak Raj on 10.10.2019 for the purchase of cows but the same was returned back on 15.10.2019 since the work did not materialize. Further this amount of Rs. 10,00,000/- cash was given on 02 11 2019 but unfortunately the quality and sale value of the cows was not satisfactory hence the deal did not materialize and hence the same was returned back on 07.11.2019. Ld AR submits that finally this amount of Rs. 10,00,000/- cash was given to Sh. Deepak Raj on 31.12.2019 but this time again the deal did not materialize and the amount was returned back on 05.01.2020 in cash. A declaration of Sh. Deepak Raj dt. 14.05.2022 has also been filed along with paper book. However no independent evidences have been submitted to support such claims. There is no seized material from which this submission may be cross verified. Further in the assessment order it has been stated by Ld. AO that Sh. Rahish Pal Singh vide reply dt. 09.02.2021 clearly denied entering into any sort of transaction with the appellant, thus the version of the appellant furnished during assessment proceedings that final time the cash amount was given and received back through Sh. Rahish Pal Singh has been proved completely false. In the appellate proceedings the appellant submitted that source of cash amount of Rs. 10,00,000/- was from Smt. Preeti Singh, who is wife of the appellant, however no documentary evidences of the same could be produced

9. Dissatisfied, the assessee is before the Tribunal and all the grounds relate thereto.

10. We have heard the Ld. Representative of the parties and perused the records. It is revealed from the statement of the assessee, Mr. Chandra Pal recorded under section 132(4) of the Act during search (page 11 of Paper Book) that his phone was checked and following transaction was noticed:-

10.10.2019	Rs. 10 lakhs cash
02.11.2019	Rs. 10 lakhs cash
31.12.2019	Rs. 10 lakhs cash

The assessee was asked to explain - (1) relationship of his firm with Mr. Deepak and (2) the nature and source of such transaction. The reply of the assessee was that Mr. Deepak is working under Binsar Farms and he provides knowledge/assistance to him regarding his farm. He further stated that the above transaction was made in cash through Mr. Deepak for the purchase of cows. Regarding source he replied that details will be given later. From the above, it is obvious that cash transactions as per phone were three on three different dates and not one transaction of Rs. 30 lakhs. The assessee has been consistent in his explanation furnished before the Ld. AO/CIT(A). The explanation of the assessee is duly supported by evidence brought on record. Mr. Deepak confirmed the transactions. His confirmatory letter dated 14.05.2022 was filed before the Ld. AO/CIT(A). There is nothing on record to suggest that the statements made therein are in any way not correct.

11. It is not in dispute that the assessee and his wife are partners in Daurau Farms LLP engaged in the main business activity of sale of farm fresh milk of cows. The contention of the assessee all along has been that the above transactions of Rs. 10 lakhs each has been entered into through Mr. Deepak for the purchase of cows for Daura Farms LLP and that Mr. Deepak has been providing knowledge/assistance to the assessee as partner of the firm as deposed by him in statement recorded under section 132(4) of

the Act. As to the reply of Shri Rahish Pal Singh in response to the summon issued under section 131(1A), the stand of the assessee has been that it is factually correct that the assessee had no business transactions with Shri Rahish Pal Singh during the year. However, cash given on 31.12.2019 to Mr. Deepak to purchase quality breed of cows for the firm was received back by the assessee on 05.01.2020 through Mr. Rahish Pal Singh who is relative (spouse of sister in law) of the assessee. Mr. Deepak had handed over the amount to Mr. Rahish Pal Singh in his daily meeting in regular course of business to return the same to the assessee on his behalf.

12. The explanation furnished by the assessee has been considered by the Ld. AO as afterthought without bringing on record any cogent material to establish its falsity. The Ld. CIT(A) has only dittoed the view of the Ld. AO.

13. As to the source, the assessee's explanation has been that Rs. 10 lakh has been given by the assessee to Mr. Deepak in the capacity of partner of Daurau Farms LLP in support of which cash book pertaining to the Financial Year 2019-20 had been produced during the assessment proceedings. As per the income & expenditure statement of the firm for Financial Year 2019-20 brought on record it had cash sales of Rs. 8,40,400 in local market and sale of Rs. 17,46,798/- as reflected in the bank statement of the firm. Therefore it is not a case of failure to explain the source of the impugned amount on the part of the assessee.

14. It is not the case of the Revenue that the entire amount of Rs. 30 lakhs was given by the assessee to Mr. Deepak in one go.

15. In our opinion, the assessee discharged his onus of explaining the nature and source of the transactions noticed in his phone during the course of search proceedings. The impugned addition has been made by the

Ld. AO and sustained by the Ld. CIT(A) on the basis of suspicion and surmises alone.

16. In the light of the facts and circumstances of the case and keeping in view the nature of business of the assessee, we hold that there is no justification on facts and in law for the impugned additions which we direct the Ld. AO to delete.

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12th December, 2023.

Sd/-	**sd/-**
(DR. BRR KUMAR) **ACCOUNTANT MEMBER**	**(ASTHA CHANDRA)** **JUDICIAL MEMBER**

Dated: 12/12/2023
Veena
Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT 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	