

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **687/CHD/2023**

निर्धारण वर्ष / Assessment Year : 2021-22

Jagbir Singh Nehra Prop. Shiv Shankar Fruit Company, Jalandhar-1, Grain Market S.O. Jalandhar-1, Jalandhar	Vs. बनाम	The DCIT, Central Circle-3, Ludhiana
स्थायी लेखा सं./PAN No: AYQPS0736D		
अपीलार्थी ./ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/Assessee by : Sh. Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 07.05.2024
उद्घोषणा की तारीख/Date of Pronouncement : 11.06.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 10.10.2023 of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana [herein referred to as 'CIT(A)'].

2. The Assessee has taken the following amended Grounds of appeal:

1. *That that the Ld. CIT(A) has erred in confirming the addition of Rs. 25,85,000/- on account of alleged investment in the immoveable property by just relying upon the statement recorded during search and without any incriminating evidence.*
2. *That the Ld. CIT(A) has failed to apply the binding judgment of ITAT, Chandigarh Bench that statement recorded during the course of search cannot be an incriminating evidence and further without making any enquiries from the seller, the very basis of making the addition on the basis of oral statement, ignoring the documentary evidence of the valid registration, the CIT(A) was not justified in upholding the addition in view of the judgment in the case of K.P. Varghese, reported in 131 ITR 597.*
3. *That the Ld. CIT(A) has also failed to appreciate that the documentary evidence had to be relied upon against the oral evidence as per binding judgment of Hon'ble Apex Court in the case of Daulat Ram Rawat Mull, reported in 87 ITR 349.*
4. *That the Ld. CIT(A) has erred in confirming the addition of Rs. 10 lacs on the basis of dump document, though, the addition has been deleted for statistical purpose.*
5. *That the addition has been made against the facts and circumstances of the case.*
6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. Appeal on Ground Nos.1 to 3 is against the confirmation of addition of Rs. 25,85,000/- on account of alleged investment in the immovable property by just relying on the statement recorded during

search without any corresponding incriminating evidence / documents.

4. Brief facts of the case are that the Assessee is an individual dealing in trading of bananas. A search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted on 8.9.2021. During the search, statement of the Assessee was recorded in which the Assessee admitted for purchase of a property of Rs. 36 lacs against the registered title deed for an amount of Rs. 10,15,000/- for which the payment was made through banking channel. The Id. CIT(A) has given his finding on this issue as under:-

“(b) This statement has not been retracted even during the post search investigation or even till date. Therefore, as per law this statement alone has evidentiary value.”

5. The Id. CIT(A) has stated that the statement of the Assessee was recorded when the Assessee was in a completely healthy state of mind. On this issue, the CIT(A) has further given his finding that during the search, as per Annexure A-6, which is a part of a writing pad on some of the pages amount, name of persons from whom they have taken along with dates are mentioned. The Assessing Officer has taken them as sources of cash component of payment for

the purchase of the property and the ld. CIT(A) has confirmed the addition. During the proceedings before us, the ld. Counsel of the Assessee has filed a written submission on this issue which are as under: -

“2....

a) It is a fact that the assessee is an illiterate person dealing in trading of Bananas and is carrying on this business at Jalandhar. The whole basis of making the addition is borne out from the order of Assessing Officer starting from pages 35 to 43. The Ld. Assessing Officer after referring to statement has assumed that assessee has paid cash of Rs. 25,85,000/-, which is against the facts and circumstances of the case. The relevant para of the statement has been reproduced in the order and nowhere the assessee has stated that cash was paid. Only approx. value has been mentioned which can be market value even.

b). Thereafter, the assessee submitted an explanation, which has been reproduced by the Assessing Officer at page 42 of the order and the brief extract of the explanation as given by assessee was as under:-

i). That the plot of Rs. 10,15,000/- was purchased by assessee and his wife is an Income tax assessee.

ii). It was stated that the consideration of the property is as per registered sale deed.

iii). There is no documentary evidence of the payment by way of cash over and above the registered amount.

iv). *There is no agreement to sell or any Biana relating to purchase of property.*

v). *There is no noting on any document that any amount over and above the registered amount has been paid by the assessee or by any members of his family.*

vi). *The registration of the property have been made at the prevailing Govt, circle rate and there is no element of 'on money'.*

vii). *No corroborated evidence have been found during the course of search that the assessee has made any payment in cash.*

viii). *The assessee is an uneducated person and his statement as recorded during search, no where proves that cash has been paid.*

ix). *However, the Assessing Officer in a summary manner by relying upon the statements recorded during search has made the addition of Rs.25,85,000/- as alleged amount paid in cash towards the purchase of property, which is a wrong assumption on the part of the Assessing Officer.*

x). *Our reply as quoted by the Assessing Officer at page 42, is being relied upon and there is no adverse view drawn on the basis of same statement in the case of his wife, Smt. Anita Devi.*

3. *The assessee filed an appeal before the Ld. CIT(A) and the Ld. CIT(A) without considering the submissions of the assessee only by relying upon the statement as recorded during search, has confirmed the addition and this finding has been given by the Ld. CIT(A) at page 22 to 25 of his order.”*

6. The ld. DR relied on the order of the CIT(A).

7. We have considered the issue and we have also considered case laws brought on record by the ld. Counsel of the Assessee. The ld. Counsel has brought on record an order passed by the Chandigarh Bench of the ITAT in the case of 'Dy. CIT vs. Partap Singh Rajendra Chamola & Co.' in IT (SS) A No. 22/Chd/2007 order dated 28.11.2008. In this order the Tribunal has held that no addition in block assessment can be solely made on the basis of statement recorded during the search. Such a statement cannot be treated as incriminating material found in the course of search. The ld. counsel has also brought on record case laws decided by the Hon'ble Supreme Court of India in the case of 'CIT vs. Mantri Share Brokers (P.) Ltd.' [2018] 96 taxmann.com 280 (SC) dated 3.7.2018. In this case, the Hon'ble Supreme Court has held as under: -

"...High Court in the impugned order held that where except statement of director of Assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document in any other form to justify said statement, addition made on the said income in hands of Assessee under section 69B was to be deleted -Whether SLP against said decision was dismissed -Held, yes".

8. We have considered the findings of the ld. CIT(A) on this issue and we have also considered the written submissions and arguments made by the ld. Counsel of the Assessee during the proceedings before us and the orders of the Hon'ble Supreme court of India on this issue in the case of 'CIT Vs. Mantri Share Brokers (P.) Ltd., (supra) and the Chandigarh Bench of the ITAT in the case of 'Dy. CIT vs. Partap Singh Rajendra Chamola & Co.' In this case, the ITAT Chandigarh Bench has held "*No addition in block assessment can be made solely on the basis of statements recorded during search. Such statements cannot be treated as incriminating material found in the course of search.*"

9. The ld. DR relied on the order of the CIT(A).

10. From the documents filed before us, it is clear that there is no specific incriminating document to prove the payment of Rs. 25,85,000/- over and above the cheque payment of Rs. 10,15,000/- by the Assessee for the purchase of the immovable property. In fact, there are some note pads which indicate where from the Assessee has got money for the purchase of this property but they cannot be treated as incriminating document to prove the cash payment for the purchase of this property. Though it is true that the Assessee in his statement recorded during the search has stated to have paid Rs. 36,00,000/- as total consideration for the purchase of this property

but other than his statement the Department could not bring any incriminating document on record to substantiate its claim of cash payment of Rs. 25,85,000/-. As the Hon'ble Supreme Court in '*CIT Vs. Mantri Share Brokers (P.) Ltd.*', (*supra*) has held that mere statement recorded during the search cannot be treated as incriminating document for the addition in a search case, therefore, the CIT(A) finding on this issue cannot be sustained. Accordingly, the Assessee's appeal on Ground Nos. 1 to 3 stand allowed.

11. Appeal on Ground No .4 is against the addition of Rs. 10 lacs on the basis of dumb document. In fact, during the search operation, a paper was found on which names of four persons were written and against them Rs. 2,50,000/- each was mentioned. The Assessing Officer asked the Assessee to explain it. In the assessment order, the A.O. has mentioned Assessee's reply as under:-

"....in this regard, we have time and again clarified that these are rough notings in round figures without any significance and income repercussion. Further it is submitted that this document is basically a dumb document. There is no date on the said document and neither it indicates whether the amount has been paid or received. Therefore, any Ad-Hoc / Dumb Document without any corroborative evidence /finding that the alleged documents have materialized into transactions cannot be deemed to be the income of the assessee. It

is respectfully submitted that even in your SCN, it is not clear as to what is the presumption being drawn against the assessee whether it is of an unexplained asset / investment / cash / credit/ money / expenditure and this is for the simple reason that it is a dumb document and it is submitted that not every noting on a rough paper or diary can be presumed as an incriminating material against the assessee resulting in some unreported / undisclosed income in the hands of the assessee.”

But the Assessing Officer did not accept the explanation of the Assessee and made the addition of Rs. 10,00,000/- on the basis of this document. During the appellate proceedings, the Id. CIT(A) did not consider this document fit for making separate addition and he considered it as a part of Rs. 25,85,000/- of the addition confirmed. The Id. CIT(A) in his order has treated this amount as part of Rs. 25,85,000/- (appeal on Ground Nos. 1 to 3), which has already been decided. The relevant portion of the order of the CIT(A) is as under:-

“Under the facts & circumstances of the case and in view of the submission filed by the AR, the submissions filed during the assessment & appellate proceedings, the addition of Rs. 10,00,000/- is found to be sustainable and therefore confirmed. However, since that addition of Rs. 25,85,000/- on account unexplained investment in immovable property has already been made by the A.O. and confirmed (as discussed above), no

separate addition is required to be made on basis of these document.”

12. We have considered the submissions of the ld. counsel of the Assessee and findings of the Assessing Officer as well as ld. CIT(A) on this issue. We find that the Assessing Officer has treated this dumb document as a noting for cash transaction without indicating whether it is receivable or payable. The ld. CIT(A) has not accepted the findings of the Assessing Officer and he has treated it as a part of Rs. 25,85,000/- which he had confirmed as cash paid for the purpose of immovable property. This issue has already been decided by us in the former part of this appeal in Ground Nos 1 to 3 above. Therefore, regarding appeal on this dumb document, as the ld. CIT(A) himself has treated it as part of Rs. 25,85,000/-, therefore, we are of the view that there is no need of any separate adjudication of this issue. Accordingly, Assessee’s appeal on this Ground is allowed.

13. Ground Nos. 5 and 6 are general in nature.

14. In the result, the appeal of the Assessee is allowed.

Order pronounced on 11.06.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar