

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2189/DEL/2023
(Assessment Year: 2018-19)**

Vinod Kumar Bajaj,
Plot No.1, Shivaji Enclave Road,
Rajouri Garden,
New Delhi – 110027.

vs.

DCIT,
Central Circle 32,
New Delhi.

**(PAN : AACR0962Q)
(APPELLANT)**

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Amit Garg, CA

REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 09.09.2024

Date of Order : 20.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal has been filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)-30, New Delhi [for short 'the Id. CIT (A)] dated 15.06.2023 for Assessment Year 2018-19 raising following grounds of appeal :-

- "1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad both in the eye of law and on facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the learned AO under section 153Ar.w.s 143(3) is illegal and bad in law as the same has been passed without having valid jurisdiction.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the learned AO under section 153A r.w.s 143(3) is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the assessment framed under section 153A r. w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred in making the addition in order passed u/s 153A r.w.s 143(3) of the Act, without any incriminating material having been found during the course of search.*
6.
 - (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the consequent reassessment framed under section 153A r.w.s 143(3) are in violation of mandatory provision s of Section 153A of the Act and as such the same is bad in eyes of law.*
 - (ii) *That the CIT(A) has erred in ignoring the contention of the assessee that the purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed by the AO is invalid and bad in law as the same was passed in violation of the circular No. 19/2019 issued by CBDT which mandates that no order shall be passed without there being valid Document Identification Number (DIN)*
8.
 - (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 18,00,000/- made by the AO on account of cash found du ring the course of search treating the same as unaccounted invoking the provision of section 69A of the Act.*
 - (ii) *That the addition has been confirmed rejecting the detailed submission and explanation brought on records by the assessee.*
9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition has been made by misinterpreting the statements recorded on oath during the course of search.*
10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO by indulging in conjecture and surmises only on the basis of presumption and assumption.*

11. *On the facts and circumstances of the case, the learned CIT (A) has erred in facts and in law in confirming interest charged u/s 234B and 234C of the Act.*
 12. *That the appellant craves lead to add, amend or alter any of the grounds of appeals.”*
2. At the time of hearing, ld. AR for the assessee not pressed the issue of DIN and other jurisdictional issues raised by the assessee in Ground Nos.2 to 7. He pressed Ground Nos.8 & 9. The other grounds no.10 & 12 are general in nature and ground no.11 is consequential in nature. Therefore, we proceeded to adjudicate the issue in grounds no.8 & 9 as per the submissions of the assessee.
 3. Brief facts of the case relating to grounds no.8 & 9 are, assessee is an individual and derives income under the head salary, income from business and profession and other sources. Assessee filed his return of income for the current assessment year on 14.08.2018 declaring total income of Rs.11,83,580/- under the head House Property and Other Sources.
 4. A search and seizure operation u/s 132 of the Income-tax Act, 1961 (for short ‘the Act’) was carried in the case of Bajaj Group on 20.04.2017 at various premises including the premises of the assessee as well as the locker opened in the name of the assessee. During the course of search, in the various lockers held in the name of Vikram Kumar Bajaj, Vinod Kumar Kumar Bajaj (assessee), Pramod Kumar Bajaj and other names, cash found in the locker no.72, 299 and 198 to the extent of

Rs.41,00,000/-, Rs.15,00,000/- and Rs.22,00,000/- respectively. The abovesaid lockers were opened in the joint names of Vikram Kumar Bajaj and assessee. At the time of hearing, the assessee explained that these cash were belonged to RNB Temple Trust. After considering various details submitted by the assessee, the Assessing Officer, based on the information, determined the cash found in various lockers on the basis of the date of last operation and the name of the person who last operated the locker. Accordingly, he found that locker no.72 of Federal Bank and Locker No.299 of SBI, Rajouri Garden, New Delhi was last operated by the assessee and the cash found in locker no.72 of Rs.41,00,000/- and in locker no.299 of Rs.22,00,000/- in the name of the assessee and added the same as unaccounted cash in the hands of the assessee for AY 2008-09. The Assessing Officer observed that despite allowing several opportunities to the assessee, assessee did not put forth any explanation/clarification in this regard, therefore, he satisfied that the assessee has concealed his income and accordingly, proceeded to make the addition of Rs.63,00,000/-.

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A)-30, New Delhi and filed detailed submissions before him as under :-

“7. During the course of appellate proceedings the appellant detailed written submission on each ground which has been carefully perused. The

relevant part of written submissions filed by the appellant are reproduced as under:

9.1. Your honour, a search and seizure action was carried out in the case of RNB Group on 20.04.2017. In consequence to the said search, and seizure action the bank lockers in the name of assessee was searched by the departmental officials in the month of May 2017. During the course of said search action, cash was found and seized from the following bank lockers and was added in the hands of the assessee by alleging the same to be unexplained cash:

<u>Date of search</u>	<u>Locker</u>	<u>Amount seized</u>
24.05.2017	72, Federal Bank, Rajouri Garden, Delhi	41,00,000
24.05.2017	29S, SBI, Rajouri Garden, Delhi	22,00,000
Total		63,00,000

9.2. In this regard, U is relevant to submit before your honour, that the said allegation has been made by the Id. AO in the absence of any evidence, on record as well as merely on the basis of illogical presumptions drawn by him. Your honour, during the course of search action at the lockers of the RNB Group, statements of Sh. Vikram Bajaj as well as Sh. Vinod Bajaj were recorded u/s 131/132(4) of the Act, wherein, they duly explained the cash found, in the bank lockers with the help of supporting documentary evidences. However, ignoring the explanation and the documents submitted by the assessee, Id. AO with a preconceived, notion made the addition by alleging the same to be unexplained cash of the assessee.

9.3. In this regard, it is relevant to refer to the statements of Sh. Vikram Bajaj as well as Sh. Vinod Bajaj recorded by the departmental officials during the course of search action at various bank lockers. Your honour, during the course of search action at locker no. 72, Federal Bank, Rajouri Garden, Delhi and locker no. 299, SBI, Rajouri Garden, Delhi the departmental officer required the assessee as well as Sh. Vikram Bajaj to give the details of the content/things kept in the said locker. In response to which it was submitted, that the locker no. 72, Federal Bank, Rajouri Garden, Delhi contains amount of cash which pertains to RNB Temple Trust and locker no, 299, SBI, Rajouri Garden, Delhi contains certain amount of cash which pertains to RNB Temple Trust and remaining cash is accounted, in the books of other group entity. Meaning thereby, your honour, the cash found, in the above mentioned 2 lockers pertained to the cash belonging to the following entities:

<u>Name of locker</u>	<u>Amount of cash found</u>	<u>Cash pertains to</u>
72, Federal Bank, Rajouri Garden Delhi	41,00,000	Entire cash pertains to RNB Temple Trust.
299, SBI, Rajouri Garden,	22,00,000	Rs. 8,00,000 pertains to Delhi RNB Temple Trust Rs. 14,00,000/- pertains to Ram Bajaj Foundation

Explanation with respect to cash of Rs. 14,00,000/- found in locker no.299, SBI, Rajouri Garden Delhi with belonged to Ram Bajaj Foundation.

9.4. *Your honour, during the course of search action at locker no. 299, SBI, Rajouri Garden, Delhi, the statement of Sh. Vikram Bajaj was recorded on oath, wherein vide question no. 5 and, 6 (refer PB Pg, no. 191-192) the departmental officials inquired him about the content of the locker. Your honour, in response to the said question, it was slated by Sh. Vikram Bajaj that the locker contains cash, part of which belongs to RNB Temple Trust and. the balance belongs to other group entity which were recorded in the books of accounts,*

9.5. *However, your honour, ignoring the contention raised during the course of search action, Id, AO made the addition of cash found in the bank lockers by alleging the same to be undisclosed cash of the assessee. In this regard, it is relevant to submit before your honour that the cash found was duly recorded in the books of accounts of the person to whom it belongs i.e. Ram. Bajaj Foundation and, was not undisclosed cash from some undisclosed sources as has been alleged by the Id. AO. In order to substantiate the same, we would like to draw your honour's kind reference towards the copy of audited financial statements of Ram Bajaj Foundation pertaining to AY 2017-18, placed at PB Pg. no.307-317 Ongoing through the said financial statements, your honour, will appreciate the fact that the cash balance as on 31.03.2017 with Ram Bajaj Foundation was Rs. 14,15,860/-.*

9.6 *Your honour, the above fact clearly substantiates the fact that the cash found during the course of search action amounting to Rs.14,00,000/- at locker no.299, SBI, Rajouri Garden, Delhi was duly accounted cash. Moreover, your honour, since, the above data has been arrived from the audited financial statement filed before the Income Tax Authorities, accordingly, the genuineness of the above claim of the assessee cannot be doubted. At this juncture, it is further, relevant to mention before your honour that the cash balance available with Ram Bajaj Foundation as on 31.03.2017 was duly accepted by the Id. AO vide his assessment order dated 15.04.2021 passed u/s 153C in the case of Ram Bajaj Foundation (placed at PAPER BOOK Pg. No.318-333). On going through the said assessment order, your honour, will appreciate that no adverse inference has been drawn by the Id. AO with respect to the cash balance available with Ram Bajaj Foundation as on 31.03.2017.*

9.7. *In view of the above submission, your honour, will appreciate the fact that cash of Rs. 14,00,000/- found during the course of search action was accounted cash and hence the addition made in the hands of the assessee by alleging the same to be his undisclosed income is liable to be deleted.*

Explanation with respect to cash of Rs. 49,00,000/- (Rs. 41,00,000 + Rs. 8,00,000/-) found in the above mentioned lockers with belonged to RNB Temple Trust.

9.8 With respect to the source of above mentioned cash found in the said lockers, due explanations alongwith documentary evidences were given by Sh. Vikram Bajaj as well as sh. Vinod Bajaj while recording their statement during search action at locker no. 72, Federal Bank, Rajouri Garden, premises. Accordingly, your honour at his juncture it is relevant to refer to the statement of the assessee and Sh. Vikram Bajaj recorded on 23.05.2017 by the departmental officer during and pre and post search operation, locker no. 72, Federal Bank, Rajouri Garden, New Delhi (since the said locker was in the joint name of assessee and Sh. Vikram Bajaj), placed at paper book page no. 162-186 and 187-190 respectively. Ongoing through the said statements your honour will acknowledge the fact that with respect to the details and source of cash contain in the bank lockers of RNB group, it was categorically submitted by the assessee as well as Sh. Vikram Bajaj that the cash contained in the lockers belongs to RNB Temple Trust which has been duly recorded in the books of the RNB Temple Trust. Your Honour, in order to substantiate the said contention, assessee submitted the copy of audited financial statements of RNB Temple Trust (refer Pit Pg. no. 138-142) to the departmental officers and. contended, that when the income tax department had a copy of audited financial statement of RNB Temple Trust much before the dale of search then how if can be alleged that the Cash found in the bank lockers of the RNB group was undisclosed.

9.9. However, your honour ignoring the explanation and the documentary evidences submitted by the assessee and Sh. Vikrum Bajaj during the course of search action at the bank lockers of the RNB group. Id, AO made the addition of the cash found by considering the same as unexplained cash. Your Honour, while making the said addition, the Ld. AO has made various futile allegations which are dealt in detail in the immediately succeeding paragraphs.

a. Sh. Vikram Bajaj and Sh. Vinod Bajaj (assessee) were unable to substantiate their claim that the cash found in the lockers pertains to RNB Temple Trust with any plausible evidence.

9.10. Your Honour Ld. AO vide para 8.2 of the impugned assessment order has alleged that Sh. Vikram Bajaj and Sh. Vinod Bajaj (assessee) were unable to substantiate their claim, that the cash found in the lockers pertains to RNB Temple Trust with any plausible evidence.

9.11. In this regard, it is relevant to submit before your honour that the said, allegation has been made by the Ld. AO with the pre conceived notion and merely for the sake of making addition in the hands of the assessee. Your Honour, vide answer to question no. 5 of statement of Sh. Vikram Bajaj (refer PB Pg. no. 126) and answer to question no. 11 of statement of Sh. Vinod Bajaj recorded (refer PB Pg.no. 149-150) at locker no. 72, Federal Bank, it has been, duly submitted by them, that the cash found in the locker is the cash in hand of RNB Temple Trust which has been collected, to build a huge temple at Bikaner. Further, vide answer to question no. 10 of statement of Sh. Vikram bajaj (refer PB Pg. no. 128) and answer to question no. 43, 45 and 46 of

statement of Sh Vinod Kumar Bajaj (refer PB Pg no. 181-182), it was categorically submitted by than that the complete amount of cash found in the locker of RNB group is duly recorded in the books of accounts of RNB Temple Trust. Your Honour in order to substantiate the fact that the cash found was already disclosed in the hooks if RNB Temple Trust Sh. Vikram Bajaj placed on record the copy of its audited financial statement, the same cannot be made evident from answer to question no, 2-1 of statement of Sh. Vinod Bajaj recorded on oath under section 131 of the Act.

9.12. Moreover, with respect to the source of cash found in the bank lockers pertaining to RNB Temple Trust, it was submitted, by Sh, Vikram Bajaj and Sh. Vinod. Bajaj that the cash was received as donation/gupt daan for the construction of temple at Bikaner, The said fact can he substantiated, from answer to question no. 20 of statement of Sh. Vikram Bajaj (refer PB Pg. No. 133) and answer no. 17 of statement of sh. Vinod Bajaj (refer PB Pg. no. 167) recorded during pre search operation at locket no. 72, Federal Bunk, Rajouri Garden, New Delhi.

9.13. In view of the above submission is beyond the understanding of the assessee that when both Sh. Vikram. Bajaj and Sh. Vinod Bajaj during their statement recorded separately and at different point of time confirmed that the cash belongs to RNB Temple Trust and submitted the copy of financial statement pertaining to AY 2016-17 duly audited on 12.04.2017 i.e. before the date of search, then on what basis it has been alleged by Ld. AO that Sh. Vikram Bajaj and Vinod Bajaj failed to substantiated their claim by giving any plausible evidence.

b. They were unable to provide any satisfactory explanation as to how the alleged "gupt daan" was collected by them.

9.14. Your Honour, vide para 8.2 of the assessment order Ld. AO has alleged that Sh. Vikram Bajaj and Sh. Vinod Bajaj has failed to explain as to how gupt daan was collected by them. Further, it has been observed by the Ld. AO that when it has been stated on oath that there was no hundi/donation box kept anywhere, than how the anonymous donation could have been collected a claimed by them.

9.15. In this regard, it is relevant to drawn your honours kind attention towards answer to question no. 20, 21/25,26 & 27 of statement of Sh. Vikram Bajaj (refer PB Pg.no. 133-136) and answer to question no, 17 to 26 and 48 of statement of Sh. Vinod Bajaj(refer PB Pg. no. 167-172 and 182 respectively). On going through the said answers yaw honour is appreciate the fact that smash action at the lockers, it. was submitted by Sh. Vikram Bajaj as well as Vinod Kum.gr Bajaj that the donation received by the trust was guptdaan received from different people and since it was a gupt daan. information pertaining to the person who donated the such amount was not gathered by them. Your Honour, it was further submitted by the Sh Vinod Bajaj in his statement that in the absence of gupt daan peti/donation box any empty bag (just like a laptop bag) or similar hag having a zip was used to collect

donation for the construction, of the temple. It Was further submitted by him that since his social circle was wide spread, accordingly, wherever he went for the meetings or social gatherings or during the meetings held in his office, he would talk about the religious activity of construction of temple in Bikaner and consequently if any person showed interest then Sh. Vinod Bajaj would, request them to donate any amount as they would like in the bag carried by him for the purpose of collecting donation for construction of temple. Your Honour, the said fact was also confirmed by the departmental officer from Sh Vikram Bajaj vide question no.26 and 27 of his statement In response to which Sh. Vikram Bajaj agreed with the explanation given by Sh. Vinod Bajaj.

9.16, Your Honour, since the donation received by Sh. Vinod Bajaj and, Vikram Bajaj was anonymous donation /gupt daan, accordingly, it was again and again submitted by them that the details/information of the person were not available with them. Moreover, it was further observed by the Ld. AO that when it has been stated on oath that there was no hundi/donation box kept anywhere, then how the anonymous donation could have been collected, a claimed, by them. In this regard, it was clarified by Sh. Vikram Bajaj vide answer to question no. 21 (refer PB Pg.no. 133) and by Sh. Vinod Bajaj vide answer to question no. 18 and 48 of their statement (refer PB Pg. no. 168 and 182 respectively) that since the temple was yet to be constructed, accordingly how it would have been possible for them to install a daan peti/donation box. It was further mentioned by them that the gupt daan peti/donation box will surely be installed once the temple gets constitution, however, till than for the purpose of construction of temple the donation was collected in any laptop bag or similar kind of bag. In view of the above submission your honour will appreciate the fad that the ld.AO has given his observation merely on his presumption and in the absence of any evidence on record, accordingly, no adverse inference can he drawn on the assessee on the basis of the same,

c. It was learnt that no registration under section 12A has been granted to the trust till date

9.17. Your Honour, vide para, 8.2 impugned assessment order Id, AO has observed that no registration under section 12A of the IT Act, 1961 has been granted to the trust till date (i.e. date of order 20.12,2019), Further, it has also been observed by the Ld. AO that trust does not even have, the hank account Your Honour on the hand of the said observations the Ld. AO has alleged that the claim of Sh. Vikram Bajaj and Vinod Bajaj that the cash pertains to RNB Temple Trust is not sustainable.

9.18. In this regard, it is relevant submit before your honour that the observation of the Ld. AO that RNB Temple Trust has not received any registration under section ISA is factually incorrect, since your honour vide order of registration (Office letter no.CIT(E) I 201718/ BEL- RR2657-16,10.2017/8429) under section 12AA dated 16.10.2017, RNB Temple Trust was granted registration (registration number? DEL 'RR26S7-16.10.2017) In this regard, it is further relevant to draw your honours kind attention towards question no. 18 of statement of Sh. Vikram Bajaj, wherein the departmental

officers questioned him about the registration granted under section 80G/12A of the Act. In response to the said question it was duly submitted by Sh. Vikram Bajaj that RNB Temple trust has applied for registration with the Income Tax Department between 10 April, 2017 to 20.04.2017. In order to substantiate the id contention of Vikram Bajaj, your orders kind attention is drawn towards acknowledgment received from income tax department dated 18.04.2017 (refer paper book page no.303-306) which duly substantiates The fact that RNB Temple Trust applied for registration under section 12 between 10 April, 2017 to 20.04.2017.

9.19. Further, your honour with respect to the observations the AO that RNB Temple Trust does not even had the bank account. It is relevant to draw your honours kind attention towards answer to question no.19 of statement of Sh. Vikram Bajaj (refer PB Pg, no. 133), wherein he has explained about the bank account of said trust. It was submitted by Sh. Vikram Bajaj that banks were approached around December, 2016 for opening bank account but at that time due to demonetization rush they were not able to open the same, later on some clarifications were pending due to which the bank account could not be opened. Thereafter, the trustees of the trust planned to open the bank account in April, 2017, however, then search under section 131 was conducted on various premises of the RNB group on 20.04.2017 due to which the opening of the bank account again got delayed.

9.20. On going through the above explanation given by Sh. Vikram Bajaj during the course of search action at Bank locker in the month of May, 2017, your honour unit appreciate the fact that the detailed reason for not having registration under section 12A and bank account was explained before the departmental officials. However, ignoring the explanation, given by Sh. Vikram Bajaj and the documents available with the IT Department, Ld. AO made illogical and baseless allegation against the assessee merely for the purpose of making addition by alleging the cash found in the locker to be unexplained.

d. That during the course of main search, none of the individuals of the Bajaj group stated that cash of this entity was kept in the bank lockers,

9.21. Your Honour, vide para 8.2 of impugned, assessment order Id. AO has observed that during the course of main search none of the individuals of the Bajaj group stated, that cash of this entity was kept, in the bank lockers. However, your honour while making the said observation the Ld. AO has failed, to mention, what inference he was trying to make from such observation.

9.22. In this regard, it is submitted before your honour that when, no specific question was raised by the departmental official from any of the individuals of the bajaj group with respect to the bank lockers/things kept in the bank locker, then how will any person from the bajaj group unit comment on the same. Further, your honour, it cannot be denied that (during search action, the person on whom search is carried out are under tremendous

pressure and fear and accordingly, in such circumstances it cannot be expected from the search person to answer/explain what has not been asked from them. Therefore, your honour, the said observations has no relevance in the present case of assessee and hence no adverse inference can be drawn against him.

e. The books of accounts of this entity were not found during the course of search and none of the key individuals disclosed the identity or existence of M/s RNB Temple Trust in their statement during the course of search action.

9.23. Your Honour vide para 8.2 of impugned assessment order AO has observed that during the course of search the books of accounts of RNB Temple Trust were not found anywhere and none of the key individuals disclosed, the identity or existence of M/s RNB Temple Trust in their statement during the course of search action. From the said observation Ld. AO has alleged that the contention of the assessee that the cash found in the bank locker pertains to RNB Temple Trust is not acceptable and seems to be an afterthought.

9.24. In this regard it is relevant to submit before, your honour that the allegation of the Ld. AO that books of account were not found, anywhere during the course of search is factually incorrect and is devoid of any evidence on record. In this regard, it is relevant to refer to the question no. 11 of the statement of Sh. Vikram Bajaj (refer PB Pg, no. 123) and question no.2 7 of the statement of Sh. Vinod Bajaj (refer PB _ Pg, no. 173/ wherein the departmental officers claimed that during the course of search action the books of accounts of RNB Temple bust were neither found from its registered premises nor from any other searched premises of Bajaj group, accordingly, it was questioned, in the absence of such books of accounts how they will be able to verify the cash found, from the lockers with the books. In this regard, it was answered by Sh. Vikram bajaj and. sh. Vinod. Bajaj that search, was conducted by income tax officials only and whether or not any books were found, can only be answered by the department itself. It was further contended that the income tax officials selectively took papers as per their convenience and understanding and accordingly if they left the books of accounts of RNB Temple Trust at its premises and how can the people of bajaj blamed for the same.

9.25 In view of the above statement of Shri Vikram Bajaj and Vinod Bajaj your honour will appreciate the fact that the books of accounts of RNB Temple Trust were present at the premises of Bajaj group only and accordingly Ld. AO was not justified in making false allegation against the assessee. Furthermore, your honour, vide question no. 24 of the Statement of sh. Vikram Baja (refer PB P. No. 134), it has been alleged by the Department that in the absence of any books of accounts found during the course of search, the submission of audited financial statement during recording of the statement seems to be nothing more than afterthought. In this regard, in response to the said query it was submitted by Sh. Vikram Bajaj when cm. application for registration of trust under section 12A was submitted to the income tax

department through online mode, before the date of search then how can it be alleged that the contention raised by the assessee is an afterthought Moreover it was also submit that while applying for the said registration the copy of audited financial statement of the trust was also submitted before the department that too before the date of search, then on what basis doubts can be raised on the genuineness of the audited, financial statement submitted by him at the time of his statement.

9.26. In view of the above submission it is event before your honour hat the allegation made by the Id. AO is nothing but wild presumptions drawn by him in order to draw adverse inference against the assessee. Accordingly, your honour no addition can be raised on the hands of the assessee on the basis such futile observation of the Id. AO.

f. That the cash found in the lockers as mentioned para 8 is most likely to be part of the cash received by the Bajaj group from the persons whose identity has been mentioned in code name in the loose paper seized as page no. 10 of Exhibit 21 of Annexure AS-3 of Party no. 3A.

9.27. Your honour while para 8.3 to 8.7 of the impugned assessment order, Ld. AO has tried to link the loose paper containing the code name pasted on. page no. 10 of Exhibit 21 of Annexure AS-3 of Party no.3A with another loose paper seized from the same premises and also pasted on page no, 10 of Exhibit 21 of Annexure AS-3 of Party no,3A, It has been alleged by the Ld. AO that the loose paper quoted in para 8.3 of the assessment order appears to be on account of how much each person owes to the Bajaj group and the loose paper quoted, in para. 8.3 of the impugned assessment order corresponds to the cash stored by Bajaj group in the various hank lockers. Your Honour from the said loose papers, vide para 8,7 of the impugned assessment the order the id, AO has observed, that since both the loose papers appears to have been written by the same person i.e. Sh. Vikram Bajaj in similar diaries s and have found, in the same office at the same place, accordingly, it cart be inferred, that the amount of cash mentioned in the loose paper refer to in para 8.4 i.e. cash found in the lockers corresponds to the cash received by the Bajaj group as recorded in loose paper referred to in para. 8,3. It has also been mentioned by the Ld.AO that all the lockers were last operated in 07.04.2017 to 19.04,2017, which exactly corresponds with the time period during which the payments have be.cn recorded to have been received by the persons mentioned in code word as per the loose paper referred under para 8.3 of the order.

9.28. Your honour before analyzing the merits of the addition made by the Id. AO it is relevant to mention here that the said seized material marked as Page no. 10 of Exhibit 21 of Annexure AS-3 of Party no- 3A (referred in para 8.3 of the impugned order), which was alleged id be seized from ground floor of RNB blouse, 3, Shivaji Enclave, New Delhi. The material has been used as an evidence against assessee, despite the fact that the search warrant of the premises from which it has been alleged to be seized was not in the name of assessee but in the name of M/s RNB Infrastructure Pvt. Ltd. and RNB Leasing and financial Service (which otherwise was non-existing on the date of

search). Accordingly, any addition made on the basis of documents/loose papers seized from the premises not searched in the name of assessee cannot be a subject matter of assessment under section 153A of the Act and is liable to be deleted. Moreover, the search carried out at the aforementioned premises i.e. RNB House no. 3, Shivaji Enclave, New Delhi, was an invalid search since the same was carried out on the basis of an illegal search warrant. These issues have been discussed in detail in submissions to ground no. 2-5 supra.”

6. Further, assessee filed additional evidences before the ld. CIT (A) and ld. CIT (A) remanded the matter back to the Assessing Officer and in the remand report, Assessing Officer gave various details/reasons for rejecting the additional evidences. The assessee also filed rejoinder to the remand report. Both the remand and response are reproduced in the appellate order. After considering the above, ld. CIT (A) gave partial relief to the assessee. After considering the statement recorded from Vikram Kumar Bajaj and the assessee during the search as well as post search proceedings, ld. CIT (A) observed as under :-

“17.19 Accordingly, I am of the view that the AO was not justified in doubting the existence of the trust and the belongingness of the cash found in lockers of the trustees of the trust including appellant (trustee) and Sh. Vikram Bajaj (president/trustee) to the RNB temple trust. The appellant has substantiated the nexus of this cash with RNB Temple Trust by filing the above discussed documentary evidences sanctity of which is not in doubt. Appellant and Sh. Vikram Bajaj maintained in their statements u/s 132(4) that the cash in the lockers in HDFC Bank and Federal bank pertained to RNB Temple trust in respect of cash found in the locker no.299 SBI Rajouri Garden. The appellant stated that part cash pertained to RNB Temple Trust and remaining to business entities. As per the audited books of RNB Temple Trust Rs.1,75,00,000/- on cash was set aside for the construction of Temple. Therefore, cash maximum to the extent of Rs.1,76,00,000/- can be considered as available in the books of Trust which can reasonably be accepted to be kept in the lockers of the Trustees. Accordingly, I hold that cash which has been shown to be set aside for the construction of temple in the financial statements of RNB Temple Trust amounting to Rs.1,75,00,000/- were kept in the lockers no.111, 198 HDFC Banks (1,30,00,000/-) 72, Federal Bank (41,00,000/-) and

299, SBI (4,00,000/-). Therefore, same shall be assessed in the hands of trust as per the provisions of law applicable in its case.

18. Regarding the cash found in the locker No. 299, SBI, Rajouri Garden, Delhi the appellant in its written submission has stated that Rs.8,00,000/- contained to RNB Temple Trust and remaining Rs 14,00,000/- pertained to Ram Narayan Bajaj Foundation. Out of Rs. 22,00,000/- cash found in the locker no.299 SBI, Rs,4,00,000/- was accepted as cash of RNB Temple Trust as discussed in para 17 above. In respect of balance cash of Rs. 18,00,000/- the appellant did not submit satisfactory evidence. During the appellate proceedings, the appellant claimed that Rs.14,00,000/- pertained to Ram Narayan Bajaj Foundation. The submission of the appellant, remand report of the AO and rejoinder filed by the applicant have been carefully perused. My observations are as under :

18.1 In the statement recorded on 23.05.2019 at the time of search of locker, Shri Vinod Bajaj has mentioned that the cash in the locker No.299 was partly of RNB Temple Trust and remaining of other business entity Ram Narayan Bajaj Foundation (Foundation) is a trust which runs University in the name of RNB Global University and is not a business entity. Had the cash of foundation been kept in the locker, the appellant would have remembered the name and stated so in his statement as the locker was operated by him just a day before the search. As the appellant did not name the entity whose cash was kept in locker no 299 his statement was found to be vague, evasive and misleading.

18.2 The appellant did not submit the cash book of Ram Narayan Bajaj Foundation during the appellate or remand proceedings to substantiate that the cash pertaining to it was kept in the bank locker of Shri Vinod Bajaj. Further, the appellant did not submit any document from Ram Narayan Bajaj Foundation to substantiate that Shri Vinod Bajaj was authorized to keep cash belonging to the University/Foundation. The Financial Statements of Ram Narayan Bajaj Foundation was audited subsequent to the search in which cash of Rs.14,15,860/- was shown as cash in hand as on 31.03.2017, out of which Rs.14,00,000 /- has been claimed to be kept in the locker which appears to be unusual/ doubtful. It is further noted that the locker was operated on 19.04.2017, therefore, the cash in hand as on 31.03.2017 in Ram Narayan Bajaj Foundation does not explain the availability of cash as on 19.04.2017.

18.3 Thus, I find that appellant failed to substantiate the availability of "cash in the hands" as on 19.04.2017 in the books of Ram Narayan Bajaj Foundation and that the cash pertaining to Foundation was kept with Mr. Vinud Bajaj or in his lockers. This claim is also contrary to the statement of the appellant u/s 132(4) recorded at the time of search of locker no.299 SBI, Rajouri Garden. Accordingly, I find that the balance cash of Rs.18,00,000/- was unaccounted income of the appellant. Therefore, addition to the extent of Rs.18,00,000/- is confirmed u/s 69A of the Act and balance addition of Rs.45,00,000/- is deleted."

7. Aggrieved with the above order, assessee is in appeal before us.
8. At the time of hearing, ld. AR for the assessee briefly explained the facts involving this case and he brought to our notice detailed submissions made before the ld. CIT (A) in page 54 of the order and he submitted that cash found during the search involving Bajaj Group cases to the tune of Rs.1.79 crores and ld. CIT (A) gave relief only to the tune of Rs.1.75 crores. He has sustained to the extent of Rs.4,00,000/-. In this regard, he brought page 39 of the paper book which is the balance sheet of RNB Temple Trust wherein they have huge fund set aside for the purpose of construction of temple and he brought to our notice the declared cash in hand for the year ending 31.03.2017 to the extent of Rs.1,79,03,880/-. He submitted that the cash found in the locker is more or less the same amount. He also brought to our notice statement recorded by Vikram Kumar Bajaj at page 95 of the paper book and in answer to question no.5 from the statement recorded dated 24.05.2017, Vikram Kumar Bajaj has specifically mentioned that the cash belonged to RNB Temple Trust partly and remaining in the books of other group entities. Further, he brought to our notice page 253 of the paper book which is additional evidences submitted before the ld. CIT (A) which is the balance sheet of Ram Bajaj Foundation wherein they have declared cash in hand of Rs.14,15,860/- and further he brought to our notice page 283 of the paper

book which is the cash book which tallies with the figure declared in the Balance Sheet. He also brought to our notice page 328 of the paper book which is the assessment order passed u/s 143 (3) of the Act dated 19.04.2021 where Revenue has accepted the books of account of Ram Bajaj Foundation. He prayed that all the cash found in the locker belongs to RNB Temple Trust AND Ram Bajaj Foundation.

9. On the other hand, ld. DR for the Revenue brought to our notice detailed findings of the Assessing Officer and specifically brought to our notice para 8.2 of the assessment order and submitted that there was no books of account found during the search. he relied on the remand report submitted by the Assessing Officer against additional evidences submitted by the assessee. He submitted that the informations submitted by the assessee during appellate proceedings as additional evidences are nothing but afterthought. He strongly insisted that no documents were found during the course of search, therefore, the cash found in the locker only belongs to the assessee.
10. In the rejoinder, ld. AR of the assessee submitted that all the evidences are duly submitted before the ld. CIT (A) and ld. CIT (A) has given categorical finding at para 17.18 that all the cash were belonged to RNB Temple Trust and cash belonged to other group companies. The additional evidences submitted by the assessee are nothing but Balance

Sheet of Ram Bajaj Foundation. He submitted that the books of accounts of the above entity were already accepted by the Department.

11. Considered the rival submissions and material placed on record. We observed that lockers kept in the name of Vikram Kumar Bajaj and assessee were searched and cash found in locker no.72 of Federal Bank and Rs.41,00,000/- and locker no.299 of SBI of Rs.22,00,000/-. After considering the submissions of the assessee, these cash were belonged to RNB Temple Trust and Ram Bajaj Foundation. After analysing various evidences submitted before Id. CIT (A), Id. CIT (A) gave a clear finding that the cash found during the search relating to RNB Temple Trust to the extent of Rs.1,75,00,000/- and he sustained the addition of only Rs.4,00,000/- even though there is a cash balance outstanding in the RNB Temple Trust to the extent of Rs.1,79,00,000/-. Id. CIT (A) gave relief to the extent of Rs.1,75,00,000/- only by observing the Balance Sheet that the funds earmarked for temple construction is only Rs.1,75,00,000/- and he has not considered the actual cash in hand with the Trust. After careful consideration, we are of the view that what is relevant is cash available with the Trust. As per the Balance Sheet submitted before us, it clearly indicates that the Trust holds cash in hand to the extent of Rs.1,79,00,000/-. Therefore, the cash found in the locker which pertains to RNB Temple Trust is already brought on record to the extent of

Rs.1,79,00,000/-. Accordingly, the addition sustained by the ld.CIT(A) to the extent of Rs.4,00,000/- is already explained. Therefore, this addition of Rs.4,00,000/- is also allowed.

12. Coming to the cash found in locker no.299 of SBI, the assessee has submitted in written submission that Rs.8,00,000/- contained in this locker belongs to RNB Temple Trust and balance amount of Rs.14,00,000/- pertained to Ram Bajaj Foundation. Ld. CIT (A) has given relief to the assessee to the extent of Rs.4,00,000/- and balance addition of Rs.18,00,000/- was sustained. We observed that ld. CIT (A) rejected the submissions of the assessee for the reason that the assessee did not submit any document from Ram Bajaj Foundation to substantiate that assessee was authorised to keep cash belonging to the Ram Bajaj Foundation. Further, the reason for rejecting the plea was that the locker was operated on 19.04.2017 and the Balance Sheet of Ram Bajaj Foundation was audited subsequent to the search. It was observed that the cash declared in the audited Balance Sheet was Rs.14,15,860/- and the same amount was claimed to be kept in the locker. After considering statements of both sides, we observed that no doubt, the Balance Sheet finalized by the foundation was accepted in its assessment. It is also fact on record that the Balance Sheet was finalized subsequent to the search and further, the locker was also operated one day before the search

operation. Keeping the overall facts on record, we observed that all the cash of RNB Temple Trust and the Ram Bajaj foundation was kept in the lockers operated by the family members of Bajaj Group and it is a fact on record that almost all the cash kept in the locker were belonged to the RNB Temple Trust and Ram Bajaj Foundation and 95% of the submissions made by the assessee are accepted by the Id. CIT (A). All the cash kept in the lockers which were specifically earmarked for the purpose of construction of temple and running of Ram Bajaj Foundation. Considering the fact that the cash declared in the Balance Sheet of both the entities are matching with the cash found in the locker, one has to go by the circumstantial presumption that the cash found in the lockers are meant for the temple construction and for the purpose of running of educational institution. Therefore, there is no evidence brought on record to show that this cash belongs to the members of Bajaj Family except applying presumption. Accordingly, we are inclined to delete the addition made by the Id. CIT (A).

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 20th day of November, 2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 20.11.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI