

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.1272/Del/2020
Assessment Year: 2012-13

DCIT,
Central Circle-27,
New Delhi.

Vs VSS Sales (Prop. Gaurav Jain),
11/28, Raj Nagar,
Ghaziabad,
Uttar Pradesh – 201 002.

PAN: AAYPT1709K

(Appellant)

(Respondent)

Assessee by : Shri R.S. Singhvi, CA &
Shri Satyajeet Goel, Advocate
Revenue by : Ms Sapna Bhatia, CIT-DR

Date of Hearing : 07.06.2024
Date of Pronouncement : 05.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 31.01.2020 of the Commissioner of Income Tax (Appeals)-29, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.290/18-19 arising out of the appeal before it against the order dated 26.12.2018 passed u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter

referred as ‘the Act’), by the ACIT, Central Circle-27, New Delhi (hereinafter referred to as the Ld. AO).

2. The Revenue has raised the following grounds:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred by ignoring the fact that bank account maintained by the assessee has not been declared in its books of accounts. Even during the assessment proceedings despite giving fair opportunities the assessee never declared these accounts before AO.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred by ignoring the fact that during the whole reassessment proceedings, the assessee failed to adduce even a single evidence which could establish that the deposits appearing in the bank accounts had been accounted for while working out the total surrendered amount of Rs. 5 cr.

3. On facts and in the circumstances of the case, the Ld. CIT(A) has not considered the fact that benefit of peak balance in the account may not be allowed to the assessee as credit and debit entries are both through cash and cheque.

4. That the grounds of appeal are without prejudice to each other.”

3. Heard and perused the records.

3.1 The assessee’s case for AY 2011-12 which was also heard along with the present appeal stands decided by order dated 27.06.2024 except for the reference to the quantum of addition made by the AO and as reduced by the Id.CIT(A) u/s 69A of the Act and further addition made applying GP rate there is no other distinction of facts. The assessee’s cross appeal ITA No.616/Del/2020 stands withdrawn by order dated 22.01.2021 having been settled under VSVS. In the light of the aforesaid, we are of the considered view that the findings recorded in ITA No.1271/Del/2020 for AY 2011-12 stands

squarely applicable to the present appeal of the Revenue for AY 2012-13.

Accordingly, we reproduce the same hereinbelow:-

“3.1 The facts relevant for adjudication of the grounds as canvassed by Ld. AR are that assessee Mr.Gaurav Jain Prop. VSS Sales is engaged in the business of trading in plastic films and ITR for the year under reference was filed on 24/09/2011. The re-assessment proceedings u/s 147 were initiated vide issue of notice u/s 148 dated on 30/03/2018. The allegation of escapement of income was on the basis of certain entries appearing in the undisclosed bank accounts with Kotak Mahindra Bank and Dhanlaxmi Bank. The assessment was completed u/s 147/143(3) vide order dated 26/12/2018 after making addition of Rs. 15,93,57,000/- u/s 69A being total credit in the bank account. The appeal of the assessee was decided by CIT(A) vide impugned order u/s 250 dated 31/01/2020 by upholding the validity of reopening u/s 147 of the Act. Further the addition of Rs. 15,93,57,000/- u/s 69A was reduced to Rs. 53,20,266/- being peak balance in the bank account. However, the CIT(A) made an addition of Rs. 50,51,617/- by applying GP Rate @ 3.17% on total credit appearing in the bank account based on regular books of account. In this regard the CIT(A) held that entire credit in the bank account cannot be treated as income in the hands of the assessee and as such the addition was made on account of peak credit as well as estimation of profit on total credit. Against the order of CIT(A), the assessee as well as the assessing officer had filed appeal before the Tribunal. However, the assessee settled its appeal under Direct Tax Vivad Se Vishwas Scheme (DTVSV) and accordingly, the appeal filed by the assessee was allowed to be withdrawn by order dated 22/01/2021 in ITA No. 615/Del/20.

3.2 The appeal in hand is the one filed by the revenue challenging the order of CIT(A) restricting the addition of entire credit in the bank account to the extent of peak credit as well addition on account of profit based on application of gross profit rate on aggregate credits in the bank accounts.

4. At the outset, the ld. Counsel of the assessee had raised the objection with regard to the maintainability of the appeal of department once the appeal of assessee was settled in VSVS.

5. On merits of the grounds, as regarding the re-assessment proceedings and addition, the Ld. AR has submitted that in the reasons recorded by the assessing officer and the approval granted by PCIT, the income escaping was alleged to be Rs. 53,20,266/-, which is the peak balance of the two accounts and thus as per the Ld. AR, the addition of total credits in the bank accounts was arbitrary and beyond the reasons recorded.

6. *The thrust of Ld. AR was on the contention that the peak balance of deposits in the bank accounts in the name of the assessee have already been disclosed by the brother of the assessee Sh. Vikas Kansal in pursuant to survey action u/s 133A vide letters dated 09/01/2014 and 26/03/2014 before Investigation wing, where he admitted that he was operating these undisclosed bank account in name of the assessee and other entities for his business. It was submitted that disclosed income stands considered and taxed in the hands of Sh. Vikas Kansal. It was thus contended no addition in the hands of assessee can now be made. To support this, Ld. AR has relied a letter filed by Sh. Vikas Kansal before the Investigation wing, Form 26AS and affidavit of Sh. Vikas Kansal and the assessee which are placed in the paper book in support of the factual position.*

7. *The Ld. DR, has relied a report of the AO and submitted that the settlement of appeal of assessee under VSVS has no bearing on the appeal of the revenue survives.*

8. *Defending the order of Ld. AO, the Ld. DR argued that the CIT(A) has erred in restricting the addition to the extent of peak and gross profit by ignoring the fact that assessee has failed to explain all the transactions in the bank accounts. As with regard to the additions in the hands of Sh. Vikas Kansal is concerned, she has submitted that CIT(A) has held this issue against the assessee.*

9. *We have considered the material on record and submissions. It can be seen that the case of assessee is that these two accounts had entries out of the transactions relating to trading activities which the brother of assessee, Mr. Vikas Kansal, was carrying out and as such the deposits therein cannot be considered as income of assessee.*

10. *On considering the documents filed by the assessee, which include the copies of letters 09/01/2014 and 26/03/2014 filed with DDIT (Investigation), Noida containing annexure showing peak balance of bank accounts including the aforementioned bank accounts as part of surrender made during the course of survey action u/s 133A. Computation of income alongwith Form 26AS showing details of tax paid on surrendered income which included peak balance of various bank accounts. Affidavit of the Mr. Vikas Kansal. Affidavit of the assessee Mr. Gaurav Jain it is established that Mr. Vikas Kansal has paid tax on peak balance relating to these disputed bank accounts, which were in the name of assessee.*

11. *The ld. DR could not dispute the factual position regarding correspondence of Mr. Vikas Kansal with investigation wing regarding surrender of income and evidence of payment of tax as appearing in Form 26AS. Though, she tried to rebut it by submitting that assessee has not placed on record that if the income disclosed by Mr. Vikas Kansal, included the credit entries of the two bank accounts of the assessee. We are of*

considered view that infact, the burden was on the Revenue to establish that the admissions made by Mr. Vikas Kansal about the fact the he was operating the two accounts was not adhered to by Mr. Vikas Kansal, and the income surrendered by him did not include the peak credit entries of these two disputed account. Despite being given opportunities during hearing by us, to call for report from field authorities, the Ld. DR could not controvert the documentary evidences placed by the assessee. Thus there was failure on the part of CIT(A) to have not considered this set of evidence.

12. Be that as it may, the assessee having chosen to settle the dispute under DTVSVS and paid taxes on the addition confirmed by the CIT(A), the dispute to that effect is fate accompli and has attained finality. However, keeping in mind the factual matrix of the case as discussed above, we do not find any merit in the appeal of the revenue as the issue raised therein would only lead to anomalous result, double taxation and unjust enrichment of the revenue as the credits in the two bank accounts have already been subjected to tax on two occasions i.e. first in the hands of Mr. Vikas Kansal, who had surrendered the peak balance of disputed two accounts and thereafter in the hands of the assessee, which though stood settled under VSVS. In fact, as per the reasons recorded and approval u/s 151, the income escaping assessment was considered at Rs. 53,20,266/- being peak balance of both the bank accounts and CIT(A) having confirmed the same, there remains no grievance as per the reasons recorded by the assessing officer himself and as such the order of CIT(A) does not call for any interference. Accordingly, the grounds raised by the revenue have no merit and are hereby dismissed.

13. With regards to the technical objection raised by the assessee regarding maintainability of the appeal of the revenue, as we have already dismissed the appeal of the revenue on merits, we do not see any need to delve into the legal aspect and thus we refrain ourselves from expressing any opinion in respect of the same.

14. The appeal of Revenue is dismissed.”

4. In the light of the aforesaid, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 05.07.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 05th July, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi