

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,  
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1952/DEL/2021 [A.Y. 2017-18]

The A.C.I.T  
Central Circle - 13

Vs.

Shri Dhiraj Jain  
C- 215, Block -C,  
Vivek Vihar, Delhi

PAN : AADPJ 4043 R

CO No. 32/DEL/2022  
[In ITA No. 1952/DEL/2021 [A.Y. 2017-18]]

Shri Dhiraj Jain  
C- 215, Block -C,  
Vivek Vihar, Delhi

Vs.

The A.C.I.T  
Central Circle - 13  
New Delhi

PAN : AADPJ 4043 R

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv  
Shri Shrey Jain, Adv

Department By : Ms. Sapna Bhatia, CIT- DR

Date of Hearing : 01.04.2024  
Date of Pronouncement : 03.04.2024

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned appeal by the Revenue and cross objection by the assessee are directed towards the order of the CIT(A) - 28, New Delhi dated 10.07.2020 pertaining to A.Y. 2017-18.

2. Since the appeal and cross objection were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. The solitary grievance of the Revenue is that the Id. CIT(A) erred in holding the income of Rs. 12,45,40,000/- as business income u/s 28 of the Income-tax Act, 1961 [the Act, for short] despite the fact that the same represents undisclosed income of the assessee found and seized only during the course of search and hence was rightly added by the Assessing Officer u/s 69 r.w.s 115BBE of the Act.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

5. Briefly stated, the facts of the case are that a seizure and search operation u/s 132 of the Act was conducted on 03.08.2016 and on subsequent dates in different business and residential premises of Mahagun Group of Companies.

6. During the course of search and seizure operation at the premises of Mahagun India Pvt Ltd, incriminating documents which were found and seized contained details of commodity trading done by Shri Dheeraj Jain to the tune of Rs. 12.45 crores. Documents so found were confronted to the brother of the assessee who admitted unaccounted income on account of commodity trading amounting to Rs. 12,45,40,000/- for F.Y. 2016-17 pertaining to A.Y 2017-18.

7. Relevant statement is extracted at page 5 of the assessment order wherein to Question No. 16, Shri Jain admitted the income as not recorded in the regular books of account and accepted the same as income from other sources and agreed to pay taxes on the same.

8. Return of income was accordingly filed including income of Rs. 12.45 crores shown as income from other sources being the amount disclosed during the course of search and seizure operation. Invoking

provisions of section 69 of the Act, the Assessing Officer was of the firm belief that income has to be charged to tax u/s 69 r.w.s 115BBE of the Act as income was never disclosed by the assessee and would never have been disclosed had there been no search proceedings.

9. The Assessing Officer further discarded the contention of the assessee that income is not chargeable under the head income from other sources.

10. Having carefully considered the assessment order, we are of the considered view that the assessee has earned income from commodity trading. Even if the same was not disclosed in its regular books of account by the assessee, the same was offered for tax as income from other sources.

11. In our considered opinion, provisions of section 69C of the Act do not apply as the impugned item is income and not investment. In our view, provisions of section 115BBE of the Act would apply if the income of the assessee is either declared or assessed u/s 68/69/69A/69B/69C/69D of the Act. But facts of the case in hand show that the

assessee has declared income from commodity trading, which has been accepted as such by the Assessing Officer.

12. Entries on the documents seized relate to offline commodity trading transactions relating to the assessee and the amount of profit of Rs. 12.45 crores is reflected on the account of these transactions.

13. In our considered opinion, transaction reflected on the seized paper represents future contract of purchase and sale of gold and silver on various dates. Since the income has been accepted by the Assessing Officer, it can be safely presumed that the transactions recorded in the seized documents do not have any different character than that reflected on the seized paper and that is income of the assessee.

14. We are of the considered view that the assessee has clearly explained the source of profit earned by him and as the source of income is identifiable, deeming provisions of section 69 cannot be applied.

15. Considering the totality of the facts on the given circumstances, we have no hesitation to hold that the provisions of section 69 of the Act are not applicable on the profit from trading of speculative transactions. We, therefore, decline to interfere with the findings of the Assessing Officer.

16. As a result, the appeal of the Revenue stands dismissed.

17. Since we have dismissed the appeal of the Revenue, we do not find it necessary to dwell into the issues raised vide Ground No. 2 of cross objections.

18. In the result, the appeal of the Revenue in ITA No. 1952/DEL/2021 is dismissed whereas the Cross objection of the assessee in CO No. 32/DEL/2022 is otiose.

The order is pronounced in the open court on 03.04.2024.

**Sd/-**

**[SAKTIJIT DEY]  
VICE PRESIDENT**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 03<sup>rd</sup> APRIL, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	