

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 1520/Del/2020 : Asstt. Year : 2017-18

Sh. Amit Jain C-215, Block-C, Vivek Vihar, New Delhi-110095 (APPELLANT)	Vs	ACIT Central Circle-13, New Delhi (RESPONDENT)
PAN No. AAEPJ3625J		

ITA No. 1953/Del/2021 : Asstt. Year : 2017-18

ACIT Central Circle-13, New Delhi (APPELLANT)	Vs	Sh. Amit Jain C-215, Block-C, Vivek Vihar, New Delhi-110095 (RESPONDENT)
PAN No. AAEPJ3625J		

CO No. 31/Del/2022

(in ITA No. 1953/Del/2021 : Asstt. Year : 2017-18)

Sh. Amit Jain C-215, Block-C, Vivek Vihar, New Delhi-110095 (APPELLANT)	Vs	ACIT Central Circle-13, New Delhi (RESPONDENT)
PAN No. AAEPJ3625J		

**Assessee by : Sh. Somil Agarwal, Adv. &
Sh. Shrey Jain, Adv.
Revenue by : Mr. Javed Akhtar, CIT-DR**

Date of Hearing: 14.11.2024	Date of Pronouncement: 21.11.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

These assessee's and Revenue's cross appeals ITA No. 1520/Del/2020 and ITA No. 1953/Del/2021; alongwith the assessee's cross objection CO No. 31/Del/2022 therein; for A.Y. 2017-18 arise against the CIT(A)-28, New Delhi order

dated 10.07.2020 passed in case No. 382/19-20, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Here both the parties at length. Case files perused.

3. We first of all deal with assessee's appeal ITA No. 1520/Del/2020 wherein he challenges both the lower authorities action invoking u/s 69A r.w.s. 115BBE of the Act for making addition of Rs.20,00,000/-. Learned Assessing Officer's detailed discussion in para 6 pages 2 to 3 dated 30.09.2018 has itself not disputed the clinching facts in principle that the assessee had filed cash flow statement(s) as on 01.04.2016 along with cash withdrawal from April to July, amounting to Rs.31,00,000/- which should simply brushed aside on the ground that "it is difficult to understand why would someone take out so much cash and keep in the home.....". All this leads us to the only inference that the learned Assessing Officer was more swayed by his conjecture and surmises than having rejected the assessee's cash flow statement filed during the course of assessment. The facts also remains that even learned counsel could not explain each and every cash withdrawal entry as forming source of the cash seized before us during the course of hearing. Faced with this situation, we deem it appropriate a lump sum addition of Rs.2,00,000/- only would be just and proper with a rider that the same shall not as a precedent. The assessee gets relief to Rs.18,00,000/- in other words. We further clarify that once the source herein in assessee's cash withdrawals in principle, the learned Assessing Officer's consequential computation shall not invoke u/s 115BBE against him. This assessee's appeal ITA No. 1520/Del/2020 is partly allowed.

4. The Revenue's cross appeal ITA No.1953/Del/2021 raise the following substantive grounds:

"1. The Id. CIT(A), Delhi has erred in fact's consideration that the income of Rs.12,99,00,000/- reflected in the seized paper is neither taxable u/s 69 as assessed by AO nor assessable u/s 56 as contemplated by the appellant and is of the character of the "speculative business transactions" taxable u/s 28 of the I.T. Act, 1961.

2(a) The Id. CIT(A) is erroneous and not tenable in law and on facts."

5. It is in this factual backdrop that we find the CIT(A) has reversed the Assessing Officer actions invoking section 69 r.w.s. 115BBE addition of Rs.12,99,00,000/- on the ground that the same does not deserves to be assessed at the higher rate under the said latter provision.

6. The Revenue's instant appeal has admittedly arisen on account of section 132 search action carried out in case of M/s Mahagun Group of Companies at Khanpur on 03.08.2016 thereby invoking section 69 r.w.s. 115BBE addition in all group cases including that of one Mr. Dhiraj Jain. It is at this stage that the learned counsel invited our attention to the tribunal's recent order dated 03.04.2024 declining Revenue's identical appeal ITA No. 1952/Del/2021 for A.Y. 2017-18 itself as under:

"5. Briefly stated, the facts of the case are that a seizure and search operation u/s 132 of the Act was conducted on 03.08.2016 and on subsequent dates in different business and residential premises of Mahagun Group of Companies.

6. During the course of search and seizure operation at the premises of Mahagun India Pvt. Ltd., incriminating documents which were found and seized contained details of commodity trading done by Shri Dheeraj Jain to the tune of Rs. 12.45 crores. Documents so found were confronted to the brother of the assessee who admitted unaccounted income on account of commodity trading amounting to Rs. 12,45,40,000/- for F.Y. 2016-17 pertaining to A.Y 2017-18.

7. *Relevant statement is extracted at page 5 of the assessment order wherein to Question No. 16, Shri Jain admitted the income as not recorded in the regular books of account and accepted the same as income from other sources and agreed to pay taxes on the same.*

8. *Return of income was accordingly filed including income of Rs. 12.45 crores shown as income from other sources being the amount disclosed during the course of search and seizure operation. Invoking 4 provisions of section 69 of the Act, the Assessing Officer was of the firm belief that income has to be charged to tax u/s 69 r.w.s 115BBE of the Act as income was never disclosed by the assessee and would never have been disclosed had there been no search proceedings.*

9. *The Assessing Officer further discarded the contention of the assessee that income is not chargeable under the head income from other sources.*

10. *Having carefully considered the assessment order, we are of the considered view that the assessee has earned income from commodity trading. Even if the same was not disclosed in its regular books of account by the assessee, the same was offered for tax as income from other sources.*

11. *In our considered opinion, provisions of section 69C of the Act do not apply as the impugned item is income and not investment. In our view, provisions of section 115BBE of the Act would apply if the income of the assessee is either declared or assessed u/s 68/69/69A/ 69B/69C/69D of the Act. But facts of the case in hand show that the assessee has declared income from commodity trading, which has been accepted as such by the Assessing Officer.*

12. *Entries on the documents seized relate to offline commodity trading transactions relating to the assessee and the amount of profit of Rs. 12.45 crores is reflected on the account of these transactions.*

13. *In our considered opinion, transaction reflected on the seized paper represents future contract of purchase and sale of gold and silver on various dates. Since the income has been accepted by the Assessing Officer, it can be safely presumed that the transactions recorded in the seized documents do not have any different character than that reflected on the seized paper and that is income of the assessee.*

14. *We are of the considered view that the assessee has clearly explained the source of profit earned by him and as the source of income is identifiable, deeming provisions of section 69 cannot be applied.*

15. *Considering the totality of the facts on the given circumstances, we have no hesitation to hold that the provisions of section 69 of the Act are not applicable on the profit from trading of speculative transactions. We,*

therefore, decline to interfere with the findings of the Assessing Officer."

7. This being the clinching case, we adopt judicial consistency in absence of any distinction on facts or law as the case may be, to uphold the CIT(A) foregoing detailed discussion rejecting applicability of section 115BBE of the Act in assessee's hands. Ordered accordingly. This Revenue's appeal ITA No. 1953/Del/2021 fails in very terms.

8. Learned counsel submits that he no more wishes to press for assessee's cross objection CO No.31/Del/2022 once we have upheld the CIT(A) foregoing lower appellate findings. Ordered accordingly.

9. No other ground or argument has been raised or pressed before us.

10. To sum up, this assessee's appeal ITA No.1520/Del/2020 is partly allowed. The Revenue's cross appeal ITA No. 1953/Del/2021 is dismissed and assessee's cross objection CO No. 31/Del/2022 is dismissed as rendered infructuous in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 21/11/2024.

Sd/-

(M. Balaganesh)
Accountant Member

Dated: 21/11/2024

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR