

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1784/DEL/2022
Assessment Year 2013-14

ACIT Central Circle-28 New Delhi	Vs.	Stonex India Pvt. Ltd. D-176 West Delhi Mansarover Garden S.O. Delhi Delh.
TAN/PAN: AACCG9620R (Appellant)		(Respondent)

Appellant by:	Shri Gaurav Jain, Advocate Ms. Sweta Bansal, CA		
Respondent by:	Shri H.K. Choudhary, CIT-DR		
Date of hearing:	18	01	2024
Date of pronouncement:	06	03	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal is directed against the first appellate order of the Commissioner of Income Tax (Appeals)-XXIX, New Delhi ('CIT(A)' in short) dated 14.06.2022 arising from the assessment order dated 30.09.2021 passed by the Assessing Officer (AO) under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the Revenue read as under:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred and on facts in deleting the addition of Rs. 66,80,471/- made under business income as under reporting of sales ignoring the fact that director of the company accepted the same in his statement recorded on oath during search and seizure operation carried out of the company.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred and on facts in deleting the addition of Rs. 2,24,50,000/- ignoring the fact that the director of the company Sh. Gaurav Agarwal has accepted in his statement recorded during search operation that it is merely an accommodation entry and the cash was given to Sunmoon Vision Infra Developers Pvt. Ltd in lieu of RTGS."

3. Briefly stated the assessee is a private limited company engaged in the import and sale of marble and other natural stone from various countries. The assessee filed its return of income under Section 139(1) of the Act on 24.09.2013 declaring return income at Rs.2,91,61,280/-. The return so filed was subjected to regular assessment under Section 143(3) of the Act vide order dated 26.03.2015. Thereafter, search and seizure operation was carried out under Section 132 of the Act on 19.12.2019 in Stonex Group of cases including assessee. Consequently, the assessment proceedings were initiated under the provisions of Section 153A r.w. Section 142(1) r.w. Section 143(3) of the Act. In the course of the assessment proceedings, the AO on the basis of page no.47 of Annexure A-1 found and seized from the premises of the assessee considered that loan taken by the assessee from lender M/s. Sunmoon Vision Infra Developers Pvt. Ltd. ('Sunmoon' in short) to be an accommodation entry. The assessee submitted before the Assessing Officer that against such additions, no evidence / material has been placed on record by the AO except for a vague and non-descript statement of Mr. Gaurav Agarwal given under pressure and duress and retracted subsequently. The Assessing Officer refused to entertain the plea of retraction on the grounds of pressure and duress and proceeded to treat the loan taken from 'Sunmoon' to be unexplained cash credit under Section 68 of the Act. The AO alleged that the assessee did not discharge its onus of proving genuineness, identity and creditworthiness of the said lenders owing to the fact that notice issued under Section 133(6) of the Act to the lender remained unresponded. The AO accordingly made an addition of Rs.2,24,50,000/- by invoking Section 68 of the Act.

4. The AO also made an addition of Rs.66,80,471/- as unaccounted business income on the ground that various sheets pertained to the AY 2017-18 to 2020-21 gives an inference that assessee is indulging in out of books bogus cash sales.

5. Aggrieved by the additions so made by the AO, the assessee preferred appeal before the CIT(A).

5.1 Before the CIT(A), the assessee submitted that the aforesaid addition has no link or nexus with any incriminating documents/material found in the course of search under Section 132 of the Act *per se*. Therefore, such additions made is outside the scope of Section 153A of the Act owing to the fact that the assessment for AY. 2013-14 stood completed prior to search and remains unabated. On merits, the assessee-company pointed out that it has borrowed interest bearing loan aggregating to Rs.2,24,50,000/- from 'Sunmoon' in ordinary course. The said loan was interest bearing and the interest accrued from time to time was duly debited and paid to the lender. The principal sum of said loan was also partially repaid to the extent of Rs.9,50,000/- on 06.07.2017, relevant to AY 2018-19, i.e., prior to search. It was submitted that the AO has concluded adverse to the assessee solely on the basis of vague statement of director Mr. Gaurav Agarwal obtained under pressure coercion and duress at the time of search while treating such loan to be an accommodation entry despite no incriminating evidence gathered in search to suggest payment of cash as *quid pro quo* against corresponding receipt of loan record through banking channel. The AO drew adverse inference from page no.47 of Annexure A-1 seized in the course of search.

5.2 The CIT(A) obtained remand report dated 10.06.2022 and observed that identity of the lender cannot be doubted in the facts of the case. The CIT(A) observed that the loans were obtained from banking channel and supported by Loan Agreement which depicts that loan was granted on commercial considerations at an annual interest of 9% per annum. The CIT(A) on perusal of the remand report also observed that lender has responded to notice under Section 133(6) and filed Audited Financial Statement and its ITR. The AO in the aforesaid remand report has also accepted the net worth of the company which shows the creditworthiness of the lender company also. The CIT(A) was thus satisfied with the identity and creditworthiness of the lender and genuineness of the transaction carried out.

5.3 The relevant operative paragraph of the order of the CIT(A) granting relief to the assessee is reproduced hereunder:

“9.6 I have carefully considered the facts of the case, the assessment order, the remand report from the AO and the written submissions of the Appellant in respect of Ground no 5.3. It is seen that the loan was obtained from banking channel, which was given after execution of a loan agreement. As per the said agreement, the loan was granted at an annual interest of 9%. Further part of the loan was repaid through banking channel. Further, the lender company i.e. Sunmoon Vision Infradevelopers Pvt. Ltd is a company registered under the Companies Act, 1956 and therefore the identity of the company cannot be doubted. From perusal of the remand report and the reply of the lender in response to notice u/s 133(6), it is seen that the lender company has filed its audited financial and the ITR. The Assessing Officer in the aforesaid remand report has accepted the net worth of the company which shows the creditworthiness of the lender company. Also the loan agreement, repayment of interest and the principal amount shows the genuineness of the loan transaction.

9.7 After considering the submission filed by the appellant, facts of the case, findings of the AO and the assessment order and the remand report, it can be inferred that the appellant duly discharged its onus of establishing genuineness, identity and creditworthiness of the lender. Accordingly, the addition of Rs.2,24,50,000/- is hereby deleted. As such, Ground No. 5.3 is hereby allowed.”

6. As regards the addition of Rs. 66,80,471/- towards unaccounted business income, the CIT(A) broadly observed that the additions made are *ad hoc* in nature and is not based on any material found or seized during the course of search but are rather off shoot of estimations based on certain sheets relating to some later years found in the course of search and extrapolated to the AY 2013-14 in question.

6.1 An analysis of factual matrix and legal position on the point in issue, the CIT(A) concluded that impugned addition is not based on any corroborative evidence found during the course of search or even otherwise is purely based on estimates and is completely *ad hoc* in nature.

6.2 The CIT(A) thus reversed the additions made by the AO in following terms.

“During the course of the appellate proceedings, the appellant has challenged the said addition on the ground that the said addition is ad-hoc

in nature and is not based on any material found or seized during the course of search but rather estimates which doesn't corroborate the contention of AO that the appellant was involved in making undisclosed sales in any manner.

8.2 The search was conducted in the case of the appellant on 19/12/2019. As per the submissions of the appellant, the original return of income was filed on 24/09/2013 wherein income of Rs. 2,91,61,280/- was declared. The said return got processed u/s 143(1) of the Act on 28/04/2014. Thereafter, vide an order dated 26/03/2015, an assessment was framed under section 143(3) of the Act with respect to the year under consideration wherein the returned income was accepted.

8.3 During the assessment proceedings, the appellant filed a return of income u/s 153A of the Act on 20/02/2021 declaring income of Rs. 2,91,61,280/- i.e. same as declared in the return filed u/s 139 of the Act. Further, as can be seen from the present assessment order, the addition have not been made on the basis of any material found during the search proceedings, but only on the basis of estimation and by taking leverage of theory of extrapolation. This fact is evident from the assessment order where, there's neither any reference to any seized material nor any statement recorded during search on this issue indicating undisclosed sales pertaining to the year under consideration.

8.4 On perusal of the impugned assessment order that the AO has reproduced various sheets which pertain to later years. The entire assessment has been framed on the basis of assumption of AO that the appellant must have been involved in making out of the books cash sales in all the years as in AY 2017-18 to AY 2020-21 the appellant has declared such income voluntarily. There are however no evidences or proof on records to corroborate the said contention of Assessing Officer. The appellant has contended that the additions made by AO is ad-hoc and arbitrary in nature, derived through estimates and suspicion formed on the basis of the afore-said vague perception of AO formed on the fact that the appellant has voluntarily declared income in the last four assessment years i.e. AY 2017-18 to AY 2020-21.

8.5 Further, I refer to the page no. 48 of the Assessment order where in the statement of Mr. Saurabh Agarwal was being referred, which provides as below:

"Q. 10 Sh. Saurav Agrawal (your brother and Director in M/s Stonex India Put Ltd) in his statement u/s 132(4) of the Income Tax Act 1961 dated 20.12.2019, in response to 16, stated that total cash component (per month in the total sale during the previous years was approximately 6.5% to 8.5% of the total monthly sales. Do you agree with this ? Also state what is the percentage of your per month accounted cash sales and unaccounted cash sales?"

Ans: Yes, I do agree that we make cash sales but according to best of my knowledge it is in the range of 4 to 4.5% and not more than that, but most of them are accounted cash sales and cash generated from those sales are used for making small petty expenses and remaining part is duly deposited in the bank account. There is no fix percentage for unaccounted cash sales

as they vary from month to month. Before two three years, this amount was negligible but in last two three years real estate in India has gone very down and to maintain our sales we have started entertaining the professionals like contractors etc by paying them incentives to bring customers. According to me now in last two three years this percentage of unaccounted cash sales would be around 0.5% to 1% of total monthly sales.

0.11 What is the utilization of cash received from your uncounted cash sales?

Ans: Almost all this cash is being utilized to pay incentives to the professionals facilitating these sales and other sales also in the company as none of them raise invoice for such services and we are bound to pay incentive in cash."

8.6 A perusal of the said statement reflects that the total unaccounted cash sales was in the range of 0.5% to 1% which as per the above statement was stated two to three years back for the purpose of giving incentive to contractors. Further in the said statement it has been stated that the said unaccounted sale was utilized for the purpose of payment of incentives to professionals facilitating such sales.

8.7 Further, as apparent from the assessment order, the AO while relying on above said submission as quoted in Para 49 of the Assessment Order, did not give any adverse finding or decision based on the images as reproduced in the assessment order and concluded as below in para 57 of the Assessment Order:

"57. In view of the submissions of the assessee, judicial precedents relied upon and statement of Sh. Gaurav Agarwal that the unaccounted cash sales vary from 0.5 % to 1% of total sales, 1% of the total sales (being highest of unaccounted cash sales admitted by Gaurav Agarwal) which comes to around 15.26 crores (1% of the Net Revenue) for 11 years i.e. AY 2010-11 to AY 2020-21 against the declared additional business income @ 0.5% of its net sales only for four years from AY 2017-18 to AY 2020-21 which comes to around 4.59 Crores, is required to be added to the total income of the assessee company to the protect the interest of revenue.

Thus, an amount of Rs. 66,80,471/- (being 1% of Rs. 66,80,47,099/-) is added to the total income of the assessee company as business income. Penalty proceedings u/s 271(1)(c) of the Act are initiated separately for concealment of income."

Therefore, the Assessing Officer made an addition based on estimates. The assessment has been framed on the basis of assumption of AO that the appellant must have been involved in making out of the books cash sales in all the years to the tune of 1% of the amount of sale for the respective years for the period of AY 2010-11 to AY 2016-17, thereby making an addition of Rs.66,80,471/- in the total income of the appellant for the present year under consideration. There are however no evidences or proof on records to corroborate the said contention of AO.

8.8 From the perusal of the Assessment order, it was seen that the AO on

the basis of statement of directors and voluntary disclosure made by the appellant with respect to AY 2017-18 to AY 2020-21, assumed that the appellant was involved in making undisclosed cash sales in other years as well i.e. AY 2010-11 to AY 2017-18 without having any corroborative material qua the said assessment years and has made addition on extrapolation basis. I find that the addition made in the assessment order is not based upon any material or documents found during the course of search. The AO has also not referred to any material which was impounded during the course of search proceedings pertaining to the year under consideration i.e. AY 2012-13.

8.9 The appellant in its submissions has relied upon plethora of judgments that there is no scope for extrapolation in assessments framed u/s 153A of the Act. The Hon'ble ITAT Delhi has enunciated that there is no scope of extrapolation without any material found during the search. The order parts of the Judgments are reproduced as under:

(a) The ITAT Delhi in the case of M/S Gupta & Co, Put. Ltd, vide judgment dated 14 February, 2019/ ITA Nos. 729 & 730/DEL/2016/A.Yrs 2008-09 & 2009-10 held as under:

"5. We have heard both the parties and perused the records, especially the impugned order of the Ld. CIT(A). We note that the judicial position on this issue is quite clear. It is the seized material which gives rise to quantification of unaccounted sales and consequently unaccounted income. The seized material in the instant case contains notings in respect to certain unaccounted sales, namely with respect to 59 parties. The assessment order does not bring on record any such seized material which shows sales out of the books corresponding to each and every sale. Since section 153A of the Act gets invoked only with respect to the incriminating material found during the course of the search, clearly extrapolation without any incriminating material would be contrary to the spirit of the section. There are a large number of judicial decision on the issue, including the ones quoted by the Ld. CIT(A) which support this view. Hence in the facts and circumstances of the case, we do not find any infirmity in the order of the Ld. CIT(A) on this issue, therefore, we uphold the order of the Ld. CIT(A) and confirm the relief granted by him. Accordingly, the appeal filed by the Revenue for the assessment year 2008-09 stands dismissed".

(b) The ITAT Delhi in the case of M/S. Minda Industries Ltd., vide judgment dated 27 April 2018/ ITA No. 4297 to 4300/D/2015, 4455, 4456/D/2015/AY 2009-10 to 2012-13 held as under:

14. Coming to the issue of deletion of addition by the Ld. CIT (Appeals) in respect of the scrap sales which has been challenged by the Department, it is seen that the Ld. CIT (Appeals) has accepted the assessee's contention that the impugned addition had been made by the assessing officer on an estimate and that the same was not based on any evidence that was found during the course of search proceedings.

While allowing the relief, the Ld. CIT (Appeals) has also accepted the assessee's reliance on the judgment of the Hon'ble Delhi High Court in the case of Kulwant Rai reported in 291 ITR 36 (DEL).

Although the Ld. CIT DR has contested the deletion of addition by the Ld. CIT(Appeals), she could not point out any legal infirmity or factual infirmity on this adjudication by the Ld CIT (Appeals). The Department also could not point out any judgment to the contrary and in favour of the Department in this regard.

It is settled law that there is no scope for extrapolation in assessment framed under section 153A of the Act and the additions can be made only with reference to incriminating material found during the course of search. This view supported by another judgment of the Hon'ble Delhi High Court in the case of Principal CIT versus Smt. Anita Rani reported in 392 ITR 501 (Delhi).

Another judgment of the jurisdictional High Court to the point is Principal CIT versus Kurele Paper Mills (Private) Limited reported in 380 ITR 571 (Delhi).

Therefore, in view of the finding of fact by the Ld. CIT (Appeals) that incriminating material found in respect of the scrap sales amounted to Rs. 20,73,211/-only and further in view of the judgments of the Hon'ble Delhi High Court as aforementioned, we find no reason to interfere with the findings of the Ld. CIT (Appeals) on this issue and we, accordingly, dismiss ground No. 2 of the Department's appeal."

8.10 Reliance also placed on the following judicial following recent pronouncements, wherein it has been held that in the absence of any material suggesting the undisclosed income, the question of extrapolation of addition in the previous year or subsequent year does not arise:

(i) ACIT, Central Circle-4 Vs JKG Construction Put. Lt. – ITAT Delhi as reported in 2021 (6) TMI 653.

(ii) A.C.IT., Central Circle 2 (2) Nagpur Vs Shri Narendra Maganmal Kothari - ITAT Nagpur as reported in 2021 (12) TMI 1206

(iii) THE DCIT Central Circle -III, Ludhiana Vs Shri Inderjit Singh Brar and (Vice-Versa) ITAT CHANDIGARH as reported in 2021 (11) TMI 673

(iv) JT. CIT (OSD) Central Circle -5 (4), Mumbai Vs M/S. Gandhar Oil Refinery (1) Ltd. and (vice-versa) ITAT Mumbai as reported in 2021 (9) TMI 1120

(v) Ms Priya Happykumar Surya Vs ACIT, 29 (2) ITAT Mumbai as reported in 2021 (9) TMI 70

(vi) DCIT, Central Circle 2(2), Pune Vs Shikshana Prasaraka Mandali Sharda Sabhagruha- ITAT Pune as reported in 2021 (6) TMI 903 M/ s.

(vii) Mani Square Ltd Vs ACIT Central Circle -3 (2), Kolkata ITAT Kolkata as reported in 2020 (9) TMI 1094

8.11 The legal position is clear that no addition can be made for a particular assessment year without there being an evidence/material qua that assessment year which would justify such an addition specially on the

basis of estimates and assumptions. Irrefutably, presence of evidence for each assessment year is a sine qua non for framing an assessment under section 153A of the Act. Therefore, the addition merely based on suspicion that the appellant must have made out of the books cash sales in each assessment years by using extrapolation technique does not satisfy the requirement of law.

8.12 As discussed above, the AO made an addition of 1% of the sales pertaining to the year under consideration of Rs.66,80,471/- i.e 1% of Rs.66,80,47,099/-. I find that the said increase in income is not based on any corroborative evidence found during the course of search or even otherwise is purely based on estimate and is completely ad-hoc in nature. The AO while relying on the statement of Mr. Gaurav Aggarwal made addition of the said percentage of 1% while ignoring the part of the statement which states that the said amount was used for the purpose of giving the incentives to the professionals facilitating such sales. The fact of unaccounted sales having been withheld by the contractors/architects as their incentive for referring customers to the appellant has not been denied by the AO but is stated to be conspicuously appearing in the seized material. Logically, the version of the appellant that such unaccounted sales were actually not received by the appellant but were withheld by the contractors/architects as their incentive has considerable merit. As such though, as claimed by the appellant no taxable income could be inferred to have existed due to payment of such incentives, yet in order to buy peace of mind and to avoid litigation, the appellant offered a particular percentage to tax which was initially admitted by the AO but later enhanced in an arbitrary manner and therefore the act of the AO in this regard cannot be held valid.

8.13 In view of the above discussion, I find that the addition made by the AO is based on estimates and is not actually based on any tangible material unearthed during the course of search. Thus, there is neither any basis nor justification for the additions made by the AO of Rs.66,80,471/- and there is nothing to support the action of AO of increasing the income of appellant by 1% of sales pertaining to the respective year as well. The addition made by AO is thus ad-hoc and arbitrary in nature. Accordingly, the addition of Rs. 66,80,471/- by the AO is hereby deleted. As such Ground no. 3 is allowed.”

7. Aggrieved by the relief granted by the CIT(A) on both counts, the Revenue has preferred appeal before the Tribunal.

8. While the Id. DR for the Revenue has relied upon the assessment order, the Id. counsel for the assessee has strongly defended the first appellate order and took us through the relevant factual matrix in length and case laws as applicable in the factual matrix.

9. We have carefully considered the rival submissions and perused the first appellate order, assessment order, material referred to and relied

upon in the course of hearing and case laws cited.

10. The dominant issue as per Ground No.2 concerns addition of Rs.2,24,50,000/- under Section 68 of the Act attributable to lender Sunmoon.

10.1 On perusal of the record, it emerges that in the course of search under Section 132 of the Act carried on 19.12.2019, a loose sheet as per Annexure A-1 was found that resulted in the impugned addition. The relevant loose paper is reproduced hereunder:

Rajiv Bangar

<i>Khanda Chawla Trading Co. Pvt. Ltd. – Rajiv</i>	<i>21,500,000.00</i>	<i>15% p.a.</i>	<i>Stonex</i>
<i>Lashkery Jewellers Pvt. Ltd. – Rajiv</i>	<i>1,200,000.00</i>	<i>14.40% p.a.</i>	<i>Stonex</i>
<i>Nice Finance & Leasing Pvt. Ltd.- Rajiv</i>	<i>7,500,000.00</i>	<i>14.40% p.a.</i>	<i>Stonex</i>
<i>Professional Softec Pvt. Ltd. – Rajiv</i>	<i>2,500,00.00</i>	<i>14.40% p.a.</i>	<i>Stonex</i>
<i>Shree Modi Cement – Rajiv</i>	<i>5,000,000.00</i>	<i>15% pa</i>	<i>Stonex</i>
<i>Uma Enterprises Pvt. Ltd. - Rajiv</i>	<i>1500,000.00</i>	<i>14.40% pa</i>	<i>Stonex</i>
	<i>39,200,000.00</i>		

Mahvir Ji Jaipur

<i>Eyesore Tradecom Pvt. Ltd. – Mahavir (Jaipur)</i>	<i>2,500,000.00</i>	<i>9% pa</i>	<i>Stonex</i>
<i>Hilton Merchandise – Mahavir (Jaipur)</i>	<i>2,000,000.00</i>	<i>9% pa</i>	<i>Stonex</i>
	<i>5,500,000.00</i>		

<i>Amil Industries Loan</i>	<i>12,500,000.00</i>	<i>15% pa</i>	<i>Stonex</i>
<i>Bajrang Lal Agarwal</i>	<i>5,000,000.0</i>		

Stonex Total 61,700,000.00

Rajiv Bangar

<i>Anjali Malani-Rajiv</i>	<i>12,500,000.00</i>	<i>15% pa</i>	<i>Marmo</i>
<i>Savita Diwan- Rajiv</i>	<i>5,000,000.00</i>	<i>15% pa</i>	<i>Marma</i>
	<i>17,500,000.00</i>		

<i>Rice India Exports Pvt. Ltd. – R Agarwal</i>	<i>40,000,000.00</i>	<i>9% pa</i>	<i>Stonelam L.T.</i>
<i>Eyesore Tradecom Pvt. Ltd. – Mahavir (Jaipur)</i>	<i>2,500,000.00</i>	<i>9% pa</i>	<i>Stonelam</i>
	<i>42,500,000.00</i>		

Entry

<i>ANG Finvest Pvt. Ltd.</i>	<i>42,000,000.00</i>	<i>9% pa</i>	
<i>Dream Fincap Pvt. Ltd. – Rajiv</i>	<i>50,000,000.00</i>	<i>10.20 pa</i>	
<i>Shreepati Rasayan Udyog Pvt. Ltd. – Nitin</i>	<i>11,000,000.00</i>	<i>9% pa</i>	
<i>Sunmoon Vision Infradevelopers Pvt. Ltd. – Lovleen Ji</i>	<i>21,5000,000.00</i>	<i>9% pa</i>	
<i>Swastik Pipe Ltd. – Sandeep</i>	<i>64,500,000.00</i>	<i>9% pa</i>	
	<i>189,400,000.00</i>		

10.2 The AO made inquiries in respect of the parties referred to under the head ‘Entry’ in the loose paper and found the transaction in relation to other parties to be in order and *bonafide* except the one that relates to a Sunmoon.

10.3 As regards the loan obtained from Sunmoon, the AO observed that onus which lay upon the assessee under Section 68 of the Act towards identity and creditworthiness of the lender and genuineness of transaction could not be established. Hence, addition towards amount received from Sunmoon appearing in the loose sheet under the head ‘Entry’ was made under Section 68 of the Act. In the first appellate proceedings, the CIT(A) called for the remand report from the Assessing Officer. The remand report has been extracted in the first appellate order. The CIT(A), based on the remand report, observed that notice under Section 133(6) was issued by the AO to the lender in the remand proceedings. In compliance to such notice, the lender has furnished copy of loan agreement, confirmation, bank statement and balance-sheet from F.Y. 2012-13 till date. The CIT(A) also observed that the loan was granted at an annual interest of 9%. Besides, the loan has been partly repaid. In the light of these facts, the CIT(A) found force in the plea of the assessee towards existence of satisfactory explanation contemplated under Section 68 of the Act.

10.4 The Revenue before us pointed out that the loose paper clearly categorizes loan from ‘Sunmoon’ to be ‘Entry’ which would mean accommodation entry and the Director, Mr. Gaurav Agarwal in his

statement has accepted the factum of underlying cash transaction against such accommodation entry.

10.5 The assessee, on the other hand, contends that on a nuanced examination of the assessment order, it will be evident that the AO has not attached any significance to the expression 'Entry' in the loose paper *per se*. The AO has made independent inquiries in respect of the parties listed under the head 'Entry' in the purported loose paper seized in the course of search and based on outcome such verification, found no reason to doubt the propriety of transactions appearing against names of various parties except 'Sunmoon'. The sole basis for doubting the *bona fides* of Sunmoon transaction was lack of response from the lender party in the course of search assessment. The assessee thus submits that the additions have been made on the premise that the lender has not responded. No incriminating material was found in the course of search indicating any cash payments against the loans received. The statement was obtained from Director in the course of search which cannot be treated as voluntary statement adverse to the assessee. All the transactions with different parties appearing under the head 'Entry' have been entered in the regular course of business and were also accepted after due verifications by the AO. The AO has only disputed the transaction with Sunmoon owing a difference reason, i.e., notice issued under Section 133(6) remaining unresponded. The primary onus which lay upon the assessee under Section 68 stood discharged where the lender has furnished the relevant documents viz. loan agreement, its copy of ITR, audited balance sheet, confirmation, bank statement etc. in the course of direct inquiry by the AO in the remand proceedings. Coupled with this, the receipt of loan is backed by the loan agreement which stipulates charge of interest. The interest cost incurred was paid prior to the search. A part of loan has also been repaid prior to search. Thus all traits of *bona fide* in such commercial transaction is self evident and proven to near hilt. Merely because one of the many lenders, i.e., Sunmoon failed to respond to the inquiry notice issued by the AO under Section 133(6) in

the original assessment proceedings, by itself, could not taint the *bona fides* of such loan obtained in the ordinary course of business.

10.6 The assessee thus contends that the CIT(A) has concluded the issue in favour of the assessee on the strength of the exhaustive documentary evidences, payment of interest, part repayment of loan coupled with the fact that the AO himself has discarded the possibilities of parties recorded under the head 'Entry' in the loose paper to be lacking in *bona fides* but has proceeded against the assessee qua solitary party 'Sunmoon' on the strength of lack of response to notice issued under Section 133(6) of the Act.

10.7 The Id. counsel also contends that there are plethora of judgments to underscore that statement recorded under Section 132(4) does not constitute incriminating material *per se* for the purposes of making addition within the scope of Section 153A of the Act in respect of completed assessment viz. *Pr.CIT vs. Best Infrastructure Pvt. Ltd.*, 397 ITR 82 (Del) and *CIT vs. Harjeev Aggarwal (2016) 290 CTR 263 (Del)* and so on.

10.8 The Id. counsel thus relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Pr.CIT vs. Abhisar Buildwell (P.) Ltd.*, (2023) 293 Taxman 141 (SC) for the proposition that addition in the instant case under Section 68 is not permissible in law under the Scheme of search assessment envisaged under Section 153A of the Act in respect of completed assessment.

11. As pointed out on behalf of the assessee, we note that both assessee as well as lender have produced tell-tale evidences to support the propriety of loan transaction *albeit* in the remand proceedings. The loan from Sunmoon has not only carried charge of interest but has also been partly repaid prior to search. Such traversing facts requires to be given due weightage. The lender has confirmed the loan. The capacity of loan has not been doubted by the Revenue Authorities. Thus, when seen

on standalone basis, one cannot say that identity, creditworthiness of lender and genuineness of transaction is lacking in any manner to a reasonable person instructed in law. Thus, statutory discretion vested with the AO under Section 68 is fairly required to be exercised in favour of the assessee as rightly held by the CIT(A).

12. We also simultaneously note that the AO himself has legitimized the transactions with different parties appearing under the head 'Entry' in the loose paper by accepting the bonafides of transactions qua different entities. The transaction with Sunmoon was disputed in isolation on the grounds of non-compliance by the lender. Thus, the loose paper found in the course of search do not constitute incriminating material belonging to the assessee *per se*. As noted, the AO himself has found the other transactions mentioned in the loose paper to be correct and worthy of acceptance. The only transaction qua Sunmoon has been questioned, that too, owing to non responsive lender in the course of original proceedings. As a corollary, the provision of Section 68 has been applied *dehors* any incriminating material found in the course of search. Such course of action is not permissible in law in the light of *Abhisar Buildwell (supra)*. The statement made by the Director of the assessee is required to be read down owing to its retraction. In such circumstances existing the present case, it is difficult to accept the stand of the Revenue that loan from Sunmoon is a mere accommodation entry where it has been demonstrated that the assessee has incurred interest cost as well as displayed his intention to make repayment thereof. Thus seen from any angle, we see no error in the conclusion drawn by the CIT(A). We thus see no reason to depart from the view taken by the CIT(A) on the point in issue. Ground No.2 of the Revenue appeal is thus dismissed.

13. We now turn to Ground No.1 which concerns additions of Rs.66,80,471/- on account of alleged unaccounted sales.

13.1 The AO has made estimated addition being 1% of the total sales holding it to be unaccounted sales on the basis of statement of the

Director in the course of search proceedings. The CIT(A), in first appeal, recorded the findings of fact that the AO has referred to various rough sheets which pertained to later years relevant to AY 2017-18 to AY 2020-21. The CIT(A) has further referred to the statement recorded by the Director in the course of search and observed that the action of the AO is governed by the assumption that where the assessee has indulged in cash sales in later years, similar additions are warranted in AY 2013-14 regardless the fact that no adverse evidence or proof is available on record to corroborate such assumption. The CIT(A) has referred to several decisions to hold that there is no scope of extrapolation in the search assessment based solely on assumptions and surmises in the absence of any tangible material qua the relevant assessment year.

14. We have perused the process of reasoning adopted by the CIT(A) carefully and see no reason to depart therefrom. As observed in several judicial precedents, the additions based on extrapolation of material relating to different other years is not permissible in a search assessment. We thus see no error in the conclusion drawn by CIT(A). The action of the CIT(A) reversing the *ad hoc* additions made by AO without any tangible material qua A.Y. 2013-14 in question is justified on facts as well as in law and thus does not call for any interference. The appeal of the Revenue on this point thus does not hold any water.

15. Ground No.1 of the appeal of the Revenue is dismissed.

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

Order pronounced in the open Court on 06/03/2024

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /03/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**