

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2830/Del/2022
(Assessment Year: 2018-19)

DCIT, Central Circle-19, New Delhi (Appellant) PAN:AAIPP3208R	Vs. Amarjeet Singh, S-138, Greater Kailash, Partt-II, Delhi (Respondent)
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Assessee by :	Shri R. S. singhvi, Adv Shri Satyajeet Goel, Adv
Revenue by:	Shri Safarul Haque Tanweer, CIT DR
Date of Hearing	09/11/2023
Date of pronouncement	07/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2830/Del/2022 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 37/10407/2017-18, A.Y. 2018-19 dated 21.09.2022 against the order of assessment passed u/s 153A read with Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.07.2021 by the Assessing Officer, DCIT, Central Circle-19, New Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal:-

"1) The Ld. CIT(A) has erred on facts and in law, in not considering the assessee's admission on oath u/s 132(4) of the IT. Act, 1961 as evidence on the basis of which unaccounted income of the assessee has been assessed.

2) The Ld. CIT(A) has erred on facts and in law, in not considering the assessee's admission on oath as evidence in conjunction with a seized document found during the search, which points to application of unaccounted funds for construction of the same immovable property.

3) The Ld. CIT(A) has erred in ignoring the fact, that, the assessee in his statement recorded u/s 132(4) of the I.T. Act, 1961 had accepted the ratios of payments by cheque and cash, which was further corroborated by the evidences found.

4) The Ld. CIT(A) has erred on facts and in law in restricting the addition on account of unexplained money u/s 69C of the IT Act, 1961 from Rs. 3,50,00,000/- to Rs. 16,26,000/- by not considering the statement of Sh. Amarjeet Singh which was recorded on oath u/s 132(4) of the Act?

5)(a) The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves to add, alter or amend any/all of the ground of appeal before or during the course of the hearing of the appeal."

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and had filed his regular return of income for the Asst Year 2018-19 prior to the date of search u/s 139 of the Act. The assessee is working as partner in the partnership firm M/s Punihani International which is engaged in the business of manufacture and export of leather products. A search and seizure action u/s 132 of the Act was carried out in the case of the assessee as part of search of Punihani group at residential and business premises on 4.1.2019 and proceedings u/s 153A of the Act were initiated on the assessee vide issuance of notice dated 13.4.2020. The search assessment u/s 153A read with section 143(3) of the Act dated 16.7.2021 was framed wherein an addition of Rs 3,50,00,000/- was added u/s 69C of the Act on the ground that the assessee had incurred undisclosed expenditure in construction of farm house situated at F-5, Radhey Mohan Drive, Gadaipur, New Delhi. This addition was made by the Id. AO merely on the basis of statement of the assessee u/s 132(4) of the Act recorded by the search party at the time of search on 4.1.2019, which is not supported by any corroborative material found during the search. Admittedly, there was absolutely no material that was found during the course of search indicating any outflow of funds to the tune of Rs 3.50 crores from the assessee towards construction of farm house. During the course of search, a the search party found a slip of paper from the phone of the assessee regarding expenses incurred on construction of farm house of the assessee. The source of payment

for construction of farm house was out of disclosed source of income of the assessee. In the statement recorded u/s 132(4) of the Act, the assessee in response to query raised replied that an expenditure of Rs 5.50 crores were incurred on construction of the farm house and the source of such expenditure was Rs 2 crores from fixed deposits and rest from his firm M/s Punihani International. The statement given by the assessee was subsequently retracted on 8.8.2019 before the investigation wing . For the sake of convenience, the retraction statement dated 8.8.2019 placed on record by the Id. AR is reproduced below:-

"Date 08th August 2019

*Assistant Director of Income Tax (Inv.)
Unit 1(4), C Block,
Room No 119, 1st Floor,
Civic Centre,
New Delhi*

Subject: Explanation regarding certain points of my statement recorded during the course of search on 04/01/2019 and 05/01/2019

Reg: Punihani Group

Dear Sir,

- 1. Search action was conducted at the various business as well as residential premises of the self along with family members which lasted for more than three days at a stretch.*
- 2. It is on record that the assessee group rendered due assistance and co-operation to the search party. The entire set of books of account and other relevant documents pertaining to the group were duly verified. The search team had checked all the documents and verified the same.*
- 3. Besides the above, my statement was also recorded during such action at my residential premises situated at F-5, Radhey Mohan Drive, Mehrauli, New Delhi. It is clarified to the search party that I am a business person and being a graduate, I always restricted my hands only over buyer's Interaction and production in leather business rather than indulging in finance and accounts. Though I had practically no knowledge of the finance or accounts, yet the*

search team forced me to render certain statement during the course of their action.

4. In fact, during the course of recording of my statement I got surrounded by a number departmental personnel. The presence of security forces at our premises was intimidating too. Considerable pressure and inconvenience were being caused to all the family members including ladies and children due to their presence for such enormous period of time. Under such continued pressure and scared of such action of the Department which was faced by us for the first time, I thought of admitting whatever was being narrated to me for the simple reason that they should vacate our residential premises at the earliest. Being under severe mental agony and pressure, I admitted what suited the search party upfront and all the subsequent questions like which suited their convenience without verifying the actual facts or referring the same to the books of account.

5. It will be evident that during the course of such action of the Department, I wasn't allowed to refer my bank statements or books of account. It was also not possible to talk to our CA who was critically ill and unfortunately passed away in last week of July 2019. During post search proceedings I made efforts to recollect my financial and wealth details. Our CA SK Gupta was not in a position to explain anything as he was hospitalized due to severe illness from past 5-6 months,

6. I was mostly guided by our late CA for financial and business advices. Unaware of accounting technicalities and without handy access to my financial details I may have referred inadvertent figure from my blurred memories during the recording of my statement at the time of search. I was recently provided with a copy of the impugned statement and was shocked to peruse the details when compared with facts on record. Therefore, I would like to shed light on few of the issues, whereupon I believe the department must be made aware about the true and correct aspects of such transactions.

7. In respect of property no 203B, Magnolias, Gurgram it is submitted that:

a. The said property was purchased by me from M/s DLF Ltd at a price of Rs. 2.72 crore and sale deed for the same was registered with Sub Registrar, Gurgaon on 19/06/2015.

b. After a month, the said property was sold to Mrs. Tarini Sharma at a consideration of Rs. 7 crores and sale deed for the same was registered with Sub Registrar, Gurgaon on 21/07/2015 and the entire sale consideration was received through banking channels,

c. The capital gain on such sale is duly disclosed in the income tax return filed by me for AY 2016-17.

2) *In respect to property situated at F-5, Radhey Mohan Drive, Delhi, I wish to state that I was only having minor undivided share in the said property. All the major expenses for construction of said property were incurred by my brothers i.e. Tarlok Singh Punihani and Narinder Singh Punihani or the firm of which I am a partner i.e. Punihani International, which amount was later charged to our drawings.*

3) *In respect of image found from my mobile phone, I wish to state that the said image was sent by Mr. Sumit Arora (Dada Partners) showing some rough calculation of bills amount to be raised by them for some construction work done by them at F-5, Radhey Mohan Drive. In the said rough working, Mr Sumi Arora falsely claimed that they had done extra work in relation to F-5, Radhey Mohan Drive, expenses of which were allegedly incurred in cash from the payments provided by us by way of cheque to Mr. Sumit and therefore Mr. Sumit was claiming reimbursement of all such cash expenses which was neither approved by me or by my brothers. The said bogus claims were disputed by us and eventually the same were withdrawn with mutual consent. Therefore, nothing was factually paid over and above the amount recorded in the books of account.*

4) *In view of the facts as discussed above regarding the impugned questions and answers of my statement, no adverse view may kindly be taken on the basis of the answers to the various questions posed at that time, the narrative of which was dictated and noted by the search party itself.*

5) *As a matter of fact, neither any other incriminating documents nor any other evidences were either found or seized which could have established the incongruency and inconsistency which were there in my statement recorded under extreme stress.*

6) *In nutshell, the submission that the statement as given by me on the date of search under pressure and without having access to my records cannot be relied upon as it was based on erroneous misconception of facts and as such, it is prayed that the same may kindly be examined on merits and no adverse inference shall be drawn. Therefore, the incongruency and Inconsistency existing in my statement as recorded at the time of search has to be expunged and no credence should be paid thereon.*

Thanking You,

Amarjeet Singh Punihani"

4. The search party also enquired about a slip extracted from the mobile phone of the assessee wherein it was shown that the assessee has paid an aggregate sum of Rs 32 lacs to Mr Sumit Arora out of which Rs 16.26 lacs was

paid in cash without deduction of tax. The assessee replied that the payment made to Dada Partners was 50% by cheque and 50% through cash. This sum of Rs 16.26 lacs paid in cash was added by the Id. CIT(A) in the hands of the assessee, against which there was no appeal preferred by the assessee before us.

5. It was submitted that in the panchanama drawn pursuant to the search, there was no reference to any incriminating material or evidence of undisclosed income. Even in response to RTI application the Id. AO had not provided any details of incriminating material for framing addition of Rs 3.50 crores in the hands of the assessee. It is not in dispute before us that the addition of Rs 3.50 crores was solely made based on the statement given by the assessee u/s 132(4) of the Act without any support from any corroborative material found during the course of search. This statement was later retracted by the assessee before the investigation wing itself though after a gap of 8 months. In the said retraction statement, the assessee had also explained the reason for the delayed retraction that his chartered accountant was severely sick and eventually died in July 2019 and that the retraction was given in Aug 2019. Hence the assessee had satisfactorily explained the delay in retracting the statement in the instant case. In our considered opinion, the Id. AO ought to have considered the retraction statement in the aforesaid factual context in the interest of justice. Further it was submitted that the assessee is only one of the co-owners of the said farm house which is in dispute before us. Even this fact was not considered by the Id. AO while concluding that an alleged payment of Rs 3.50 crores was incurred for construction of the same. There is absolutely no iota of evidence to prove that a payment of Rs 3.50 crores was even incurred towards construction and that the same were paid either by the assessee or by the other co-owners. When there is no incurrence of expenditure of Rs 3.50 crores by the assessee, how can the assessee be expected to prove the fact that he had not incurred the same. How can the assessee be expected to prove the negative? The only seized material was in respect of payment of Rs 32 lacs which has been accepted by the assessee

pursuant to the order of the Id. CIT(A) by not preferring further appeal. Even otherwise, when there is no seized material found during the course of search evidencing the payment of Rs 3.50 crores for construction of farm house, why at all the assessee should voluntarily come forward to surrender the income in his statement recorded u/s 132(4) of the Act. Looking the entire circumstances, the reason adduced by the assessee in the retraction statement that the statement u/s 132(4) of the Act was not made voluntarily requires to be accepted.

6. In view of the aforesaid observations, we hold that the Id. CIT(A) was duly justified in granting relief to the assessee by deleting the addition of Rs 3.50 crores, on which we do not find any infirmity. Accordingly, the grounds raised by the revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07/02/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 07/02/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi