

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.02/Del/2020

Assessment Year: 2014-15

Raman Gupta, F-73, Preet Vihar, New Delhi. PAN: ABAPG1217G (Appellant)	Vs	ACIT, Central Circle-17, New Delhi. (Respondent)
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Assessee by	:	Shri R.K. Kapoor, CA & Shri Pradeep Dinodia, Advocate
Revenue by	:	Shri Amit Katoch, Sr. DR
Date of Hearing	:	05.04.2024
Date of Pronouncement	:	27.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Assessee against the order dated 25.10.2019 of the Commissioner of Income Tax (Appeals)-27, New Delhi (hereinafter referred to as the Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.281/16-17 arising out of the appeal before it against the order dated 31.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle-17, New Delhi (hereinafter referred to as the Ld. AO).

2. A search and seizure operation u/s 132/133A of the Act was conducted on 27.12.2013 on Metenere Group in the case of the assessee along with other group cases of the group at various residential and business premises. The case was centralized. The assessee's return of income of Rs.2,54,51,370/- was taken up for assessment u/s 143(3) of the Act and notices u/ss 143(2) Act and 142(1) of the Act were issued. The ld. AO made an addition of Rs.1,44,00,640/- on account of jewellery and bullion found at the time of search from the residence of the assessee. An addition of Rs.16,66,730/- was made on the basis of cash found at the time of seizure and an addition of Rs.1 crore was made on account of unexplained investment towards purchase of a property which was revealed on the basis of the seizure of a cheque of Rs.1 crore dated 13.06.2013 drawn in favour of Mr. Raman Gupta. Taking certain details of transaction described upon the cheque, the ld.CIT(A) has restricted the addition on account of jewellery to Rs.9,05,640/- and sustained the addition on account of cash seized and alleged unaccounted cash paid against investment of property for which the assessee is in appeal raising the following grounds:-

“1. Ground No. 1 : That the Ld. CIT(A) has grossly erred in law and on facts of the appellant's case in upholding the addition of Rs. 16,66,730/- made by the AO on account of alleged unexplained cash.

2. Ground No. 2 : That the Ld. CIT(A) has grossly erred in law and on facts of the appellant's case in upholding the addition of Rs. 1,00,00,000/- on account of unexplained investments towards purchase of property.

3. Ground No. 3 : That the Ld. CIT(A) failed to appreciate that the transaction underlying the receipt of un-encashed cheque of Rs.

1,00,00,000/- never materialized and no cash was transacted arising out of the transaction as alleged by the AO upheld by the Ld. CIT(A).

4. Ground No. 4 : That the addition of Rs. 9,05,640/- upheld by the Ld. CIT(A) on account of unexplained jewellery is bad in law.”

3. Heard and perused the record. The ground wise findings are as follows;

4. **Ground no 1;** The relevant facts are that during the course of search, cash amounting to Rs. 16,66,730/- was found from the residential premises of the appellant. The appellant in his preliminary statement stated that cash amounting to 10 lacs or less is available at his residential premises. However, on physical verification cash amounting to Rs. 16,66,370/- was found. The assessee for this difference stated that the amount of 10 lacs or less was told by him on approximate basis. Further, during the course of assessment proceedings, the appellant submitted that the cash belonged to M/s. Metenere Global Ltd. in which he is a Managing Director. The appellant submitted that since no cashier is appointed in the said company, the cash was kept at his residential premise. Also, the appellant submitted the Balance Sheet of the Company. However, the Ld. Assessing Officer held the explanation to be an afterthought. He held that the appellant failed to prove the source of such cash. Hence, addition was made by the Ld. Assessing Officer of Rs. 16,66,730/-.

4.1 The ld AR has submitted the date of search was 27.12.2013 and the cash book of Ketenere Global Ltd level closing balance of Rs. 16,80,748/-. The copy of which was given to ld CIT(A) with application under Rule 46A as additional

evidence. Further, same was not considered. It was submitted that the cash book balance matches the cash recovered from the assessee and reasonable explanation was given as there has been no cashier was employed by the company and it was not safe to keep the cash in the company therefore, same was lying with the Managing Director, the assessee. The Id DR has further relied on the findings of the Ld. Tax Authorities below.

4.2 After considering the submission and material before us, we are of the considered view that the Id CIT(A) has fallen an error in accepting the remand report of the Id AO wherein, this factual explanation of the cash on the basis of cash book balance was alleged by the Id AO to be after thought. The Id CIT(A) without accepting or rejecting the additional evidence has sustained the addition. The Id CIT(A) has merely drawn conclusion on the fact that in the balance sheet as on 31.03.2014 the company has not shown the cash seized by the department as receivable or seized by income tax department. We are of the considered view that the attempt of Id CIT(A) should have been to make a verification of the cash book, the copy of which is made available to us at paper book 117 to 118. But then additional evidences should have been entertained. Thus, with regard to this issue we are of the considered view that the Id CIT(A) should admit this additional evidence in the form of cash book of the company and after that assessee be given an reasonable opportunity of being heard, then decide the issue afresh. To this extent this ground is allowed for statistical purposes.

5. **Ground no 2 and 3;** These ground arises out of addition of Rs. 1 crore on account of unexplained investment towards purchase of property. During the course of search, photocopy of cheque in the name of the appellant signed by Mr. D. P. S. Rathore amounting to Rs. 1,00,00,000/- was found and seized from appellant's residence. Further, on the same page below, "cheque [one crore]- *cash liya hai*" was mentioned. It was held by the Ld. Assessing Officer, that the appellant has paid cash for purchasing the said property. During the course of assessment, the appellant submitted that he has not entered, into any transaction with Mr. DPS Rathore. The appellant submitted that Amar Devi Family Welfare Trust, in which the appellant is a trustee, had planned to purchase the property from Mr. DPS Rathore. However, the deal never crystallized and no monetary transactions were undertaken between the appellant, trust and Mr. DPS Rathore. Further, the appellant also submitted an affidavit of Mr. DPS Rathore wherein he has confirmed that no monetary transactions have been carried out between him and the appellant. However, the Ld. Assessing Officer held that the amount of Rs.1,00,00,000/- was paid in cash towards the purchase of property and the assessee failed to provide the source of the same. The Ld Assessing Officer has considered the same as unexplained investment u/s 69 of the Act and added to the Total Income of the appellant.

5.1 In regard to these grounds the ld AR has submitted that on a stale cheque addition are made. It was submitted an affidavit of DPS Rathore is substantive piece of evidence which was not relied. The ld AR also pointed out that alleged

documents in the form of copy of cheque is not in the form of an account maintained in regular course of business so as to sustain the addition u/s 69 of the Act. The ld AR pointed out that copies of all the bank account of Mr. Raman Gupta were filed before the ld CIT(A) along with application under Rule 46A to show that the said cheque was never credited in the accounts of the assessee up to 12.12.2013. It was submitted that the ld AO had not made any independent enquiries and merely on basis of the copy of cheque has drawn inference.

5.2 The ld DR however submitted that the copy of the cheque cannot be said to be dumb document as it brings forth the nature of transaction which was affected. It was also submitted that there was no logic for a proposed seller of a property to give a cheque to buyer.

6. After taking into consideration the submission as we appreciate the alleged incriminating document, the copy of cheque available at page 30 of the Paper Book, copy of which also provided separately at the time of hearing. It comes up that the copy of the document is not merely copy of a cheque but a leaf of paper wherein, there is an impression of cheque and scribed separately under there is an endorsement also by the payee DPS Rathore mentioning "*A-250 Anand -Vihar ke agreement ke on behalf par cheque (one crore)) cash liya hai*".

7. Now as we examine the cheque, same is dated 13.03.2013 and the endorsement is also dated 13.03.2013. The cheque is shown to be account payee and issued in the name of assessee Mr. Raman Gupta by Shri DPS Rathore.

What is material is that the date of search was 27.12.2013 and validity of the date of cheque was up to 13.06.2013. The background of the cheque as explained by assessee is that the assessee intended to purchase a property through the trust from Shri DPS Rathore for which agreement dated 13.03.2013 was also made and as a security deposit, Shri DPS Rathore had given the cheque, however, as deal did not materialized, the cheque was returned and copy was left with assessee. The assessee has filed an affidavit of Shri DPS Rathore and the copy of which is made available at page 39 to 40 of the paper book wherein, the same set of facts are narrated through Mr DPS Rathore and he specifically deposed that monetary transactions have not been carried out between two parties and he neither received any money nor paid any money to Shri Raman Gupta.

8. Though there appears to be some substance in the contention of the Id DR as to why a seller of property would give a cheque to the purchaser for any transaction of immovable property. In this regard we are of considered view that as it was an account payee cheque in the name of assessee only, same signifies assessee's willingness to report it in the accounts when the cheque would have been encashed on default on the part of seller and then certainly assessee would have been under burden to establish reasons for receiving the amount. Certainly if it was return of on-money, assessee would not have pleaded so and plea would have been more justified, like it was compensation on breach of agreement on the part of seller. So that is one valid logical inference that can be

drawn countering to one made by the AO and sustained by the CIT(A). Thus if merely on the basis of prudent conduct of parties inferences have to be drawn, and truth to be unveiled, as done by CIT(A), then we can say that both parties to present transaction may have intended to secure their interest by such security cheques. Thus purchaser giving cheque is not something impossible. In fact, if we consider the impugned assessment order and the finding of the Id CIT(A) in para 8.2 both the authorities have made the conclusion on the basis of probabilities without corroborating this copy of post dated cheque with any separate enquiry or evidence. Thus merely on basis of such inferences and use of words like 'probably' or 'might', a tax liability cannot be created.

9. Now as a matter of fact, if the endorsement date 13.03.2013 is accepted to be correct that assessee had paid cash of Rs. 1 crore against which this cheque was received as security from Shri DPS Rathore then this payment was made on 13.03.2013 which falls beyond the financial year 2013-14 relevant to present assessment year 2014-15. This addition on account of alleged cash payment on 13.03.2013 is not sustainable in the present assessment year.

10. At the same time as the Id AO has not made any separate enquiry to corroborate the alleged payment of Rs. 1 cores or purchase of any property against the same then for the purpose of section 69 of the Act as there is no evidence as to how assessee received back the cash, it is not justified to hold that any 'investment' was made for purpose of Section 69 of the Act. Thus, we are inclined to sustain the ground Nos. 2 and 3.

11. **Ground no 4;** During the course of search, jewellery valued by Approved Valuer of Rs. 1,01,32,878/- was found at the residential premises of the appellant. Out of the said jewellery, Rs. 31,92,566/- worth of jewellery was returned back to the appellant and jewellery amounting to Rs. 66,39,896/- was seized. Also, from the locker of the appellant jewellery amounting to Rs. 77,66,744/ - was found and seized during the course of search. During the course of search, while giving statement, the appellant stated that the jewellery found at the residential premises was declared by him in the VDIS. Also, for the jewellery found from the locker, it was submitted by him that the same belonged to his wife and the same was declared in the VDIS. The appellant was asked to provide one-to-one reconciliation for the jewellery found. However, the same could not be submitted as most of the jewellery declared in the VDIS was remade. The remaking bills for the same were submitted by the appellant in the course of assessment proceedings. However, the explanation was not accepted by the Ld. Assessing Officer. He was of the opinion that the said explanation giving by the assessee is an afterthought and rejected the appellant's submissions. The CIT(A), has partly deleted the addition.

12. In regard to this ground the ld AR had submitted that the due to remaking and remodeling of the jewellery there was slight difference in the weight and worth of the jewellery which was declared under VDIS 1997 Scheme which the ld CIT(A) has failed to appreciate while giving part relief.

12.1 The ld DR had relied however on the order of the ld CIT(A).

13. After considering the material on record and admitted set of facts relied by the Id CIT(A) to give part relief it comes up that the total value of the jewellery Rs. 1.44 crores and the alleged unexplained jewellery addition sustained of 9,05,640/- is very negligible. The excess found in the diamond jewelry to the extent 61.92 cts and for which we consider the explanation of the Id. AR to be good enough, as it is likely that after VDIS 1997 there would be remaking and remodeling of jewellery and in such case the assessee cannot be expected to explain the negligible addition in jewelry by any direct and substantive evidence. Thus Id CIT(A) erred in not giving benefit in the absence of any bill etc or failure to show the payment of any remodeling charges by way of banking transactions. Thus we are inclined to allow this ground.

14. As a consequence of determination of the ground Nos. 1 for statistical purposes in favour of assessee and ground no. 2 to 4 substantially in favour of the assessee, the appeal is allowed, with consequences to follow as per the determination of the grounds, as above.

Order pronounced in the open court on 27.06.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 27th June, 2024.

dk/AKK

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi