आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 559/Chd/2022
निर्धारण वर्ष / Assessment Year : 2018-19

The DCIT, CC-III, Ludhiana	बनाम	Shri Puran Chand 57, Royal City, Near Jalandhar Bye Pass Chowk, Ludhiana
स्थायी लेखा सं./PAN NO: ALAPK2720L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Pankaj Bhalla, C.A
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 30/01/2024
उदघोषणा की तारीख/Date of Pronouncement : 31/01/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Revenue against the order of the Ld. CIT(A)-5, Ludhiana dt. 12/05/2022 pertaining to Assessment Year 2018-19.

2. In the present appeal Revenue has raised the following grounds:

1. That the Ld. CIT(A) erred on facts and law, in deleting the addition of Rs. 67,50,000/- made by the Assessing Officer in respect of addition u/s 69A of the I.T. Act, 1961 on account of unexplained cash receipts recorded in the impounded documents.

2. That the Ld. CIT(A) ignored the facts that the documents were impounded at the business premises of the assessee during the course of survey proceedings.

3. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

3. Briefly the facts of the case are that survey operations were carried at the business premises of the assessee on 04.07.2017 and during the course of survey, various documents were impounded and page no. 7 of Annexure A-3 contains

the details of various cash entries of Rs. 67,50,000/- on one side and cheque on the other side. The AO reproduced the scanned copy of the said document in the assessment order and mentioned that during the survey, the assessee was asked to explain the entries in this document and in his statement dated 04.07.2017, the assessee stated that he did not know the nature of these entries and the same may be belonging to Sh. Darshan Lai Baweja (Laddu Uncle). It was also stated that these entries are not in the assessee's handwriting and he did not remember more than this about the entries. The document was also confronted to Sh. Arun Baweja S/o Sh. Darshan Lai Baweja and the AO reproduced his statement where he has submitted that the document was not found in his custody and he had nothing to do about these entries. The AO then refers to the reply of the assessee dated 22.02.2021 where the assessee submitted that it was done by Sh. Darshan Lai Baweja (Laddu) in assessee's office when assessee was not present in his office, and he has no/ any relation and knowledge about these transactions. But as per the AO, the assessee has not disclosed the nature of the transactions and source of the figures on the document found from his premises and refers to Section 292C as per which, it is presumed that the document found during the survey belongs to the assessee and contents of such documents are true. As per the AO, it is evident that the document contains details of receipts of Rs. 67,50,000/- which have not been explained by the assessee and accordingly the assessee was show-caused as to why this amount of Rs. 67,50,000/- should not be considered as unexplained money u/s 69A and added to the income.

4. In response, the assessee filed his reply dated 19.04.2021 wherein he reiterated about the entries in cash where different names are mentioned as well as entries in Cheque and mentioned that he knows only one name i.e. Darshan Lal Baweja (Laddu Uncle). It was also claimed that the assessee has co-relation whatsoever with these entries. In support of his claim, the assessee submitted an affidavit dated 18.04.2021 mentioning the same fact.

5. The reply was considered but not found acceptable to the AO. As per the AO, the document was found from the premises of the assessee and the assessee has not given specific details of the visitors who made the entries on notepad and had not given the details of the transactions mentioned in the document. As per the AO, the assessee has not given any documentary evidence in support of his submissions and provided only an affidavit which is self-serving document. As per the AO, the assessee is reluctant in accepting the content of the document and disclosing the details of the transactions noted on the document and concluded that the cash entries in the document are nothing but unexplained cash receipts of the assessee in Financial Year 2017-18 when the survey was conducted and the same shows that the assessee was the owner of the said money. Therefore, the amount of Rs. 67,50,000/- was considered as unexplained money u/s 69A and added to the income of the assessee.

6. Being aggrieved, the assessee carried the matter in appeal before the ld CIT(A). During the course of appellate proceedings, the Ld. AR submitted that the addition has been made by the AO on the basis of undated, unsigned rough loose sheet which was not written by the assessee. As per the Ld. AR, it is an uncorroborated document on which statement was recorded at the time of survey itself where the assessee stated that he does not know the nature of the entries and the entries are not in his handwriting. It is also argued by the Ld. AR that the document contains details/narration of some Cheque transactions and detailed bank statement of the assessee was furnished during the assessment but there is not a single entry of such amounts as alleged in the loose paper/assessment order and argued that, even if, extended period of 20 months is considered, there is no such debit or credit entries in any of the accounts. As per the Ld. AR, there is no merit in making the addition as unexplained money for the fact that no asset or valuable article was found during the course of survey. It was further mentioned that there are names of

four persons on the impounded document but assessee knows only one person and he is not even aware about other persons. It was also submitted that the document is not written by the assessee and handwriting is also not belonging to the assessee and none of the names belongs to the assessee. As per the Ld. AR, no addition can be made on the basis of undated, unsigned, uncorroborated loose papers containing rough jotting of figures which are not true in so far as case of the assessee is concerned, as there are no credit or debit transactions in any of the bank account of the assessee. The Ld. AR relied upon certain case laws in support of his contention. The Ld. AR further argued that no addition can be made on the basis of loose documents in the absence of corroborative evidence and the presumption u/s 292C is not applicable on the facts of the case and that the impugned document has no evidential value. It was also submitted that the contents of the affidavit has not been disproved by the AO and there is no contrary evidence against the affidavit of the assessee and the deponent has not been, cross-examined to prove the contents of the affidavit as false. It was also argued that when no real money has exchanged hands neither found in survey nor in any of the bank account of the assessee or in the shape of any asset or article, the addition made u/s 69A cannot be sustained in law. It was submitted that there is no corroborative evidence either directly or indirectly which proves any of the content of the impugned document.

7. The submissions so made and the contentions so advanced by the ld AR on behalf of the assessee were considered and found acceptable to the ld CIT(A). It was held by the ld CIT(A) that it is a fact that the document does not have a date, it is not in the handwriting of the assessee and neither signed by the assessee or anybody else, hence there is no basis with the AO to conclude that the document belongs to the Financial Year 2017-18 for making the addition in the Assessment Year 2018-19. Also, the name of the assessee is not appearing in the document and the correlation of the cheque transactions with the bank account of the assessee has not been established. The document

contains four names and none of the names belongs to the assessee then how it can be assessed in the hands of the assessee without any corroborative evidence. Also, it is not clear about the nature of the transactions mentioned in the document i.e. whether these are receipts or payments or taxable receipts belonging to the assessee. In the absence of all these ingredients, the arguments of the Ld. AR were found acceptable that no addition can be made in the hands of the assessee solely on the basis of these entries which are not in the name of the assessee, not in his handwriting, does not bear his signature, not clear whether these are receipts or payments and whether taxable receipts etc. The ld CIT(A) accordingly held that under the facts & circumstances of the case and in view of the submissions filed by the Ld. AR and the statement of the assessee recorded at the time of survey and the submissions filed during the assessment & appellate proceedings, the addition of Rs. 67,50,000/- was not found sustainable and the same was directed to be deleted.

8. Against the said findings and direction of the Ld. CIT(A), the Revenue is in appeal before us.

9. During the course of hearing, the Ld. DR relied on the orders and the findings of the AO where as the Ld. AR relied on the findings of the Ld. CIT(A) as well as ratio laid down in following decisions:

- *Shailesh P. Gonawala Vs. The ACIT Central Circle-4, Ahmedabad I.T(ss). A. No. 110/Ahd/2012 dated 05.02 2014*

Merely on the basin of that some figure is written on a piece of paper seized from the premises of the assessee. in our considered view would not be sufficient to make the addition of that figure in the income of the assessee as unexplained investment, assuming that the assessee had written 8 a ores in place of Rs.80 lacs could the AO make the addition of Rs 8 crores as the 'on-money' paid for the purchase of land We are of the view that the AO should have placed material on record in support of his contention that the figure represented is not an estimation but it is actual payment of the 'on-money' since the market value of the land in the particular area is higher than the assessee has reflected in fns books of accounts. Moreover, neither the AO not the Id.CIT(A) has treated this sum as receipt or expenditure made on any other account In the absence of the same, the addition made by the AO and confirmed by the Id CIT(A) is not justified

- *Shri Harvinder Pal Singla in ITA No. 456/Chd/2014*

The Assessing Officer, considering the seized papers, interpreted the seized document in his own way holding it to be regarding purchase of properly by assessee and others However no such fact has been mentioned in the seized paper because the seized paper did not contain mentioning of any purchase of property by assessee and others No evidence of actual investment in any property was found during the course of search The so called purchase of properly by assessee or others did not found exist The seized paper contain on the top of it year 2003-04 Therefore, seized paper could not be considered in assessment year 2005-06 No area or location of any property purchased by assessee or making any investment therein have been found on the seized paper Even on second issue, the word Chandigarh Flat has been mentioned but without giving any detail or location of the property Therefore, from the seized paper it could ascertained whether not be assessee purchased any such property or mode any investment in any of the properly It, therefore, appears that Assessing Officer merely assumed from the seized paper that assessee and others have purchased some other property or made investment therein. The Assessing Officer, thus, made addition merely on presumption without co-relating the alleged transaction of purchase of property in any document/agreement or assets or Sale Deed etc The ld CIT(Appeals) also observed m his findings that location of the purchased property have not been specified in the seized paper

- *ITAT Jaipur Bench in the case of ACIT vs. Ganpati Developers ITA No. 1348/JP/2018 CO No. 08/JP/2019*

Thus, it is clear that the A O 's examination of the Annexure AS-2 was very casual and not based either on the possible further enquiries oi workings or on the appreciation of statements and change in the status of several flats & owners. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition

- *Pramod Pandey v. Astt. CIT (IT Appeal No. 4295 (Delhi) of 2012, dated 06,12.2013)*

17 We also note that there is no mention of the assessee's name in the particulars of diary as contained hereinabove Though there is mention of the farm house belonging to the assessee, there is no mention of the total price paid etc From the jottings as above, Assessing Officer has inferred that assessee has paid Rs. 35 lacs over and above the disclosed consideration to the seller Now we find that the seller has denied having taken any money over and above the disclosed sale consideration It is also not the case that seized material were in the hand writing of the assessee or the seller oi were seized from the premises of the seller Even the total price paid for the property is not mentioned in the seized material The jottings in the diary by no stretch of imagination can be treated as conclusive proof on money transactions by the assessee It is not the case that the circle rate of the value as per stamp registration authorities of the impugned property is more than

what has been disclosed. There is no case that any part of the jottings in the diary has been corroborated from any other findings Hence, in the background, we find that presumption u/s 132(4A)/292C of the Act cannot be taken against the assessee Thus, from the facts and circumstances of the case we find that addition of on money transaction in this case is not sustainable

18. In this regard we place reliance of the Honhle Apex Court decision in the case of K P Vargheser vs 110 and Ernakula and Another 131 /IR 587 (SC) wherein it has been livid that the burden of proving is that of Revenue when there is allegation of understatement on concealment in the consideration shown. Here v/e find that revenue has failed to discharge the burden cast on it

- *Hon'ble High Court of Delhi, CIT vs. Parveen Juneja (IT Appeal No. 57) of 2017, dated 14.07.2017*

5. The IT AT m the impugned order noted that the said document "does not indicate if it pertains to the assessee nor the address and location of the property is mentioned therein nor such property has been located by the AO during the assessment proceedings. The AO has also not brought on record any forensic evidence to prove the handwriting of the loose paper relied upon by him to make the addition, which is exclusively made on the basis of suspicion and guesswork Even no corroborative material has brought on record-by the AO to substantiate the addition nor the CIT(A) has called for any remand report seeking corroborative evidence, if any "

6. In the considered view of the Court, the addition of Rs 49 lakhs to the returned income of the Assessee was based on surmises and conjectures and that too on the basis of a single document without making any further enquiry. No attempt was made by the AO to find out if in fact it constituted the construction expenses of any project of the aforementioned company of which the Assessee was a director.

Common Cause (A Registered society) vs. Union ot India [2017] 77 taxrnann.com 245/245

Loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value I he entire prosecution based upon such entries which led to the investigation was quashed by this Court [Para 20]

Sohan Lai Gupta vs. CIT (1958) 33 ITR 786 at 1 791 (All)

Shri G. S. Pathak contended rightly before us that the Tribunal was not entitled to reject the affidavit on this point on such a ground After the assessee had filed the affidavit, he was neither cross-examined on that point nor was he called upon to produce any documentary evidence Consequently, the assessee was entitled to assume that the Income-tax authorities were satisfied with the affidavit as sufficient proof on this point If it was not to be accepted as a sufficient proof either by the Income-tax Officer or by the Appellate Assistant Commissioner of income-lax or by the Income-tax Appellate Tribunal, the assessee should have been called upon to produce documentary evidence, or, at least he should have been cross-examined to find out how far his assertions in the affidavit were

correct In this connection, Shri Pathak has drawn our attention to a decision of the Supreme Court of India in Mehta Pankh and Co v. Commissioner of Income-tax Bombay [1956J 3011H 131 In that case, their Lordships of the Supreme Court, in very similar circumstances, held that the rejection of an affidavit filed by an assessee was not justified unless the assessee had either been cross-examined or called upon to produce documentary evidence in support of the affidavit sworn by him Their Lordships held "No further documents or vouchers in relation to those entries were called for, nor was the preserve of the deponents of the three affidavits considered necessary by cither party I he appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner not the Income-tax Officer who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in then affidavits Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits "

10. We have heard the rival contentions and purused the material available on record. The basis of addition by the AO is a document found at the business premises of the assessee during the course of survey. The statement of the assessee was recorded during the course of survey and the assessee has denied the knowledge of any of the contents so mentioned in the said document which contains cash entries – name of the person and corresponding amount and cheque payment – name of the person in terms of first letter of the name and corresponding amount. During the course of assessment proceedings, the assessee reiterated its submissions and in support, also filed an affidavit as well as copy of the bank statement. The ld CIT(A) has returned a finding that the document does not have a date, it is not in the handwriting of the assessee, not signed by the assessee or anybody else, the name of the assessee is not appearing anywhere in the document, the correlation of the cheque transactions with the bank account of the assessee has not been established, the document contains four names and none of the names belongs to the assessee, the nature of the transactions mentioned in the document as to whether these are receipts or payments and that it is pertaining to which year is also not clear and therefore, basis the said document in absence of any corroboration, no addition can be made in the hands of the assessee for the impugned assessment year. During the course of hearing, the ld DR could not

rebut the said factual findings as so recorded by the ld CIT(A). We have also gone through the said document and fully agree with the findings of the ld CIT(A) that basis the said document which is a non-speaking document and merely basis the fact that the same has been found from the premises of the assessee and in absence of any corroboration thereof, the same cannot be made the basis of addition towards unexplained money u/s 69A of the Act. The various authorities cited at the Bar support the case of the assessee. In the result, we upheld the findings of the ld CIT(A) and the grounds of appeal taken by the Revenue are dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31/01/2024

Sd/- Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG
Date: 31/01/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar