

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos. 1122 & 1123/PUN/2023  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2018-19

Shri Ashok Bhawarlal Jain,  
232, Main Bazar, Dehuroad,  
Pune – 412101

PAN : ADVPJ0579M

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,  
Central Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

IT(SS)A No. 22/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Ashok Bhawarlal Jain,  
232, Main Bazar, Dehuroad,  
Pune – 412101

PAN : ADVPJ0579M

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,  
Central Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Pawan Chakrapani &  
Premchand C. Patil  
Revenue by : Shri Keyur Patel

सुनवाई की तारीख / Date of Hearing : 13-03-2024  
घोषणा की तारीख / Date of Pronouncement : 27-03-2024

### **आदेश / ORDER**

#### **PER BENCH :**

These are the appeals filed by the assessee directed against the common order of Id. Commissioner of Income Tax (Appeals)-11, Pune [‘the CIT(A)’] dated 30.08.2023 for the assessment years 2014-15, 2018-19 2017-18, respectively.

2. Since the identical facts and common issues are involved in all the above captioned three appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.1122/PUN/2023 for the assessment year 2014-15 are stated herein.

**ITA No.1122/PUN/2023, A.Y. 2014-15 :**

4. Briefly, the facts of the case are that the appellant-assessee is an individual engaged in the business of trading of electric items under the name and style as "M/s. Master Sales". He also engaged in the business of broker in various commercial activities. The Return of Income for the assessment year 2014-15 was filed on 30.11.2014 declaring a total income of Rs.9,59,410/-. Subsequently search and seizure action was conducted in the business premises of the appellant-assessee on 04.11.2017. During the course of search and seizure operation the statement of the appellant-assessee was recorded and certain incriminating material relating to dabba trading were found and seized. The statement of the appellant-assessee was recorded u/s. 132(4) of the Act on 05.11.2017, wherein, the appellant-assessee admitted having indulged in dabba trading, he also worked out the income offered from such trading business in the form of brokerage income of Rs.60,00,000/- for A.Ys. 2014-15 to 2017-18, total income of Rs.3,00,00,000/- was offered to tax.

5. Subsequently, a notice u/s. 153A of the Act was issued on 01.03.2018. In response to the said notice, the appellant-assessee shown income only of Rs.30,00,000/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 30.12.2019 passed u/s 153A r.w.s. 143(3) of the Income

Tax Act, 1961 ('the Act') at a total income of Rs.2,41,03,967/-. While doing so, the Assessing Officer made addition of Rs.30,00,000/- on account of income from brokerage income from dabba trading by placing reliance on the statement of appellant-assessee u/s. 132(4) of the Act and also the Assessing Officer made addition of Rs.51,00,000/- based on the notings found in the diary seized during the course of search and seizure operation, wherein, the seized page No. 3 of bundle No. 6 of scanned copy which are reproduced hereunder :

Baalikam land with oilip. <sup>classmate 3</sup>		Date	Page
25,000=00	Cash paid on	20/7/13.	
12,500=00	" " "	15/8/13	
12,500=00	" " "	15/9/13	
10,000=00	Cheque paid on		
1,500=00	Cheque paid on	28/10/13.	
1,000=00	Cash paid on	28/10/13	
62,500=00	land Payment		
2,000=00	Paid to Suman for Construction	13/3/14.	
1,000=00	" " " By Cheque from from Costant		
7,810=00	" " " for Register from from	25/3/14.	
1,000=00	" " " for Building Exp	23/4/14.	
308=65	" " Oilip Bhai on	11/5/14.	
50,000	" by Cheque (Kajal Ann)	15/5/14.	
1,000=00	" " Cheque (Kajal Ann)	29/5/14	
500=00	" Cash at plywood shop	27/5/14.	
1,500=00	" Cash to Mitchell	14/6/14.	
1,000=00	" Cash to nilchal (Babu/Sunny)	4/7/14.	
1,000=00	" " " nilchal (Boelal)	17/7/14.	
1,000=00	" " " nilchal (Babu/Sunny)	2/8/14	
500=00	" " " Nitha Jenuach	19/8/14	
1,000=00	" " " Chemi	20/8/14	
		C/F To rout pages	

6. According to the Assessing Officer, the appellant-assessee had paid on-money consideration of Rs.51,00,000/- at the time of purchase of property which is situated at Plot No. 622, Sector 25 of Pradhikaran, Akurdi in the name of one Shri Dilip K. Parakh and Smt. Kajal Arun Jain. The Assessing Officer also reproduced the statement recorded from the appellant-assessee u/s. 132(4) of the Act on 06.11.2017, wherein he admitted to have paid consideration of Rs.51,00,000/- in cash. Based on this noting in the diary as well as statement of appellant-assessee, the AO had made addition of Rs.51,00,000/- rejecting the explanation of the appellant-assessee that the property was purchased in the name of only Shri Dilip K. Parakh and Smt. Kajal Arun Jain.

7. The Assessing officer also made addition of Rs.1,12,00,000/- for purchase of land at Mulshi in project known as Serrano Farm from one Shri Manoj Chhajed. The appellant-assessee also admitted in the statement recorded u/s. 132(4) of the Act 05.11.2017, the Assessing Officer also made addition of Rs.8,44,560/- on account of interest income on unsecured loan.

8. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the Id. CIT(A) contending that the additions were made solely on the basis of statement recorded u/s. 132(4) of the Act

cannot be sustained in the eye of law without bringing a conclusive evidence. The statement recorded u/s. 132(4) of the Act is not valid in law as it was recorded under coercion, threat and undue influence etc. However, the said submissions were rejected by the CIT(A) by holding that there was no evidence to show that the statement recorded u/s. 132(4) of the Act was under duress.

9. Being aggrieved by the direction of the ld. CIT(A), the appellant-assessee is in appeal before us in the present appeal.

10. The appellant-assessee contended that no addition can be made solely on the basis of statement given u/s. 132(4) of the Act. He further submitted that the documents found are dumb documents, therefore, no addition can be made by the Assessing Officer solely on the basis of statement which has retracted.

11. On the other hand, the ld. DR opposed the submissions made by the appellant-assessee by placing reliance on the decision of Hon'ble Supreme Court in the case of Bannalal Jat Constructions (P.) Ltd. reported in 106 taxmann.com 128 (SC).

12. We heard both the parties and perused the material on record. The submissions made on behalf of the appellant-assessee that no

addition can be made merely on the basis of statement recorded u/s. 132(4) of the Act which was retracted subsequently, cannot be accepted, in view of the fact that the entries found in the diary which was found during the course of search and seizure operation, when confronted with the appellant-assessee, he has clearly stated that he had indulged in dabba trading wherein, undisclosed brokerage income also paid on-money consideration at the time of purchase of property etc. No doubt, an admission during the course of search can be disputed by the appellant-assessee by leading evidence to show the correct states of affairs and mere fact that the appellant-assessee retracted the statement, subsequently does not render the statement invalid especially; retraction was made after lapse of long time. The mere assertion statement was recorded under coercion and duress cannot be accepted in the absence of evidence on record. In this regard reliance can be made on the decision of Co-ordinate Bench of Tribunal in the case of *Sinhagad Technical Education Society vs. DCIT [2022] 139 taxmann.com 270 (Pune – Trib.)*, where in it was held as under:

*“27. Now, we shall deal with the contention made on behalf of the appellant society that no evidentiary value can be attached to the statements made by said three persons u/s. 132(4) of the Act in view of the affidavits filed on 21-04-2014 before the Assessing Officer by the said three persons. The said affidavits are claimed to be retraction statements from the said three persons. Now the question that The said affidavits are claimed arises for consideration is under what circumstances, the retraction statement can be given the credence. The Hon’ble Rajasthan High Court in the case of *Bannalal Jat Construction (P) Ltd. (supra)* after referring to the series of decisions laid down that (i) the retraction should*

*be supported by duly sworn affidavit and statement through convincing evidence the assessee could demonstrate that the earlier statement was incorrect and (ii) whenever pleadings were made that to effect that the earlier statements was recorded under pressure, coercion or compulsion by filing a complaint to higher officials. This position was reiterated in catena of decisions by the various High Courts in the case of CIT vs. Lekh Raj Dhunna [2012] 20 taxmann.com 554/344 ITR 352 (Punj. & Har.), Bachittar Singh vs. CIT [2010] 328 ITR 400 (Punj. & Har.), Rameshchandra & Co., vs. CIT [1987] 35 Taxman 153/168 ITR 375 (Bom.), Dr. S.C. Gupta vs. CIT [2001] 118 Taxman 252/248 ITR 782 (All.), CIT vs. Hotel Meriya [2010] 195 Taxman 459/[2011] 332 ITR 537 (Ker.), CIT vs. O. Abdul Razak [2012] 20 taxmann.com 48/207 Taxman 193 (Mag)/[2013] 350 ITR 71 (Ker.).”*

Similarly, therefore, these grounds of appeal filed by the appellant-assessee stands dismissed.

13. However, we find that the Assessing Officer adopted pick and choose method while framing the assessment. It is a well settled position of law that the documents, entries in the diaries found and seized during the course of search and seizure action should be read in its entirety. It is not permissible to adopt pick and choose method by using that part of the contents of the diary which is beneficial to the AO and reject other contents of the diary which are detrimental to the AO. In this regard, reliance can be placed in the cases of Mehta Parikh & Co. vs. CIT (1956) 30 ITR 181 (SC), Navjivan Oil Mills vs. CIT (2001) 252 ITR 417 (Guj), Glass Lines Equipment Co Ltd. Vs. CIT (2002) 253 ITR 454 (Guj). The Pune Tribunal in the case of Kantilal & Bros. reported in 52 ITD 412 after making reference to judicial precedence referred supra, deduced the following principles :

- (i) A document seized in the search should be read as a whole.
- (ii) No party can pick and choose one part of document for its advantage.
- (iii) If an explanation relating to a transaction is found in the seized material, the same has to be considered. The onus will shift on to the Department to adduce, further material to support its contention that ostensible as appearing from the document is not real.
- (iv) The initial burden lying on the assessee to explain the transactions (in this case, outgoings) can be discharged either from the statement recorded under section 132(4) or from other documents found and seized in the search. Once, onus shifted from the assessee, it is for the Department to prove by adducing additional material that the statement so given was false or not true or that corroborative entries from other documents are false or not reliable.”

14. Further more it is well settled position of law that additions made to the returned income should be taken as real income of the assessee and available for subsequent application. It is not open to the department to contend that the addition was only for the purpose of taxation and it is not the real income. Regard can be made on the decision of the Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. vs. CIT (1980) 123 ITR 457 (SC). Similarly, if addition is made by the AO in the absence of plausible explanation for the source of payment of bishes (chits) is made, then, it is not open to the AO to disregard the amount received on account of bidding the bishes (chits). Similarly, if the addition is made on account of alleged repayment of loan, then, it is incumbent upon the AO to consider the receipt of the loan amount as available for application. Thus, the approach adopted by the AO suffer from the above flaws.

15. On the direction of the Bench, the Ld. AR of the appellant had submitted a cash flow statement based on the case set up by the AO and taking into consideration the entire entries found in diary during the course of search and seizure operation. The said cash flow statement filed by the assessee is extracted below:

**Annexure-A.**

**Shri Ashok Bhawarlal Jain**

**ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023**

**Cash Flow Statement**

**Ashok Jain-2012-13**

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	-		
Brokerage Income	15,00,000.00		
Addition made by AO	15,00,000.00		
Interest Income( Unsecured Loan)	5,40,000.00		
		Closing Balance	35,40,000.00
<b>Total</b>	<b>35,40,000.00</b>	<b>Total</b>	<b>35,40,000.00</b>

**Ashok Jain-2013-14**

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	35,40,000.00		
Brokerage Income	15,00,000.00		
Addition made by AO	15,00,000.00		
Interest Income( Unsecured Loan)	6,21,000.00		
		Closing Balance	71,61,000.00
<b>Total</b>	<b>71,61,000.00</b>	<b>Total</b>	<b>71,61,000.00</b>

**Ashok Jain-2014-15**

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	71,61,000.00		
Brokerage Income	30,00,000.00	Cash given to Shri Manoj Chhajed for Moshi Land	1,12,00,000.00
Brokerage Income	30,00,000.00	Business Expenses	5,23,891.00
Interest Income( Unsecured Loan)	6,00,000.00	Cash paid towards prdhikaran land	51,00,000.00
Business Cash	6,49,111.00		
		Closing Balance	-24,13,780.00
<b>Total</b>	<b>1,44,10,111.00</b>	<b>Total</b>	<b>1,44,10,111.00</b>

**Annexure-A.**

**Shri Ashok Bhawarlal Jain**

**ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023**

**Cash Flow Statement**

**Ashok Jain-2015-16**

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	-		
Brokerage Income	30,00,000.00		
Addition made by AO	30,00,000.00	Cash given to Shri Manoj Chhajed for Moshi Land	38,00,000.00
Business Cash	18,65,138.00	Business Expenses	10,45,533.00
		Closing Balance	30,19,605.00
<b>Total</b>	<b>78,65,138.00</b>	<b>Total</b>	<b>78,65,138.00</b>

**Ashok Jain-2016-17**

Income Sources		Expenses	
Particular	Amount	Particular	Amount
Opening Balance	30,19,605.00		
Brokerage Income	30,00,000.00	Investment in Bhisi	4,67,781.00
Addition made by AO	30,00,000.00	Business Expenses	17,32,680.00
Business Cash	16,63,064.00		
		Closing Balance	84,82,208.00
<b>Total</b>	<b>1,06,82,669.00</b>	<b>Total</b>	<b>1,06,82,669.00</b>

**Ashok Jain-2017-18**

Particular	Amount	Particular	Amount
Opening Balance	84,82,208.00		
Brokerage Income (As per return of income)	30,00,000.00	Investment in Bishi (at page no. 12 of assessment order at para no. 13.4 for AY 2017-18)	2,05,12,468.00
Brokerage Income (Addition made by AO)	30,00,000.00		
Loan Received form Lalit Shingavi - at page no. 16 of the assessment order at para 18 for AY 2017-18)	90,00,000.00	Interest Given to Lalit Singhvi (at page no. 18 of assessment order at para no. 21.1 for AY 2017-18)	8,77,500.00
Loan Received form Ganesh Bhutada - (Seized material page no. 59 at page no. 15 in the assessment order at para 17.2 for AY 2017-18)	3,00,00,000.00	Interest Given to Shri Ganesh Bhutada (at page no. 15 & 16 at para 17.3 for AY 2017-18)	66,75,000.00
Bhishi Income	46,75,670.00	Repayment of Unsecured loan to Bhutada	3,00,00,000.00
		Closing Balance	92,910.00
<b>Total</b>	<b>5,81,57,878.00</b>	<b>Total</b>	<b>5,81,57,878.00</b>

## Annexure-A.

## Shri Ashok Bhawarlal Jain

ITA Nos.- IT(SS)A/22/PUN/2023, ITA/1122/PUN/2023 and ITA/1123/PUN/2023

## Cash Flow Statement

Ashok Jain-2018-19			
Particular	Amount	Particular	Amount
Opening Balance	92,910.00		
Brokerage Income	35,00,000.00	Investment In Bishi (at page no. 9 of the assessment order at para no. 13.4 for the AY 2018-19)	3,89,40,206.00
Loan Received Form Ganesh Bhutada - (Seized material page no. 55 & 59, and page no. 10 of assessment order at para 14)	9,00,00,000.00	Interest Given to Ganesh Bhutada (at page no. 12 & 13 of the assessment order at para no. 17.3 for the AY 2018-19)	42,00,000.00
Loan received from Lalit Shingavi - at page no. 13 at para 18)	70,00,000.00	Interest Given to Lalit Shingavi (at page no. 14 & 15 of the assessment order at para 21.1 for the AY 18-19)	25,80,000.00
		Interest Given to Sanjay Kothari (at page no. 17 of the assessment order at para no. 22.4 for the AY 18-19)	3,69,000.00
		Expenditure incurred in MCX Trading (at page no. 19 & 20 of the assessment order at para no. 25.3 for the AY 18-19)	2,43,06,300.00
		Repayment of Unsecured loan to Bhutada	2,00,00,000.00
		Investment in jewellery as per the order of CIT[A]	97,49,280.00
		Closing Balance	4,48,124.00
<b>Total</b>	<b>10,05,92,910.00</b>	<b>Total</b>	<b>10,05,92,910.00</b>

16. The ld. CIT-DR had not pointed out any deficiency in the working of the above cash flow statement. The Ld. CIT-DR's only objection is that the benefit of telescoping cannot be granted to the appellant-assessee as no such plea was taken in the grounds of appeal, but it is admitted fact that during the course of proceedings before the CIT(A), the ld. CIT(A) has given the benefit of telescoping of addition made in the earlier assessment years and current year, against which the department is not in appeal before the Tribunal. However, the benefit of loans borrowed,

the availability of funds on bidding the bishes (chits) was ignored by the CIT(A), though this is very much evident from the entries found in the diaries.

17. As evident from the above cash flow statement, no cash deficit was found in any of the previous year relevant to the assessment year under consideration. Therefore, no addition is called for on account of unclaimed investments, which forms the basis for making additions in the assessment. Therefore, we direct the AO to delete all the additions made by the AO.

18. In the result, the appeal filed by the assessee in ITA No.1122/PUN/2023 for A.Y. 2014-15 stands partly allowed.

**ITA No. 1123/PUN/2023 & IT(SS)A No. 22/PUN/2023, A.Ys. 2018-19 & 2017-18 :**

19. Since the facts and issues involved in remaining two appeals of the appellant-assessee are identical, therefore, our decision in ITA No.1122/PUN/2023 for A.Y. 2014-15 shall apply *mutatis mutandis* to the remaining two appeals of the appellant-assessee in ITA No. 1123/PUN/2023 and IT(SS)A No. 22/PUN/2023 for A.Ys. 2018-19 and 2017-18, respectively. The findings given in ITA No.1122/PUN/2023 for A.Y. 2014-15 that there was no cash deficit for making undisclosed investment equally holds good for the AYs. 2017-18 and 2018-19.

Therefore, no addition is called for the assessment years under consideration. Accordingly, we direct the AO to delete all the additions made in the assessments. Hence, the remaining two appeals of the appellant-assessee in ITA No. 1123/PUN/2023 for A.Y. 2018-19 and IT(SS)A No. 22/PUN/2023 for A.Y. 2017-18 are also stand partly allowed.

20. To sum up, all the above captioned three appeals of the assessee stand partly allowed.

Order pronounced in the open court on 27<sup>th</sup> March, 2024.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> March, 2024.

रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune