

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

आ.अपी.सं / **ITA No.355/Hyd/2022**  
(निर्धारण वर्ष/Assessment Year: 2015-16)

Shri Syed Zeeshanuddin Hyderabad PAN:BQGPS0128A (Appellant)	Vs.	Asstt. C. I. T. Central Circle 2(2) Hyderabad (Respondent)
निर्धारित द्वारा/Assessee by:	Shri P. Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Shri K. Madhusudan, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	29/01/2024	
घोषणा की तारीख/Pronouncement:	31/01/2024	

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 14/06/2022 of the learned CIT (A)-12, Hyderabad, relating to A.Y.2015-16.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) in confirming the validity of assessment u/s 153A in absence of any incriminating material and thereby confirming the addition of Rs.12,02,000/- made by the Assessing Officer as unexplained expenditure by applying the provisions of section 115BBE of the I.T. Act.

3. Facts of the case, in brief, are that the assessee filed his original return of income on 29.03.2016 declaring total income of Rs.19,46,350/-. The case was processed u/s 143(1) on 16.07.2016. A search and seizure operation u/s 132 of the I.T. Act was conducted in the Red Rose Group of cases on 12.07.2018 and the case of the assessee was also covered. In response to the notice u/s 153A dated 23.01.2019, the assessee filed his return of income on 28.03.2019 admitting total income of Rs.19,46,350/-. Statutory notices u/s 143(2) and 142(1) were issued and served on the assessee calling for certain information in response to which the AR of the assessee appeared before the Assessing Officer and furnished the requisite information.

4. The Assessing Officer noted that during the course of search in the case of M/s. Kings Convention Centre, lease deed was found as per which the function hall was leased out to the assessee for a monthly rental of Rs.5,00,000/- from February 2015. Further, certain papers with lease rental account of Kings Convention Centre were also found and seized. As per the loose sheets the assessee was paying lease rentals by way of cheque as well as in cash. Initial lease rent of the function hall for the period from 01/02/2015 to 31/01/2016 was Rs.11,01,000/- p.m out of which Rs.5,00,000/- is to be paid by cheque and the balance of Rs.6,01,000/- is to be paid by cash. Further, on going through the loose sheets, it was evident that every year, there is an increase of 7% in Lease Rent for the cheque portion as well as cash. The assessee has admitted only the cheque portion in the ITR but has not admitted the cash portion. The Assessing Officer noted that for the period from 1-02-2015 to 31-03-2015 relevant to the AY 2015-16, the amount paid in cash by the assessee is Rs. 12,02,000/-. During the course of scrutiny, the assessee was

questioned as to why the said amount of Rs.12,02,000/- should not be brought to tax. The assessee in response to the same furnished the following reply:

*"Cash is paid for rent to Shanawaz for FY 2014-15 for Rs.10,00,000/- and not Rs.12,02,000/- as stated in the notice. The same (Rs.10.00 lakhs) is admitted by Mr. Shanawaz. Further, it is to bring to your kind notice that a detailed note on additional income offered in the group of Red Rose has been submitted on 17-02-2021. Copy of the note is enclosed."*

5. The assessee also enclosed a note on additional income. However, on going through the note, the Assessing Officer noted that no income has been admitted on account of payment of lease rentals. He observed that as per the material seized during the course of search in the Shanawaz group, there was clear evidence of an amount of Rs.5,00,000/- being paid by cheque and Rs.6,01,000/- by cash. Therefore, the Assessing Officer was of the opinion that the assessee failed to explain the sources for payment of Rs.12,02,000/- in cash. He further noted that during the subsequent assessment years 2016-17, 2017-18 & 2018-19 the assessee has admitted income on account of payment of cash on account of lease rentals based on the above working. In view of the same, the Assessing Officer made addition of Rs.12,02,000/- as unexplained expenditure and brought to tax the same by invoking the provisions of section 115BBE.

5. Before the learned CIT (A), the assessee apart from challenging the addition on merit challenged the validity of the order passed u/s 153A in absence of any incriminating material found during the course of search. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and dismissed the appeal both legally and factually by observing as under:

**7.3** I have carefully considered the submissions of the appellant, the order of the Assessing Officer, the evidence filed by the appellant's AR. Briefly, the facts are, in the case of M/s. Kings Convention Centre case, lease deed was found as per which the function hall was leased out to Mr. Syed Zeeshanuddin for a monthly rental of Rs.5,00,000/- from February 2015. Further, certain papers with lease rental account of Kings Convention Centre were found and seized. As per the loose sheets the Mr. Syed Zeeshanuddin was paying lease rentals by way of cheque as well as cash. Initial lease rent of the function hall for the period from 01/02/2015 to 31/01/2016 was Rs.11,01,000/- p.m. out of which Rs.5,00,000/- is to be paid by cheque and the balance of Rs.6,01,000/- is to be paid by cash. On going through the loose sheets, it is seen that every year, there is an increase of 7% in Lease Rent for the cheque portion as well as cash. The appellant has admitted only the cheque portion in the ITR and not admitting cash portion. For the period from 01-02-2015 to 31-03-2015 relevant to the AY 2015-16, the amount paid in cash by the assessee works out to Rs.12,02,000/-. During the course of scrutiny, the appellant was questioned as to why the said amount of Rs.12,02,000/- should not be brought to tax. The reasons for not admitting additional income were not explained by the AR. Accordingly, the AO has taxed this amount of Rs.12,02,000/- as per the provisions of section 115BBE of the Act. The appellant is aggrieved and is in appeal.

**7.4** During the course of appellate proceedings, the AR of the appellant submitted that expenses were incurred in the ordinary course of business and the AO erred in disallowing the same. It was also contended that the assessee was carrying an event management services and in lieu of that the assessee has incurred expenditure for the on-going working of the business activities and are incurred in the regular course of business operation. It was also stated that there was no incriminating evidence and the books of account were audited and no disallowance was called for. It was also argued that no notice against the original return was issued and hence it is a concluded assessment that cannot be re-assessed unless there is incriminating material. The AO also assailed taxing the addition u/s.115BBE of the Act.

**7.4.1** I have considered the submissions of the AR and the order of the AO. It is seen that the appellant has filed his return of income in response to the notice u/s.153A for the current year on 29.03.2019, admitting total income of Rs.19,46,350/-. During the course of search a lease deed and certain papers with lease rental account of M/s.King Convention Centre was found and seized. As per the loose sheets, the assessee was paying lease rental by way of cheque of Rs.5,00,000/- and the balance Rs.6,01,000/- by way of cash for one month. It was also noticed from the loose sheets that there was an increase of 7% in the lease rent for both cheque as well as cash portion. The assessee admitted cheque portion in the tax return but has not admitted the cash portion for the period 1-02-2015 to 31-03-2015 i.e, two months relevant to the current assessment year. The AO computed that unaccounted cash on account of lease deed amounting to Rs.12,02,000/- was paid by the assessee. On being asked the assessee mentioned that the rent paid was Rs.10 lakhs which was reflected in the ITR and not Rs.12,02,000/-. In the subsequent assessment years i.e., AY 2016-17, 2017-18 and 2018-19 on the same loose sheets the assessee has admitted additional income on account of cash payment

by way of lease rentals in the return filed u/s.153A of the Act. Once the assessee admitted the working in the lease rental account on seized papers found during search in subsequent years, there is no reason why the same should not be adopted in the current year. Therefore, the AO is right in bringing to tax, cash payment on account of lease rentals which was outside the books of account. Therefore, the addition made by the AO to the extent of Rs.12,02,000/- is **confirmed**.

**7.4.2** As regards the invocation Section 115BBE of the Act by the AO, it is seen that the provisions u/s.115BBE of the Act are attracted only when the total income includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D of the Act. The provisions of sections 115BBE of the Act are:

**115BBE(1).** Where the total income of an assessee -

a. includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

b. determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of-

i. the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

ii. the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

Notwithstanding anything contained in this Act, no deduction in respect of any Expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

On plain reading of Section 115BBE of the Act, it is seen that the said section is attracted when the total income includes any income referred to in Sections 68, 69, 69A, 69B, 69C or 69D in the return of income or determined as such by the Assessing Officer. In other words, there are two conditions when Section 115BBE is invoked. Firstly, return of income furnished should contain income in the nature of Sections 68, 69, 69A, 69B, 69C, 69D or secondly, the income is determined as deemed income under those sections by the AO during the assessment proceedings. Applying it to the facts of the present case, the AO has made an addition on account of unexplained expenditure and has invoked Section 115BBE of the Act. For invoking higher tax rate u/s.115BBE of the

Act it is incumbent to invoke the sections 68 to 69D and treat the income as deemed income under those sections. The additions does not automatically fall under the sections 68 to 69D unless specifically resorted to. Sections 68 to 69D deem certain unexplained cash credits, unexplained investment, unexplained money, bullion or jewellery or unexplained expenditure as income. One has to specifically state under which section the additional income falls and the reasons for doing so. Simply stating that the provisions of Section 115BBE are attracted on the income added by the AO would not suffice. The AO is required to make a case to bring the said addition under one of the sections of Chapter VI in order to invoke Section 115BBE(1)(b) of the Act. Since this was not done so, the addition was not covered under the provisions of Section 68, 69, 69A, 69B, 69C and 69D of the Act and therefore the provisions of Section 115BBE were not attracted.

Reliance is placed on the decision of **Hon'ble Chandigarh Tribunal in case of Bajaj Sons Ltd. Vs DCIT 128 taxmann 406, (24-05-2021)** in which the question of invoking the provision of section 115BBE of the Act on the surrendered income to cover any discrepancy and thereby accessing such income at higher rate of tax as against the normal rate of tax applicable to the business income was discussed. It was held that if no discrepancy is pointed by the AO, the provisions of sections 68, 69, 69A, 69B, 69C or 69D are not attracted to levy tax under section 115BBE of the Act. For ready reference, the operative portion of the ratio is reproduced below:

"We find that a separate surrender of Rs. 97.11 lacs has been made by Shri SB Bajaj Director of the assessee company on account of unexplained cash found during the search action. However, so far as the surrender of Rs. 15 lac to cover any discrepancy is concerned, the AO has not pointed out any unexplained credit in the books of account, any unexplained investment, any unexplained money, bullion or jewellery, any unexplained expenditure or any amount of loan repaid in the assessment order in this respect. Therefore, the provisions of Section 68, 69, 69A, 69B, 69C and 69D are not attracted on the surrendered amount of Rs. 15 lacs. The said amount of Rs. 15 lacs was offered in case any discrepancy is found in the books of account. However, in actual neither any unexplained investment nor any unexplained expenditure or otherwise any unexplained asset was found during the search action so far as the aforesaid surrender of Rs. 15 lacs was concerned. In these circumstances, the aforesaid surrender of Rs. 15 lacs can be said to have been offered to cover up the



No

discrepancies in respect of likely disallowances of claims, if any, relating to its business income.

9. In view of this, since the aforesaid surrender is not covered under the provisions of Section 68, 69, 69A, 69B, 69C and 69D, the provisions of Section 115BBE are not attracted in this case."

In view of the above reasons, the AO is directed to tax the amount of Rs.12,02,000/- at normal provisions of the IT Act. Accordingly, the grounds No. 5 to 13 of the appeal are **PARTLY ALLOWED**.

**8.0** In the result, the appeal of the appellant for the AY 2015-16 is **PARTLY ALLOWED**.

6. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee referring to the assessment order submitted that the assessee filed his original return of income on 29.03.2016 which was processed u/s 143(1) on 16.07.2016. A search and seizure operation was conducted in the case of the assessee on 12.07.2018 and no incriminating material was found and seized from the premises of the assessee. He submitted that in the case of the assessee the assessment was completed on the date of search i.e. on 12.07.2018 since the statutory period for issuance of notice u/s 143(2) had expired by that date. The documents which are the basis of addition in the hands of the assessee are found from the premises of M/s. Kings Convention Centre where the search took place on 25.10.2017. Since no incriminating material was found during the course of search from the premises of the assessee, therefore, in view of the decision of the Hon'ble Supreme Court in the case of PCIT v Abhisar Buildwell (P) Ltd reported in (2023) 150 Taxmann.com 257 (S.C), no addition can be made in the hands of the assessee.

8. In Another plank of his argument, the learned Counsel for the assessee submitted that the search took place in the case of M/s. Kings Convention Centre on 25.10.2017 during which copy of the lease deed and certain other papers were found and seized. Therefore, the provisions of section 153C could have been applied and the proceedings could have been completed u/s 153C and not u/s 153A. Referring to the decision of the Delhi Bench of the Tribunal in the case of ACIT vs. Atul Kumar Gupta reported in (2023) 152 Taxmann.com 99 (Del.Trib) order dated 17.02.2023, he submitted that the Tribunal in the said decision has held that where an addition has been made on the assessee u/s 153A assessment on the basis of documents found from a separate search from a 3<sup>rd</sup> party, assessment should have done u/s 153C and not u/s 153A. Accordingly, the addition was directed to be deleted.

9. Without prejudice to the above, the learned Counsel for the assessee submitted that the assessee is having sufficient income for making the alleged cash payment. He submitted that the assessee has declared income of Rs.23,65,430/- for A.Y 2013-14, Rs.48,09,960/- for A.Y 2014-15 and Rs.19,46,350/- for A.Y 2015-16. He submitted that since the assessee is having sufficient income, benefit of telescoping should be given to the assessee and under the circumstances, no addition could have been made.

10. The learned DR, on the other hand, submitted that no parallel proceedings could have been done since after the search took place in the case of M/s. Kings Convention Centre on 25.10.2017, a search took place in the premises of the assessee on 12.07.2018. Since the assessee in the instant case has not

explained the source of cash payment of Rs.12,02,000/- paid to M/s. Kings Convention Centre towards lease rent, the Assessing Officer has rightly made the addition and the learned CIT (A) has rightly confirmed the addition so made by the Assessing Officer. The learned DR filed a copy of the seized document containing the cash payment of Rs.12,02,000/- paid to M/s. Kings Convention Centre. He accordingly submitted that the order passed by the learned CIT (A) being in conformity with law should be upheld and the grounds raised by the assessee should be dismissed.

11. The learned Counsel for the assessee in his rejoinder referring to the details filed by the learned DR, drew the attention of the Bench to the relevant portion of the appraisal report according to which the action, if any, could have been taken in the hands of the assessee u/s 153C of the I.T. Act.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case filed his original return of income on 29.03.2016 declaring total income of Rs.19,46,350/-. The case was processed u/s 143(1) on 16.07.2016. The search took place in the case of the assessee on 12.7.2018. Thus, the period of issue of notice u/s 143(2) has expired by that time and thus it is a completed assessment when the search took place in the case of the assessee. It is also an admitted fact that the addition is based on certain papers found during the course of search in case of M/s. Kings Convention Centre on 25.10.2017 and no incriminating material whatsoever has been found from

the premises of the assessee on the date of search on 12.07.2018. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P) Ltd (Supra), no addition can be made in respect of a completed assessment in absence of any incriminating material. We find the Hon'ble Supreme Court in the above decision while agreeing with the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (2015) 61 taxmann.com 412 (Del.) and the decision of the Hon'ble Gujarat High Court in the case of PCIT v. Saumya Construction (2016) 387 ITR 529 and various other decisions concluded that:

*i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*i) all pending assessments/reassessments shall stand abated;*

*ii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

Therefore, in view of the decision of the Hon'ble Supreme Court cited (Supra), the addition cannot be made in the hands of the assessee in absence of any incriminating material found during the course of search.

13. Even otherwise also, the addition is based on the basis of certain documents found during the course of search in the case of M/s. Kings Convention Centre on 25.10.2017 which is much prior to the date of search in the case of the assessee. Therefore, the question that arises is as to whether the provision of section 153A or 153C would be applicable in the case of the assessee. We find an identical issue had come up before the Delhi Bench of the Tribunal in the case of ACIT vs. Atul Kumar Gupta (Supra) wherein it was held that no addition can be made on an assessee u/s 153A assessment on the basis of documents found from a separate search at third party. The assessment should have been done u/s 153C and not u/s 153A. The relevant observation of the Tribunal at para 26 of the order reads as under:

*“26. Upon careful consideration, we note that addition has been made on the assessee u/s 153A assessment on the basis of documents found from a separate search at Rajiv Gupta. Hence, the plea of the assessee is ITA No.1931/Del./2020 ITA No.1164/Del./2020 ITA Nos.205 & 206/Del/2021 quite correct that the assessment should have been done under section 153C and not under section 153A. Section 153C permits documents found from another search to be sent to the AO of that person after due satisfaction and then on the basis of those documents assessment u/s 153C can be done. In the present case, material found at the premises of Rajiv Gupta has been taken as if they are material found during search at the assessee, Atul Kumar Gupta, which is not at all correct. Hence, the very basis of addition is missing. The assessment has been made u/s 153A and not u/s 153C, and this has led to a fatal error in the assessment order which is not curable. Moreover, as rightly contended by the Id. Counsel of the assessee that the presumption u/s 132 (4A) cannot be extended to material found at somebody else place and de hors corroborating documents, these cannot be linked to the assessee. Furthermore, the assessee's plea that assessee's name is nowhere directly mentioned in these documents found at Rajiv Gupta place whereas it is mentioned as Dildar (Atul sir) which ipso facto cannot*

*mean the assessee. Hence, in the background of the elaborate submission of the assessee's counsel and discussion herein above, we set aside the order of the authorities below and delete the addition in this regard.*

14. Since admittedly, in the instant case also the very basis of addition is material found during the course of search in the case of M/s. Kings Convention Centre on 25.10.2017 which is a separate search and much prior to the date of search in the case of the assessee on 12.07.2018, therefore, the addition could have been made on the basis of proceedings u/s 153C and no addition could have been made in the case of a completed assessment especially when no incriminating material was found during the course of search. In this view of the matter, we hold that the addition made by the Assessing Officer u/s 153A in absence of any incriminating material found during the course of search is not in accordance with law and is liable to be deleted. We accordingly set aside the order of the learned CIT (A) and direct the Assessing Officer delete the addition. Since the assessee succeeds on these legal grounds, the grounds challenging the addition on merit are not being adjudicated.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 31<sup>st</sup> January, 2024

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 31<sup>st</sup> January, 2024

***Vinodan/sps***

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*By Order*