

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

**BEFORE,
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1331/Del/2022
(ASSESSMENT YEAR-2018-19)**

DCIT Central Circle-20 New Delhi	Vs.	Ritesh Mittal 443, Deepali Enclave Pitam Pura, North West Delhi, Delhi-110 034 PAN-AAXPM 7144G
(Appellant)		(Respondent)

Assessee by	Sh. Amol Sinha, Advocate
Respondent by	Ms. Sapna Bhatia, CIT-DR

Date of Hearing	08/02/2024
Date of Pronouncement	16/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-27, New Delhi, ["Ld. CIT(A)", for short], dated 22/03/2022 for Assessment Year 2018-19. The following grounds of appeal taken by the assessee:

"1. The Ld. CIT(A) has erred on facts and in law in restricting the addition of Rs.14,83,18,788 to Rs.4,75,878/- on account of unexplained money u/s 69 of the Act without considering the fact that the same remained unexplained in absence of any supporting documents.

2. *The Ld. CIT(A) has erred on facts and in law in holding that transactions found from the mobile phones of the assessee pertain to previous years i.e. FY 2004-05 or FY 2005-06, without appreciating the fact that the assessee had not filed any documentary evidence regarding the same.*

3. *(a) The Order of the Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.*

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

2. The brief facts of the case are that a search & seizure and survey operation u/s 132/133A of the Income Tax Act, 1961 was conducted on 19/12/2017 in the case of M/s PAN Group of cases. The Assessee's residential premises were also covered u/s 132(1) of the Income Tax Act. An assessment came to be passed u/s 143(3) r.w.s 153A of the Act on 30/12/2019 by making addition of Rs.14,94,27,518/- u/s 69A r.w.s 115BBE of the Act.

3. Aggrieved by the assessment order dated 30/12/2019, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 22/03/2022 partly allowed the appeal by restricting the addition of Rs.14,83,80,778 to Rs.4,75,878/- made on account of unexplained money u/s 69A of the Act.

4. Aggrieved by the order of the Ld. CIT(A) dated 22/03/2022, the Department of Revenue preferred the preferred the present appeal on the grounds mentioned above.

5. The Ld. DR submitted that the Ld. CIT(A) has committed error in restricting the addition of Rs.14,83,18,788 to Rs.4,75,878/- which was made on account of unexplained money u/s 69A of the Act without considering the fact that the same was remained unexplained in the absence of any supporting documents. Further submitted that the Ld. CIT(A) committed error in holding that the transaction found from the mobile phones of the assessee are pertaining to previous years i.e. FY 2004-05 or FY 2005-06, without appreciating the fact that the assessee had not filed any documentary evidence regarding the same. Thus, sought for intervention by the Tribunal.

6. Per contra, the Ld. AR submitted that all the images found in the I-phones of the assessee have been verified and the transactions pertaining to FY 2004-05 or 2005-06 have rightly been deleted by the Ld. CIT(A), which requires no interference at the hands of the Tribunal.

7. We have heard the parties and perused the materials available on record. During the course of search proceedings, the images from I-phone of the assessee were imaged, which demonstrated the transactions of the assessee with various parties totaling to Rs.15,13,63,104/-. The assessee was asked to explain the each and every images with documentary evidence. The assessee claimed to have provided the details only 3 days prior to the date on which the matter would become barred by limitation. The details given by the assessee was perused and on perusal of the reconciliation provided by the assessee, the AO found that an amount of Rs.14,83,18,788/- was remained unexplained. During the appellate proceedings, the assessee contended that most of the images pertaining to FY 2004-05 and 2005-06, some of them are calculation of customs duty on import, to expenses incurred on foreign tour by family of the Assessee etc and sought for deletion of the addition. The each and every image explained by the assessee has been examined by the Ld. CIT(A) and the Ld. CIT(A) made remarks which reproduced as under:-

No.	Image	Amount	Explanation given by Appellant	Remarks
11		18,99,031	<p>In this regard it is submitted that the Image No. 11 contains calculation of custom duty on import of Maize Corn Yellow popcorn.</p> <p>The present image was called upon from clearing house agent for understanding the total duty payable on import of goods. This extract of bill of entry do not pertain to the appellant group and no additions should have been made by Ld AO on the basis of the same.</p> <p>The appellant duly furnished copies of bill of entry and invoices for import made by M/s Parmanand & Sons Food Products Pvt. Ltd. (Pg. 89-112. PB).</p>	Contention of the appellant is found to be correct. This image is a calculation of Import duty on import of Maize Corn Yellow popcorn. At the bottom of the image it is clearly mentioned that duty payable is Rs. 9,78,001/-. Therefore addition on this account is deleted.
12		4,60,400	<p>That the image no. 12, 16 & 74 relates to expenses incurred on a foreign tour by the family of appellant and some of his friends.</p> <p>Image No. 12 contain details of car and hotel expenses whereas image no. 16 contains details of these expenses as well as other expenses incurred on the trip. As evident from the perusal of Image No. 16 there were 3 families in the trip which comprised of 11 persons. The total expenses incurred on the trip aggregated to Rs. 10,97,400/-.</p> <p>The expenses were further sub divided amongst three families and the division of expenses is appearing on Image No. 74. Thus, as evident the expenses attributable to the appellant were only Rs. 3,70,278/-; however, the Ld. AO in ignorance of these facts has made additions of all amounts appearing on these images which are not tenable under the law.</p> <p>These expenses were incurred out of regular income of the family members of appellant which was duly declared in the income tax returns filed.</p>	Contention of the appellant is found to be correct. Expenses attributable to the appellant comes to Rs. 3,70,278/- only for which appellant has not provided source of these expenses. His reply that these expenses were incurred out of regular income of the family members of appellant is very general in nature and can not be accepted. Therefore, addition on account of image number 12, 16 & 74 is restricted to Rs 3,70,278/-.
16	10,97,600			
74	3,70,278			
23		41,26,166	<p>At the very outset it is explained that these details were written by Late Sh. K. K. Mittal; father of the appellant and the appellant is unaware about the facts figures appearing in these images.</p> <p>However, as evident from the perusal of dates appearing on these images these documents and figures pertains to FY. 2005-06 and are not at all related to the year under consideration or the block period covered under search action. Thus, no additions could have been made by Id. AO on the basis of these additions.</p>	Contention of the appellant is found to be correct. These images pertain ta FY 2005-06. Date mentioned on the image is 31.03.2006 . Therefore addition on this account is deleted.
24	50,41,985			
26	14,16,267			
25		18,10,800	<p>That these images contain similar details and are thus, being explained together.</p> <p>These details were also written by Late Sh. K.K. Mittal.</p> <p>These images contain names of Sh. Ritesh</p>	Contention of the appellant in found to be correct. These images are in some hand writing as of image number 23, 24 & 26 and pertain to
27	47,00,000			
35	2,00,000			

		<p>Mittal Sh. Devesh Mittal, Smt. Kamlesh Mittal, Smt. Shikha Mittal, Khushi and Isaan and certain transactions entered into by them.</p> <p>These images also didn't pertain to the block period and thus, no additions could have been made by Ld. AO on the basis of these additions.</p> <p>As evident from perusal of Image No. 27 & 35 that in front of transactions there is mention of name "Gupta me (Hindi word)". M/s Gupto Industries was a partnership firm which existed till 30/06/2006 only and was taken over as a going concern by M/s Parmanand and Sons Food Products Pvt. Ltd. A copy of dissolution deed is enclosed.</p> <p>Thus, as evident the transactions appearing on these images were executed before 30/06/2006 and are not executed during the year under consideration.</p> <p>Further, as evident from the perusal of Page 5 of the assessment order, the Ld. AO had not mentioned the years in respect of these images.</p> <p>The Ld. AO ignored this vital fact and had made additions to the income of the appellant.</p>	FY 2005-06 Therefore addition on this account is deleted.
34	60,27,267	<p>That the image No. 34 contain details of transaction of Sh. Ritesh Mittal, Sh. Devesh Mittal and Smt. Saroj Mittal for F.Y. 2004-05 and the image No. 28 contains similar details for F.Y. 2005-06.</p> <p>It is pertinent to mention here that M/s Parmanand & Sons Food Products Pvt. Ltd was incorporated during F.Y. 2006-07 and all the pre-existing business of the assessee group was merged in this company which now forms the recognition of the group. Late Sh. K. K. Mittal might have made these calculations for his knowledge.</p> <p>These images also do not pertain to the block period covered by present search action and thus, the additions made by Ld. AO to the income of the appellant on the basis of these images deserves to be deleted and may please be deleted.</p> <p>It is not out of place to mention here that the closing balances appearing on Image No. 34 are carried forward to Image No 28. However, the Ld. AO while making additions have made additions in respect of opening balances as well despite the fact that these balances were also considered on Page No. 34.</p>	Contention of the appellant is found to be correct. These images pertain to FY 2004-05 Date mentioned on the image is 01.04.2005. Therefore addition on this account is deleted.
28	86,37,336		
33	17471359	<p>That the image No. 33 pertains to F.Y. 2004-05 and image No. 36 & 29 pertains to F.Y. 2005-06. These images contain transactions in the names of Smt. Kamlesh Mittal, Smt. Shikha Mittal, Khushi, Isaan, Agrim & Aashi. It is</p>	Contention of the appellant is found to be correct. These images pertain to FY 2004-05 & 2005-06. Period mentioned on image number 33 is 04-05 and date
36	18223182		
29	9571385		

		<p>pertinent to mention here that M/s Parmanand & Sons Food Products Pvt. Ltd. was incorporated during F.Y. 2006-07 and all the pre-existing business of the assessee group was merged in this company which now forms the recognition of the group. Late Sh. K. K. Mittal might have made these calculations for his knowledge.</p> <p>These images also do not pertain to the block period covered by present search action and thus, the additions made by Ld. AO to the income of the appellant on the basis of these images deserves to be deleted and may please be deleted.</p> <p>It is not out of place to mention here that the closing balances appearing on Image No. 33 are carried forward to Image No. 36 and 29. However, the Ld. AO while making additions have made additions in respect of opening balances as well despite the fact that these balances were also considered on Page Ne 33.</p>	<p>mentioned on the image number 29 & 36 is 01.04.2006 (balance carried forward). Therefore addition on this account is deleted.</p>
30	37,00,000	<p>That these pages contain certain transactions entered into by Late Sh. K. K. Mittal. These transactions also do not pertain to the block period and as evident from the perusal of assessment order, the Ld AO has not enumerated the years to which these images pertain in the notices issued as well as in the assessment order.</p> <p>It was categorically submitted during the course of assessment proceedings that these transactions do not relate to the block period and no additions shall be made on the basis of the same. However, the Ld. AO has ignored the submissions of the appellant.</p> <p>It is also pertinent to mention here that the Image No. 31 contains reference of Gupta Industries. Further, the image at S. No. 31 is in continuation of image No. 30, image at S. No. 38 is in continuation of image No. 37 and the closing balances appearing on Page 30 and 38 are appearing on Page 31 and 37 respectively. However, the Ld. AO has made additions in respect of all Images separately.</p>	<p>Contention of the appellant is found to be correct Image number 31 is in continuation of image number 30 as it includes the balance of Rs. 37,00,000/- of image number 30. On image number 30, it is clearly mentioned that this image pertain to KK. In PAN Group K.K. is the abbreviation for Krishon Kumar (member of the group: Assessed separately)</p> <p>Similarly image number 37 is the continuation of image number 38 and it also mentions the name KK. Moreover, these images pertain FY 2004-05 as period mentioned is 04-05. Therefore addition on this account is deleted.</p>
31	78,43,048		
37	1,78,20,000		
38	1,28,66,000		
32	69,00,000		
39	1,40,87,276	<p>That these images also contain details of certain transactions entered into by Late Sh. K. K. Mittal and these transactions also do not pertain to the block period. The Ld. AO has not enumerated the years to which these images pertain in the notices issued as well as in the assessment order. The Image at S. No. 39 also contains reference of Gupta Industries</p> <p>It is also submitted that these images at 5. No. 30, 31, 37, 38, 32 & 39 appears to be containing overlapping data and can only be termed as dumb documents on the basis of which no additions deserve to be made.</p>	<p>Contention of the appellant is found to be correct. Image number 32 clearly mentions that this image pertain to K.K In PAN Group K.K. is the abbreviation for Krishan Kumar (member of the group Assessed separately.) Similarly mage number 39 also mentions the name G.I. (abbreviation for Gupta industries). Mureover, these images appear to pertain to FY 2004-05/2005-06. Therefore addition on this account is deleted.</p>

66	10,77,344	That the appellant purchased Creta car during the year under consideration and before purchasing the same sought quotation of Dzire as well. The Dzire Car whose quotation is appearing at Image No. 66 was not purchased by the appellant and the creta car whose quotation is appearing at Image No. 91 was purchased by the appellant.	Contention of the appellant is found to be correct. Both these images are estimations for purchase of car. One is of Dezire and other is of Creta. Appellant has already provided the invoice of purchase of Creta car and that should be taken as the real price
91	2,44,610	<p>It was submitted during the course of assessment proceedings that the document at S. No. 66 is merely a quotation and thus, no additions shall be made; however, the submission made by the appellant is not considered by the Ld. AO</p> <p>In this regard it is clarified that it is the tendency of all persons to compare several options before purchasing a car and only 1 amongst them is bought by any person. Revenue shall not take the quotations as Investment by a person particularly when the source of car purchased is explained in assessment proceedings. Thus, the addition of Rs. 10,77,344/- made by Ld. AO on the basis of Image No. 55 deserves to be deleted and may please be deleted.</p> <p>It is clarified that the appellant has purchased Creta car whose quotation of Rs. 17,00,000/-is appearing at Image No. 91.</p> <p>The appellant during the course of assessment proceedings furnished the copy of Invoice of car for Rs. 14,55,390/- which was considered by Ld AO and addition of Rs 2,44,610/- (17,00,000-14,55,390) was made.</p> <p>However, the Ld. AO ignored the fact that along with car, insurance is taken, road tax is paid and some accessories are also purchased. Thus, the contents of Image No. 91 is duly explained and the additions made deserves to be deleted and may please be deleted. (Pg. 113 to 118, PB)</p>	<p>Quotations /estimations are collected for comparison and arranging the finances. Addition made on the</p> <p>basis of Quotations /estimations is not sustainable. Therefore addition on this account is deleted.</p>
47	14,38,376	<p>This page contains details of expenses to be incurred on import of goods. This quotation was taken before import of goods to understand the ultimate cost to be borne in case any import is made by the assessee group.</p> <p>However, the L.d. AO has taken the contents of this Image as details of parties and amount.</p> <p>From the perusal of Image and observation of Ld. AO it is evident that the L.d. AO has not even read the contents of image and has mechanically made additions of the amount appearing on</p>	Contention of the appellant is found to be correct. Therefore, addition on this account is deleted.

		<p>said Image.</p> <p>This image even contains amount of custom duty payable on import and the Ld AO has assessed even the same as unexplained money.</p> <p>It is not out of place to mention here that the appellant is looking after the business of M/s Parmanand & Sons Food Products Pvt. Ltd. and the stated company is making imports. The appellant is not having any IEC code in his individual capacity and thus, no additions deserve to be made to the income of the appellant.</p>	
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I Phone 6 + Images

1	3,70,278	<p>This image is copy of image no. 74 found from 1-phone 7+ and has been explained supra.</p> <p>The Ld. AO has made addition in respect of Image No. 74 as well as in respect of this image leading to double addition of same amount</p> <p>Thus, the addition deserves to be deleted and may please be deleted.</p>	Contention of the appellant is found to be correct. Therefore, addition on this account is deleted.
6	9,18,800	<p>That the Ld. AO has made incorrect total of this Image. It appears that this image contains total expense of Rs. 3,18,800 on Shimla Trip by 5 families.</p> <p>It is clarified that the family of the appellant did not participate in this tour and this tour expenses were just being shared in friends circle and remained in mobile of the appellant.</p> <p>It is also pertinent to mention here that this image do not pertain to the year under consideration because this image has details of expenses incurred on New Year party whereas search in the case of the assessee had taken place in December. Thus, new year could not have been celebrated by the appellant during the year under consideration prior to search action.</p> <p>Thus, the addition made by Ld. AO deserves to be deleted and may please be deleted.</p>	Contention of the appellant is found to be partially correct. Expenses attributable to the appellant comes to Rs. 1,05,600/- only for which appellant has not provided source of these expenses. Therefore, addition on account of image number 6 is restricted to Rs. 1,05,600/-.

Considering the fact that the Ld. CIT(A) has verified each and every images of the I-phones and deleted the additions and on verification of materials available on record, we find that the finding of the fact of the ld. CIT(A) requires no interference at the hands of the

Tribunal in the absence of any contradictory and contrary documents brought on record by the Department. Thus, we find no merit in the grounds of the appeal of the Revenue and the same are dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 16th February, 2024.

Sd/-

(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated: 16/02/2024

Pk/B.R/R.N Sr.ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI