

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3505/Del/2023
(Assessment Year: 2018-19)**

Kailash Gahlot, C-6/6172, Vasant Kunj, New Delhi (Appellant) PAN:AAJPG2849N	Vs.	DCIT, Central Circle-4, Delhi (Respondent)
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Assessee by : Shri Vinod Bindal, CA
Ms. Rinky Sharma, AR

Revenue by: Mr. Waseem Arshad, CIT DR

Date of Hearing 05/07/2024
Date of pronouncement 08/07/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3505/Del/2023 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-23, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 23/10259/2017-18 dated 27.10.2022 against the order of assessment passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.04.2021 by the Assessing Officer, DCIT, Central Circle-4, Delhi (hereinafter referred to as 'Id. AO').

2. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in upholding the addition made on account of unexplained money in the sum of ₹5 lakhs u/s 69A r.w.s 115BBE of the Act in the facts and circumstances of the instant case.

3. A search and seizure action u/s 132 of the Act was carried out in M/s. Corporate International Financial Services Ltd and others Group and its associates on 10.10.2018. The assessee was also covered pursuant to a separate warrant of authorization u/s 132 of the Act issued to him on 10.10.2018. During the course of Income Tax search, a WhatsApp chat dated 01.04.2017 was found in the mobile phone of the assessee between the group of some lawyers including the assessee, wherein, one Mr. Ricky Gupta, Advocate, sent a message stating as under:-

"Kailash bhai. An update on fees received as on date. Rs 50,000/- in cash paid by Mr Sukhbir Singh, Rs 2,00,000/- in cash paid on 24/03, Rs 2,00,000/- in cash paid on 27/03. A cheque in the sum of Rs 50,000/- issued by Ms Alka Lamba has been handed over. This cheque will be presented in next week. As such a total of Rs 5,00,000/- subject to clearance of cheque has been received so far for all of us."

4. Advocate Manish Vashisht replied to the message stating as under:-

"This is still very very low and less. I remember invoice was for 40 after adjusting the amount of Kailash bhai". So 35 still to come Kailash bhai AAP kuch Karen".

5. During the course of assessment proceedings, the assessee was requested to provide explanation with respect to cash receipts from different persons by Mr. Ricky Gupta on his behalf and also the pending amounts to be paid to Manish Vashisht during the year under consideration and the assessee was also show caused as to why in the absence of satisfactory reply, the total amount as mentioned in the Whatsapp Chat should not be added back to the total income of the assessee as unaccounted cash made during the year under consideration. The assessee clearly replied that the said WhatsApp chat messages were exchanged between a group of lawyers with regard to payment of fees to the advocate in connection with the case relating to disqualification of MLAs pending before the Hon'ble Delhi High Court. It was categorically submitted that the assessee in the capacity of a lawyer by profession as well as an MLA of AAP party had assisted the party in this matter and accordingly was part of the group chat in the WhatsApp group and was not involved monetarily on this issue.

6. The Ld AO however, did not heed to the aforesaid contentions of the assessee and concluded from the WhatsApp message, which emerges that Mr Ricky Gupta and Manish Vashisht advocates work on behalf of the assessee and they collected the fee of ₹5 lakhs (including 4.5 lakhs cash and Rs. 50,000/- by cheque on behalf of the assessee) and further requested the assessee to look into the matter for the further pending payment of ₹35 lakhs. The Ld AO further applied the presumption in terms of Section 132(4A) read with section 292C of the Act and concluded that the assessee had not substantiated the evidence covered in the form of Whatsapp Chat and accordingly made an addition of ₹5 lakhs as unexplained money in the hands of the assessee u/s 69A read with Section 115BBE of the Act and completed the assessment. This action of the Ld AO was upheld by the Ld CIT(A).

7. We have heard the rival submissions and perused the material available on record. It is pertinent to note that the only basis of addition made in the hands of the assessee was WhatsApp chat. Though the said WhatsApp chat was found during the course of search of the assessee and that the presumption u/s 132(4A) read with section 292C of the Act would be against the assessee, it should be understood that the said presumption is a rebuttable presumption. In the instant case, the assessee duly rebutted by stating that WhatsApp chat was between the group of lawyers wherein group of lawyers in connection with the case pending in Hon'ble Delhi High Court regarding the disqualification of 21 MLAs belonging to AAP party. The assessee had also stated that since he is an MLA of AAP party, his name was also included in the said WhatsApp group. The assessee categorically had also stated that barring the inclusion of his name in the WhatsApp group there was absolutely no monetary connection between him and the group of lawyers as ultimately it is the group of lawyers who had to pay the professional fees to the lawyer who was handling the matter of disqualification of MLAs in the Hon'ble Delhi High Court. The assessee was merely a coordinator in this regard and being a public figure, he was included in the WhatsApp group so as to give confidence to the lawyer who is handling the dispute in the Hon'ble Delhi High Court. In this context, the concerned lawyer

had requested the assessee to arrange for the remaining fees from the group of lawyers as originally agreed by the group of lawyers. The assessee's involvement in this entire transaction is only to act as a coordinator for collecting the fees from the group of lawyers and hand over to the concerned lawyer who is handling the dispute of the group of lawyers. There is absolutely no financial benefit prevailing in this transaction for the assessee. Further, even in the WhatsApp chat, which have been heavily relied upon by the revenue, nowhere, it is mentioned that the assessee was either in receipt of some money or had paid some money to the arguing counsel. Hence, the rebuttal given by the assessee for the wrong presumption drawn by the revenue based on WhatsApp chat is correct. It is the group of lawyers who were paying their portion of the advocate fees to the lawyer in connection with their case pending in Hon'ble Delhi High Court. Admittedly, the assessee was not even the arguing counsel in the said dispute. We find that Section 69A of the Act has been invoked by the revenue in the instant case. For the purpose of invoking this section, the onus is on the revenue to prove that assessee should be found to be owner of the money. In the instant case, revenue had only alleged that the assessee is the owner of the money. But the WhatsApp chat clearly shows that some group of lawyers were making payment of professional fees to some other lawyer, both in cash as well as in cheque. The said WhatsApp chat does not state that money has been paid to the assessee or the assessee had made payments to the arguing counsel. Hence, we hold that the assessee cannot be held to be the owner of the money at all in the facts and circumstances of the instant case. Hence, the provisions of Section 69A of the Act per se could not be made applicable.

8. One more excruciating fact that goes in favour of the assessee is that Ms Alka Lamba had issued cheque of ₹50,000 to the lawyer who had argued her case before the Hon'ble Delhi High Court. Hence, this is a transaction between Ms. Alka Lamba and third-party lawyer who is arguing counsel. This cheque was not credited to the bank account of the assessee. The assessee is no way involved in this also. Similarly, group of lawyers had made cash payments to the third-party arguing counsel. The assessee is not involved in this also. While this

is so, how the assessee could be found to be owner of the money of ₹5 lakhs so as to invoke Section 69A of the Act. This onus has not been proved by the revenue, in the instant case. Further advocate Manish Vashisht had requested the assessee to arrange for the pending Rs. 35 lakhs payment from the group of lawyers after acknowledging the receipt of ₹5 lakhs from the group of lawyers. This itself goes to prove that the assessee has merely acted only as a co-ordinator for the receipt of funds from the group of lawyers and handed over the same to the Shri Manish Vashisht (arguing counsel).

9. In view of the aforesaid observations, we have no hesitation in directing the Id AO to delete the addition made in the sum of ₹5 lakhs u/s 69A read with section 115BBE of the Act, as the assessee in the instant case need not explain the money of Rs. 5 lakhs. Accordingly, the groundNos. 1 and 3 raised by the assessee are allowed.

10. Ground No. 2 two raised by the assessee was stated to be not pressed at the time of hearing by the Id AR. The same is reckoned as a statement made from the bar and accordingly dismissed as not pressed.

11. Ground No. 4 raised by the assessee is general in nature and does not require any specific adjudication.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08/07/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08/07/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi