

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
3840/Mum/2023	2020-21	Raj Technology, A-2, 414, 2 nd Floor, Orchid City Centre, Bellasis Road, Mumbai [PAN: AAXFR3909G]	DCIT, Central Circle-4(2), 19 th Floor, Air India Building, Mumbai
3836/Mum/2023	2021-22		
3947/Mum/2023	2021-22	DCIT, Central Circle-4(2), 19 th Floor, Air India Building, Mumbai	Raj Technology, A-2, 414, 2 nd Floor, Orchid City Centre, Bellasis Road, Mumbai [PAN: AAXFR3909G]

For Assessee :	Shri Rahul Hakani,
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing :	27-08-2024
Date of Pronouncement :	25-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed appeals for the AYs. 2020-21 and 2021-22. The Revenue has filed appeal for the AY. 2021-22. All these appeals are directed against the orders passed by the Ld.CIT(A)-52, Mumbai. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are discussed in brief. The assessee belongs to Raj group, which is engaged in the business of dealing in mobile accessories/spare parts such as earphones, chargers, power banks etc. The assessee herein is a partnership firm and the partners are Shri Nitesh Mafatlal Jain and Shri Dikesh R. Mehta. A search u/s 132 of the Income Tax Act, 1961 ('the Act') was conducted in the hands of the assessee on 17-03-2021 alongwith Rubberwala group and others. Consequently, the assessment for the AY.2020-21 was completed u/s 143(3) r.w.s 153A of the Act. The assessment for the AY.2021-22 was completed u/s 143(3) of the Act.

3. The issue relating to addition made u/s 69C of the Act towards unexplained expenditure is common in AYs. 2020-21 and 2021-22. We shall deal with the same first.

3.1. During the search action conducted at the residence of Shri Dikesh R. Mehta, one of the partners of the assessee herein, the data backup of his phone was taken. It contained some image files and Excel files. During post search investigation, the Assessing Officer (AO) examined those details and took the view that the "image files appear to be invoices" issued by Chinese vendors in the name of "Raj-DK" and the Excel files "appear" to be freight invoices issued by the Chinese suppliers for shipment/delivery of goods to "Raj-DK". The term "Raj-DK" was deciphered as the assessee herein by the AO. The image files, which were considered to be invoices, contained the name of Chinese vendors, name of customer, date of order, description of goods, item-wise quantity of goods, item-wise price of goods, aggregate price of each item ordered and aggregate total of the price of all items. The Excel files contained details of name of customer, shipping date, total quantity of goods in pieces and weight in kg, total volume of shipment, cargo tracking note and shipping marks etc.

3.2. During post search investigations, Shri Dikesh Mehta was enquired about these digital files found in his phone. He explained that they are quotations received from Chinese vendors and further submitted that these items were not purchased by the assessee. With regard to the Excel files and other details, he expressed ignorance. However, the AO took the view that the assessee would have imported these goods and they represent unaccounted purchases. In this regard, the AO also referred to the answer given by Shri Dikesh Mehta, wherein he had stated that purchases of around 65% total goods come from China and had also explained the procedures for importing items from China. However, during the course of assessment proceedings, he reiterated that the firm has not imported any goods from China. By placing reliance on the image files and Excel files, the AO took the view that the assessee has imported goods from China and accordingly held that the value of these purchases should be assessed as unexplained expenditure u/s 69C of the Act. Upon the analysis of the image files, the AO segregated the purchases year-wise as under:-

Asst. Year 2020-21	-	Rs.24,02,088
Asst. Year 2021-22	-	Rs.59,56,592

Total	-	Rs.83,58,680
		=====

3.3. Before the AO, the assessee reiterated that it does not import goods from China and the details found in the phone of the partner were only quotations received from Chinese suppliers. It was explained that the mobile accessories business is a competitive one and the price fluctuations are high. Hence it is necessary for the assessee to keep track of the trend in prices to survive in the market. Accordingly, it was submitted that the assessee was used to keep inquiring about the prices by obtaining

quotations. It was further submitted that the assessee does not make direct purchases from China and all its purchases are from suppliers from Delhi.

3.4. The AO did not accept above said explanations. Accordingly, the AO concluded as under:-

“6.1 The assessee has predominantly raised contentions which have been already been dealt in detail above. No evidence has been brought forward by the assessee. It has been just stated that the images found are merely quotations, but the assessee has not been able to bring forward any such party, to whom these quotations were sent. Once the material is seized, the onus of providing explanation for the same lies on the assessee. It has to submit documentary evidences in support of his contentions.”

Accordingly, the AO assessed the amounts of Rs.24,02,088/- and Rs.59,56,592/- as unexplained expenditure of the assessee u/s 69C of the Act respectively in AYs. 2020-21 and 2021-22.

3.5. In the appellate proceedings, the Ld.CIT(A) confirmed the addition of Rs.24,02,088/- made in the AY.2020-21.

3.6. However, he modified the addition made in AY.2021-22. The Ld. CIT(A), in AY.2021-22, took the view that there may be rotation of funds for making purchases for the whole year. He took the turnaround period as two months. The Ld.CIT(A) also took the view that the addition of Rs.24,02,088/- made in AY.2020-21 should be considered as capital available to the assessee in the succeeding year. Accordingly, by making his own computations, he sustained the addition u/s 69C of the Act at Rs.9,93,613/-. The Ld.CIT(A) further took the view that the entire purchases of Rs.83,58,680/- (the aggregate amount of purchases made in

both the years) has been sold in AY.2021-22 and the profit earned thereon should be assessed to tax. Accordingly, he estimated the profit @ 4.48% and computed the profit at Rs.3,74,469/- Accordingly, he computed addition at Rs.9,93,613/- and Rs.3,74,469/- in AY.2021-22 and accordingly directed the AO. The assessee is in appeal against the additions sustained by the Ld.CIT(A) in both the years. The Revenue is in appeal for the relief granted in AY.2021-22.

3.7. We heard rival contentions and perused the record. The main contention of the Ld A.R was on the reliability of the digital images found from the phone of Shri Dikesh Mehta. According to Ld A.R, they are dumb documents and hence no credence should have been given to them. Further, it is contended that the AO has not properly followed the procedure prescribed u/s 65B of Information Technology Act, 2000 before relying upon the digital evidences. The Ld D.R, on the contrary, relied upon the order passed by Ld CIT(A).

3.8. We shall analyse the nature of evidences found from the phone of the partner Shri Dikesh Mehta. We noticed that they are in the form of image files and Excel files. Following points are worth noting:-

(a) The AO has taken the view that the image files “appear” to be invoices and Excel files appear to be “shipping details”. It can be noticed from the observations made by the AO himself that those documents “appear to be” such and such, meaning thereby, the assessing officer himself was not sure about the authenticity of the documents.

(b) The image files contained the name of buyer as “Raj-DK” and not the name of the assessee as “Raj Technology”. Under the law, the Invoice constitutes a “contract” and the same is enforceable in law for recovery of the amount due under the Invoice. Hence, the suppliers, in order to protect themselves, always mention correct name and address of the buyer in the Invoices, so that legal action can be taken under the law, if default, if any is committed by the buyer. The same shall be stringent, when the buyer is from a foreign Country, since recovery of amount from debtors would be more cumbersome and time consuming. In the instant case, the name of buyer is mentioned as “Raj-DK” and no address is mentioned. Even though, “Raj-DK” may be linked to the assessee, yet in the absence of full name and address of the assessee, it may not be correct to presume that these documents are ‘Invoices’.

(c) For the above said reason, the explanation of the assessee that image files are only “quotations” would merit acceptance.

(d) The submission of the assessee was that it has never imported goods from China. We notice that the AO has not disproved this claim of the assessee. It is not the case of the AO also that the books of accounts of the assessee show that there were imports from China, so that an inference could be drawn against the assessee. When the assessee has not imported goods from foreign countries, then the burden would shift to the AO that the goods mentioned in the image files were indeed imported by the assessee. However, the AO has not established that the goods mentioned therein have actually been imported and received by the assessee.

(e) The Excel files contained shipping details. However, it is not established that the goods mentioned in the Excel files were actually shipped to India. The AO was within his powers to enquire from the Custom authorities about the receipt of goods as per shipping bills, but the AO has failed to make the enquiries required to be made from Custom authorities with regard to the authenticity of the alleged shipping bills and invoices. If the assessee has imported the goods, then it would have paid customs duty. It is not established by the AO that the assessee has paid the same.

(f) During the course of search proceedings, no shipping bills, transportation details, customs duty paid details, warehouse details were found. This fact disproves the presumption entertained by the AO.

(g) We notice that the AO has expressed the view that the onus to show that these documents are not invoices/shipping bills would lie upon the assessee, while the contention of the assessee from the beginning was that they were mere quotations and the goods were never imported by it. When the assessee has not imported the goods, it would be impossible for anyone to prove the negative fact.

(h) The Ld A.R submitted that the assessee does not have “import export code”, which is essential requirement to import goods from foreign countries. This fact also disproves the presumption entertained by the AO.

(i) We notice that the AO has not conducted any independent enquiry with anyone like custom authorities, shipping agents, suppliers etc.

3.9. Further, the AO did not bring any corroborative materials and also did not conduct any independent enquiry to prove the genuineness of these documents and to disprove the explanations of the assessee. The assessee also submitted that the procedure prescribed under sec. 65B of the Information Technology Act, 2000 has not been followed by the AO. However, in our view, the AO has not proved the genuineness and the reliability of the image files and Excel files before placing reliance on them.

3.10. In view of the foregoing discussions, we are of the view these documents, being loose papers, should be classified as dumb documents only and the AO could not have placed reliance on these documents in order to make the impugned additions in both the years under consideration. In the case of *Common Cause vs. UOI* (2017) (77 taxmann.com 245) (SC), the entries in loose papers/sheets are irrelevant and inadmissible as evidence. It was further held that “such loose papers” are not books of account and the entries therein are not sufficient to charge a person with liability.

3.11. In the case of *CIT vs. Lavanya Land (P) Ltd* (2017)(397 ITR 246) (Bom), it was held that where entire decision is based on huge amounts revealed from seized documents but not supported by actual cash passing hands, no addition can be made. In the instant case also, the AO has drawn presumptions that the image files and Excel sheets represent import of goods by the assessee. However, the said presumption is not supported by any other evidence to prove that the assessee has actually imported the goods mentioned in the above said files.

3.12. We may note here that the Ld A.R placed reliance on the following case law in order to contend that the documents downloaded from

electronic items cannot be relied upon on its face value, but they need to be corroborated with other evidences: -

- (a) Smt Abba Bansal vs. PCIT (2021)(132 taxmann.com 231)
(Delhi Trib)
- (b) ACIT vs. Shanker Nebhumal Uttamchandani (2024)
(161 taxmann.com 536)(Surat Trib)
- (c) Virendra Singh Ratnawat vs. ACIT (ITA Nos. 179 to 181
(Jaipur Trib)
- (d) ACIT vs. Shri Manchukonda Shyam (ITA 87 (Viz) of 2020
dated 23-09-2020)
- (e) A Johnkumar vs. DCIT (IT A 3028 (Chny) of 2019
dated 13-5-2022)
- (f) Atul Tantia vs. DCIT (IT A No.492 (Kol) of 2021
dated 28-3-2023)
- (g) Designed Points vs. ACIT (IT A No.2517 (Delhi) of 2022)

The Ld A.R also placed reliance on certain case laws, which state that, upon violation of digital evidence manual, the addition cannot be made on the basis of electronic records unless they were corroborated. Without referring to the above decisions, we hold that the AO could not have made the impugned additions in both the years on the basis of image and Excel files, which were not supported by the corroborating materials.

3.13. In view of the foregoing discussions, we are of the view that, the instant case, the documents found in the phone of the partner of the assessee-firm cannot be considered to be credible evidence which would support the addition made by the AO in both the years, i.e., as discussed earlier, they can be considered to be dumb documents only, since they were not corroborated by any other independent documents or enquiry.

Accordingly, we hold that the additions made by the AO in both the years viz., Rs.24,02,088/- and Rs.59,56,592/- made respectively in AYs.2020-21 and 2021-22 are liable to be deleted.

3.14. Accordingly, we set aside the orders passed by the Ld.CIT(A) on the above said issue in both the years and direct the AO to delete the above mentioned additions made in both the years under consideration.

4. We shall now take up the appeal filed by both the parties for AY. 2021-22. The addition relating to un-explained purchases made u/s 69C of the Act has already been adjudicated in the earlier paragraphs. The remaining issue is related to the addition made on the basis of list of debtors found from the phone of the partner. Since the Ld.CIT(A) has granted partial relief, both the parties are in appeal on this issue.

4.1. From the mobile phone of Mr Dikesh Mehta, the partner of assessee firm, six Excel files containing the details of name of persons and the amounts mentioned against their name were found. The AO has observed that these files are established to be Sundry Debtors of the assessee-firm. Even though no date was found mentioned in these files, yet the AO took the view that they pertained to different dates within AY.2021-22. The maximum amount of outstanding was shown at Rs.17,75,92,611/- in one file. The assessee was not asked about this file in the statement taken u/s sec. 132(4) of the Act. When enquired about the file in post search enquiries, the assessee submitted that these files do not pertain to the business carried on by it. It was further submitted that they might have been sent by someone to take print outs. However, the AO noticed that some of the names mentioned in the list were found in the contact list of

the assessee. Accordingly, the AO treated the same as unexplained money and added the same to the total income of the assessee u/s 69A of the Act.

4.2. The Ld.CIT(A), however, took the view that the entire debtors balance should not be taxed. He took the view that the capital requirement would be of 10 days and hence that amount should alone be taxed. He estimated the same at Rs.48,65,551/- and directed the AO to assess the same. In addition to the above, the Ld.CIT(A) took the view that the profit element involved in the debtors balance should be assessed to tax. He estimated the same at Rs.79,56,149/-, calculated @ 4.48% of Rs.17,75,92,611/- and directed the AO to assess the same. Both the parties are aggrieved on this issue.

4.3. We heard the parties on this issue and perused the record. Following points need to be noted down on this issue:-

(a) The AO has taken the list as depicting sundry debtors balances on the basis of reply given by Shri Dikesh Mehta to a question, wherein he has stated that the same represents amount due from various persons. However, Shri Dikesh Mehta has also stated that these lists do not pertain to the business of the assessee. We notice that the AO has considered the first portion of the reply, but omitted to consider the second portion of the reply. Before the AO, the assessee has also stated that these lists might have been sent by someone to take print outs. In any case, the pick and choose approach is not permitted in the judicial proceedings.

(b) The name of the assessee is not mentioned in the document.

(c) Another important fact we noticed is that the impugned excel file is not dated. Hence it was only the presumption of the AO that it pertained to AY 2021-22. Under the Income tax Act, the unexplained income is assessable in the year to which it pertains to. Without establishing that the alleged sundry debtors belong to the assessee and it pertained to AY 2021-22, the AO could not have made the addition.

(d) The AO has made the addition u/s 69A of the Act as unexplained money. We noticed that the provisions of section 69A are applicable when the assessee is found to be the owner of any “money, bullion, jewellery or other valuable article”. The list of sundry debtors, in our view, will not fall in any of the categories of assets mentioned. Hence we are of the view that the AO was not justified in invoking the provisions of sec.69A for making this addition.

(e) The Trade debtors are always represented by the sales made to them. During the course of search action, no material was found to show that the assessee was indulging in making unaccounted purchases and sales. The AO has also not brought on record any material to show that the assessee has purchased and sold the goods outside the books. The image files found from the phone, which was alleged to represent import of goods by the assessee was for a sum of Rs.83,58,690/-, which could not help in generation of sundry debtors of Rs.17,75,92,611/-. From the financial statements, we notice that the turnover of the assessee for the year ending 31.3.2021 was Rs.2.69 crores only. Hence, the alleged sundry debtors list was not commensurate with the level of activities carried on by the assessee.

(f) In any case, the assessee has specifically stated that the same does not belong to it. However, no material was brought on record by the AO to disprove it.

(g) The AO did not conduct any enquiry with any of the sundry debtors in order to find out whether they have purchased goods from the assessee.

(h) Merely because some of the names found in the Sundry debtors were matching with the contact list of the assessee, it cannot be said that entire list shall belong to the assessee only. The said fact should have been corroborated by the AO by making due enquiries with the sundry debtors, which the AO has failed to do.

(i) The Ld A.R also submitted that the search official/AO did not find any whatsapp chat between the assessee and the persons mentioned in the list. It proves that the assessee has not supplied goods to any of them. Further, no other material like copy of invoices, balance confirmation letters, any other correspondence with any of such persons was found during the course of search action.

4.4. Further, the AO did not bring any corroborative materials and also did not conduct any independent enquiry to prove the genuineness of these documents and to disprove the explanations of the assessee. The assessee also submitted that the procedure prescribed under sec. 65B of the Information Technology Act, 2000 has not been followed by the AO. However, in our view, the AO has not proved the genuineness and the reliability of the Excel files before placing reliance on them.

4.5. In view of the foregoing discussions, we are of the view that these documents, being loose papers, should be classified as dumb documents only and the AO could not have placed reliance on these documents in order to make the impugned addition in AY.2021-22. In the case of *Common Cause vs. UOI (2017) (77 taxmann.com 245) (SC)*, the entries in loose papers/sheets are irrelevant and inadmissible as evidence. It was further held that “such loose papers” are not books of account and the entries therein are not sufficient to charge a person with liability.

4.6. In the case of *CIT vs. Lavanya Land (P) Ltd (2017)(397 ITR 246) (Bom)*, it was held that where entire decision is based on huge amounts revealed from seized documents but not supported by actual cash passing hands, no addition can be made. In the instant case also, the AO has drawn presumptions that the Excel sheets represent sundry debtors balance, i.e., the amount due to the assessee. However, the said presumption is not supported by any other evidence to prove that the assessee has actually sold the goods to these persons. There should not be any doubt that the goods could not be sold without purchasing them. The AO has not brought on record any material to show that the assessee has purchased goods outside the books of account in order to affect the sales to these sundry debtors.

4.7. The Ld A.R also placed his reliance on the decisions cited in paragraph 3.11 supra with regard to the electronic evidences.

4.8. In view of the foregoing discussions, we are of the view that, the instant case, the documents found in the phone of the partner of the assessee firm cannot be considered to be credible evidence which would support the addition of sundry debtors balance made by the AO in AY

2021-22, i.e., as discussed earlier, they can be considered to be dumb documents only, since they were not corroborated by any other independent documents or enquiry. Accordingly, we hold that the addition of Rs.17,75,92,611/- made by the AO in 2021-22 is liable to be deleted.

4.9. Accordingly, we set aside the orders passed by the Ld.CIT(A) on the above said issue in AY.2021-22 and direct the AO to delete the above mentioned addition.

5. In the result, both the appeals of the assessee are allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25-10-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 25-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai