

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

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 9854/Del/2019 : Asstt. Year : 2016-17

ITA No. 9855/Del/2019 : Asstt. Year : 2017-18

Vaibhav Jain, M-1, 2 nd Floor, Malviya Nagar, New Delhi-110017	Vs	DCIT, Central Circle-7, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AGQPJ3938C		

**Assessee by : Sh. Mayank Patawari, CA &
Sh. Anmol Jagga, Adv.**

Revenue by : Ms. Sapna Bhatia, CIT DR

Date of Hearing: 31.10.2023

Date of Pronouncement: 03.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-24, New Delhi dated 23.10.2019.

2. In ITA No. 9854/Del/2019, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by Id. CIT(A) is bad both in eyes of law and on facts.

2. That the Id. CIT(A) has erred in law as well as on facts in confirming the action of Id. AO as he was not justified in arbitrarily assuming jurisdiction u/s 153A of the Income Tax Act, 1961 and has further erred in confirming the impugned Assessment Order.

3. That the Id. CIT(A) has erred in law as well as on facts by upholding the initiation of proceedings u/s 153A, since no incriminating documents pertaining to the assessee was found during the course of search.

4. That the Id. CIT(A) has erred in law as well as on facts in confirming the action of the Id. AO for assuming jurisdiction and framing the impugned assessment order u/s 153A/143(3) of the Income Tax Act, 1961 which is bad in law and the same is not sustainable on various legal and factual grounds.

5. That the Id. CIT(A) has erred in law as well as on facts in upholding the addition of Rs.95,64,815/- on account of investment allegedly made in gold and investment in JBL (i.e. m/s Jindal Bullion Ltd.) u/s 69 r.w.s. 115BBE of the Income Tax Act, 1961.

6. That the Id. CIT(A) has erred in law as well as on facts in upholding the addition of Rs.95,64,815/- made by the Id. AO without having any incriminating documents.

7. That the Id. CIT(A) has erred in law as well as on facts by upholding the Id. AO order without observing the principles of natural justice and without providing the opportunity to cross examine the deponents.

8. That Id. CIT(A) as well as Id. AO ought to have allowed the benefit of telescoping and ought not to have taxed one and the same amount twice.

9. That Id. CIT(A) has erred in law as well as on facts in confirming the impugned addition and passing the impugned assessment order without providing the adequate opportunity of being heard which is bad in law and not sustainable on various legal and factual grounds.

10. That the Id. CIT(A) and the Id. AO has erred in law as well as on facts by initiating the penalty proceeding u/s 271(1)(c) of the Income Tax Act, 1961.

11. That the Id. CIT(A) has erred in law as well as on facts by confirming the charging of interest u/s 234A and 234B of the Income Tax Act, 1961."

3. In ITA No. 9855/Del/2019, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by Id. CIT(A) is bad both in eyes of law and on facts.

2. That the Id. CIT(A) has erred in law as well as on facts in confirming the action of Id. AO in passing the impugned assessment order without assuming jurisdiction as per rule.

3. That the Id. CIT(A) has erred in law as well as on facts in upholding the addition of Rs.9,03,040/- on account of unexplained investment u/s 69 r.w.s. 115BBE of the Income Tax Act, 1961.

4. That the Id. CIT(A) has erred in law as well as on facts in upholding the addition of Rs.1,00,000/- on account of undisclosed salary income.

5. That the Id. CIT(A) has erred in law as well as on facts by upholding the Id. AO order without observing the principles of natural justice and without providing the opportunity to cross examine the deponents.

6. That Id. CIT(A) as well as Id. AO ought to have allowed the benefit of telescoping and ought not to have taxed one and the same amount twice.

7. That Id. CIT(A) has erred in law as well as on facts in confirming the impugned addition and passing the impugned assessment order without providing the adequate opportunity of being heard which is bad in law and not sustainable on various legal and factual grounds.

8. That the Id. CIT(A) and the Id. AO has erred in law as well as on facts by initiating the penalty proceeding u/s 271(1)(c) of the Income Tax Act, 1961.

9. That the Id. CIT(A) has erred in law as well as on facts by confirming the charging of interest u/s 234A and 234B of the Income Tax Act, 1961."

4. A search and seizure operation u/s 132 of the Act was carried out on Jindal Bullion Ltd. Group of cases on 05.01.2017.

As the appellant was one of the directors of M/s Jindal Bullion Ltd. (JBL) since 01.05.2015, warrant of authorization u/s 132 of the Act was also issued and executed on the appellant. Subsequent to the search action, notice u/s 153 A of the Act dated 05.01.2018 was, issued to the appellant and in response the return was filed on 14.08.2018 declaring income of Rs.7,21,810/-.

5. It was noted by the AO that during the course of search action on M/s Jindal Bullion Ltd (JBL) Group on 05.01.2017, large quantum of incriminating data pertaining to the FYs 2014-15, 2015-16 and 2016-17, in the form of digital data and loose sheets, was seized. The incriminating material was seized from the following premises which were covered under the search of the JBL Group:

- i. Digital data maintained in a software called Hazir Johri, at the residential cum business premises of Sh. Kusharg Jindal (promoter and director of JBL) at Plot No.25, Vaishali Enclave, Pitampura, Delhi, in a dongle.
- ii. Loose sheets detailing daily pakka and kachha transactions of transfer of cash, gold and silver, found and seized as Annexure A4 at residential premises of Sh. Parul Ahluwalia (director of JBL) at D-70, Pundrik Vihar, Pitampura, Delhi-110034.

6. On analysis of the above two sets of evidences, it was found that two sets of accounts have been prepared one in Hazir Johri software and another in Tally software. It was noticed that all the transactions in the loose sheets including

the unaccounted cash transactions were recorded in Hazir Johri software, however transactions through banking channels were recorded in Tally software which was obviously prepared for the purpose of computation of income under the provisions of the Act.

7. In paras 5.4-5.7 of the assessment order, the AO has made detailed analysis of Hazir Johri software & Tally software and found that transactions recorded in Hazir Johri software is nothing but the day to day business transactions of the JBL Group wherein all the accounted as well as unaccounted transactions have been entered. The aforesaid conclusion of the AO was not without any basis as the same was also corroborated in the statement recorded u/s 132(4) of the Act on 05.01.2016 of Sh. Parul Ahluwalia, who was the director and former employee of JBL who has specifically admitted that 'pakka' transactions are entered in Tally software whereas 'kachha' and 'pakka' transactions are entered in Hazir Johri software. The statement recorded u/s 132(4) of the Act on 05.01.2016 of Sh. Parul Ahluwalia has been reproduced by the AO in para 5.6 of the assessment order. The AO also has referred to the statement of Ms. Ekta Soni who was employed as Executive Assistant in M/s. JBL wherein she has confessed that the loose sheets had been prepared by her on the directions of Sh. Kusharg Jindal and Sh. Parul Ahluwalia, both directors of M/s. JBL. As per her statement the said loose sheets contain details of daily cash, gold and silver intake and outgo from M/s. JBL and she had been witness to such cash transactions.

8. On the basis of the detailed analysis, the AO came to conclusion that Hazir Johri software was nothing but parallel set of accounts prepared in regular course of business of JBL Group. In the aforesaid software, it was found that two accounts were in the name of the appellant which was named as '01VAIBHAVJi(capital)' and other named 'Vaibhav Ji'. These accounts were for the period from 01.02.2015 to 05.11.2016 i.e. for the AYs 2015-16, 2016-17 and 2017-18 for which M/s. Jindal Bullion Ltd. has maintained books of accounts in Hazir Johri software. The accounts of the appellant for the period from 01.02.2015 to 05.11.2016 as found in Hazir Johri software have been reproduced by the AO in para 5.9 of die assessment order. On comparison of the entries recorded in Tally accounts of M/s. JBL for this period, it was found that while the entries recorded through banking transactions was duly appearing but the transactions in cash were not reflected.

9. Accordingly, the AO issued detailed show cause notice on 11.12.2018 to explain credit entries which were found to be not declared either in the bank statement or in returns of income by the appellant. In response to the show cause notice, the appellant filed its reply on 15.12.2018. The AO did not accept the submissions of the appellant and held that appellant has not disputed the banking entries recorded in Hazir Johri software which is sufficient reason to establish that the accounts maintained under the names of 'Vaibhavji' and 'Vaibhavji Capital' are the accounts of the appellant maintained in Hazir Johri ledger. It was also found by the AO that during the course of assessment proceedings, M/s. JBL has also accepted that Hazir Johri software was used by them for

recording of daily transactions. They have also offered to pay tax on the cash sales transactions recorded in Hazir Johri ledger accounts.

10. In so far as cross examination of Sh. Kusharg Jindal sought by the appellant is concerned, it was held by the AO that since the appellant himself is one of the directors of M/s. JBL, and as admitted by M/s. JBL Hazir Johri ledger accounts record daily transactions of M/s. JBL, as such, it was the duty of the appellant to explain the entries recorded in such software. He also noted that during the relevant period, Sh. Kusharg Jindal was only an employee and the appellant was a director of M/s. JBL as such the onus was on the appellant to explain the entries recorded in the software and not on the employee.

11. The AO also analyzed in detail the explanation furnished by the appellant with regard to the entries found recorded in Hazir Johri ledger accounts of appellant namely 'Vaibhavji' and 'Vaibhavji Capital' in paras 5.18 to 5.20. On the basis of the detailed analysis, the AO came to the conclusion that a sum of Rs.95,64,815/- is unexplained investment made by the appellant in gold and investment in M/s. JBL. Accordingly, the AO made addition of Rs.95,64,815/- u/s 69 r.w.s. 115BBE of the Act.

12. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the addition made by the AO.

13. Aggrieved, the assessee filed appeal before the ITAT.

14. During the hearing before us, the Id. AR argued that the Hazir Johri software has been found with Sh. Kusharg Jindal. The assessee was not aware of any such records maintained by Sh. Kusharg Jindal. Assessee was a stranger to such record. It was not in his knowledge at all. The assessee also never owned the correctness and the reliability of such records. It is on the basis of only such records that the inference of unexplained investment by the assessee has been drawn by the A.O. It is also very important to note that nowhere it is on record that Sh. Kusharg Jindal ever stated that the names recorded as Vaibhav Ji (capital) and Vaibhav Ji are of the assessee.

15. The Id. AR argued that the assessee specifically requested the A.O. for cross- examining Sh. Kusharg Jindal. This request has been noted down in the Assessment Order also at two places, at on Pg.18 in Para-4 and on Pg.19, in Para-5.17, The A.O. has rejected this request for the only reason that the assessee is also a director of Jindal therefore he is himself accountable for the same.

16. The Id. AR further argued that if any record is maintained by another director without the knowledge and without consent and without any information of other director, namely assessee here, the assessee cannot be held responsible and accountable for the same in the absence of cross-examination being allowed to him. It was also argued that, it is on record that Sh. Parul Ahluwalia and EktaSoni ever stated that the names recorded as Vaibhav Ji (capital) and Vaibhav Ji are of the assessee. The Id. AR relied on the judgment in the case of Andaman Timber Industries 281 CTR 241 (SC).

17. With regard to the additions made, the Id. AR submitted his explanation entry wise and argued that without prejudice since all the entries have been explained, no addition is called for.

18. On the other hand, the Id. DR relied on the order of the Id. CIT(A) and the order of the Assessing Officer.

19. Heard the arguments of both the parties and perused the material available on record.

20. The A.O. made addition for the following entries in the said Hazir Johri:

a	Vaibhav Ji	29.06.15	250	Cash	Unexplained cash
b	Vaibhav Ji	26.10.15	2900	Cash	Unexplained cash - paid against purchase of gold
c	Vaibkav Ji capital	15.04.15	25,00,000	Cash	Unexplained, the amt. paid thr. Abhishek Ji
d	Vaibhav Ji capital	15.04.15	40,00,000	Cash	Unexplained cash paid
e	Vaibhav Ji capital	28.05.15	20,00,000	Bank	Unexplained investment thr. Abhishek Jain. JBL has given credit to assessee on payment reed, from Abhishek Jain
f	Vaibhav Ji capital	14.06.15	6,25,000	01K.J 6.25 + 6.25	Unexplained investment of Rs.6.25 lac bal. Rs.6.25 lac paid by cheque
8	Vaibhav Ji capital	18.02.16	4,36,665	Cash	Unexplained cash payment
	Total		95,64,815		

21. Each entry is examined with respect to the explanation offered and the evidences on record.

15.04.2015 – Cash – Rs.25,00,000/-

- This transaction is reflected in the Hazir Johri Software.
- As per the AO, this is unexplained cash amount paid by Mr. Abhishek Jain to the assessee.

- Shri Abhishek Jain was also a shareholder having 8.33% shareholding in JBL for which he had paid an amount of Rs. 6.25 lacs as investment.
- Copy of accounts of Abhishek Jain vis-a-vis JBL and copy of ledger of Shikar Ji Jewellers vis-a-vis JBL revealed that Annexure A-1 reflects that this transaction is accounted for.
- The amount of Rs.25,00,000/- has been deposited in the bank and reflected in the bank statement.
- The same is also depicted on the page no. 22 of the Assessment Order which the AO has ignored.
- It is tabulated by the AO himself under "Vaibhav Ji Capital" (01.02.2015 to 28.08.2016).

28.05.2015 – Cash- Rs.20,00,000/-

- The AO held this amount as unexplained investment through Abhishek Jain, JBL has given credit to the assessee on payment received from Abhishek Jain.
- This amount has been deposited in the bank account on 28.05.2015 as per the page no. 22 of the Assessment Order which the AO has ignored.
- The amount of Rs.20,00,000/- has been deposited in the bank and reflected in the bank statement.

15.04.2015 – Cash- Rs.40,00,000/-

- The AO held this amount to be unexplained cash paid in the hands of the assessee.
- The same amount has been deposited in the bank account and considered in JBL as accommodation entry by the AO.

- Hence, the same amount cannot be taxed in the hands of the assessee as it has been already considered in the hands of the JBL.

14.02.2015 – Cash- Rs.6,25,000/-

- This amount has been paid by cheque and disclosed in the investment account.

18.02.2016 – Cash- Rs.4,36,665/-

- This amount has been reflected in the cash book.

22. Since, the amounts have been shown to be accounted and do not belong to the assessee , we hold that no addition on these heads can be confirmed. The appeal of the assessee is allowed.

ITA No. 9855/Del/2019: A.Y. 2017-18

Unexplained investment – Rs. 9,03,040/-:

23. The Assessing Officer made addition of Rs.9,03,040/- on account of transactions made on 09.05.2016 of Rs.6,01,240/- and on 10.05.2016 of Rs.3,01,620/-. The assessee explained about the entries that they belonged to the sale of gold in cash and duly accounted in the cash book and in the sales register of JBL. The amounts are reflected on 09.05.2016 of Rs.6,01,420/- and shown on the same day under the head "sale" of Rs.2,99,960/- and Rs.3,01,459/-. Similarly, the amount of Rs.3,01,620/- on account of cash on 10.05.2016 has been reflected in the books of JBL on the same date of an amount of Rs.3,00,967/- and Rs.652/- on account of labour charges. Thus,

the amount of Rs.3,01,620/- has been found to be reflected under the head "sale" in the regular books of JBL. Hence, no addition can be made in the hands of the assessee.

Salary – Rs.1,00,000/-:

24. Salary of Rs.1,00,000/- has been regularly paid from every month by cheque. To mention a few, an amount of Rs.1,00,000/- each has been paid and reflected in the books on 01.12.2015, 06.02.2016, 01.03.2016, 01.04.2016, 01.05.2016, 01.06.2016, 01.07.2016, 01.08.2016 & 01.09.2016 and also on 01.10.2016. Thereafter, there was no salary payment owing to termination of the employee. Hence, it was argued that the entry made on the date of 01.11.2015 was notional and no salary has been paid in cash as the employee has been terminated. Since, no evidence is available on record regarding salary payment in cash, no addition can be made on this account.

25. In the result, the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 03/01/2024.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR