

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
ITA No.4310/Del/2019, A.Y.2014-15**

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| Shri Krishan Kumar Goel, 18, Rama Krishna Colony, Model Town, G.T.Road, Ghaziabad, Uttar Pradesh PAN: AEGPG4936H | Vs. | DCIT, Central Circle, Ghaziabad |
| (Appellant) | | (Respondent) |

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|---------------|---------------------------|
| Appellant by | None |
| Respondent by | Ms. Nimisha Singh, CIT-DR |

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| Date of Hearing | 25/09/2024 |
| Date of Pronouncement | 28/11/2024 |

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2014-15 filed by the assessee is directed against the order dated 29.03.2019 passed by the Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter, the 'CIT(A)'].

2. Following grounds are raised in this appeal: -

"1. That the order of the Ld. Commissioner of Income Tax (Appeals) (here in after referred to as "CIT (A)") dated 29.03.2019 is bad in law and on facts.

2. That the Ld. CIT (A) has erred in law and on facts in sustaining the addition of Rs.2,78,751/- as unexplained expenditure and Rs. 11,00,000/- as unexplained income relating to the jewellery.

2.1 That the Ld. CIT(A) has sustained the impugned additions without considering the fact and submissions of the assessee that these amounts were also related to the exchange or remaking of old jewellery and there was no evidence of any cash deposited or paid by the assessee to the jeweller, with the Ld. AO.

2.2 That the Ld. CIT(A) while sustaining the impugned additions on account of unexplained jewellery has overlooked the presumption u/s 132(4A) read with section 292C of the Income Tax Act, 1961 according to which primary burden to explain the alleged seized documents lie on M/s Singhal Jewellers since the alleged seized annexures were on his letter head.

3. That the Ld. CIT (A) has erred in law and on facts in sustaining the addition of Rs.13,30,000/- made on account of unexplained expenditure u/s 69C of the Act.

3.1 That Ld. CIT(A) has erred in law and on facts in not considering that the impugned addition was made on the basis of undated, unsigned dumb piece of paper which contains only certain figures without any reference of payment made or received. By doing so, he disregarded the well settled law which states that no addition can be made merely on dumb piece of paper without any corroborative evidence.

3.2 Without prejudice to the aforesaid, the Ld. CIT(A) has not considered the fact that the Ld. AO has not met the essential requirement of section 69C of the Act according to which period to which expenditure relates must be identified by the Ld. AO meaning thereby invocation of section 69C for making the impugned addition is unjustified.

4. That the Ld. CIT (A) has erred in law and on facts in sustaining the addition of Rs.1,01,65,000/- made on account of unexplained expenditure u/s 69C of the Act.

4.1 That Ld. CIT(A) has erred in law and on facts in not considering that the impugned addition was made on the basis of undated, unsigned dumb piece of paper which contains only certain figures without any reference of payment made or received. By doing so, he disregarded the well settled law which states that no addition can be made merely on dumb piece of paper without any corroborative evidence.

4.2 Without prejudice to the aforesaid, the Ld. CIT(A) has not considered the fact that the Ld. AO has not met the essential requirement of section 69C of the Act according to which period to which expenditure relates must be identified by the Ld. AO meaning thereby invocation of section 69C for making the impugned addition is unjustified.

5. That the appellant craves leave to add, alter, amend, substitute, delete and modify any or all the grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal.”

3. The relevant facts, in brief, for deciding this case are that the appellant/assessee was searched on 26.09.2014 under section 132 of the Income Tax Act, 1961 (hereinafter ‘the Act’). Accordingly, the assessment under section 153A of the Act was completed at income of Rs.1,88,85,960/- as against the income of Rs. 23,11,110/- declared in the Income Tax Return (hereinafter the ‘ITR’) filed in response to the notice under section 153A of the Act. Aggrieved, the appellant/assessee filed appeal before the Ld. CIT(A), who dismissed the appeal holding as under:

“5.9 In respect of addition of Rs.11,00,000/- made by AO on the basis of page – 71B of LP-6 of M/s. NSJ, Ghaziabad. It is seen that against the amount of Rs.11,00,000/- noting is written in the bill. It

is also seen that before the AO, appellant did not submit anything to explain the said figure of Rs.11,00,000/-. Now, before the undersigned, the Ld. A.R. contended that the said sum is also represents the old jewellery, which was given to the jeweler by way of exchange and there is no indication in the bill that said sum of Rs.11,00,000/- has been paid to the jeweler either in cash or through any other mode of payment. This jewellery is also covered by appellant's wealth tax return therefore, addition should be deleted.

5.10 The undersigned finds no merit in the contention of the ld. A.R. because, the page under consideration is self-explanatory in respect of amount and items shown in the page. At the top of page, the word "gold" is mentioned for an amount then word "bill" "cheque" and "cash" etc. are also mentioned for different figures. Though, no word has been mentioned against Rs. 11,00,000/- but it does not mean that the same is the value of old jewellery because, against the said sum no weight of jewellery of mentioned. While, being a jeweller, a person cannot leave to mention weight of jewellery received from the customer. It is beyond imagination that a jeweller and his customer deals in purchase and sales of jewellery by way of exchange of old jewellery deposited by customer and jeweller will not mention the weight of jewellery received. Moreover, it is contrary to the methodology accepted by the jeweller in his bill, as page-70 of LP-6. Further, in remote case, if, it is treated that said sum was the value of old gold jewellery deposited then it is not possible in any case that the value of jewellery would automatically come in round figures of Rs. 11,00,000/-. For strengthening the view, both the bills of M/s. NSJ may be seen in which, all figures relating to value of jewellery are in odd figures. The undersigned also wants the put own experience to strengthen the view that it is highly impossible to obtain a round figure for gold items. Therefore, it is established that the sum mentioned in the bill is nothing but unexplained expenditure in jewellery of the appellant for which, no explanation is with him. The various case laws relied upon by the appellant are distinguishable on facts and are not applicable to the present facts of the case. Hence, undersigned agreement with the finding of AO

and addition of Rs. 11,00,000/- is hereby confirmed and grounds of appeal of the appellant allowed in part.

6.1 Ground no. 4 to 6 pertain to addition of Rs. 13,30,000/- and Rs. 1,01,65,000/- on account of unexplained expenditure u/s 69C of the Act. Relevant portion of assessment order dealing with the additions is reproduced as under:-

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6.2 In this regard, appellant filed his written submission which is reproduced as under: -

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6.3 The undersigned has carefully gone through the assessment order, written submission, remand report and rejoinder as well as verbal arguments made by the A.R. It is seen from the assessment order that the A.O has made addition on account of unexplained expenditure, as per incriminating seized document, Page no. 60 & 61 found during the course of search, which is unexplained expenditure by the appellant for which he could not give satisfactory explanation before the AO. The brief facts leading to addition of Rs.13,30,000/- and Rs.1,01,65,000/-as unexplained expenditure by the appellant are as follows:

6.3.1 During the course of search action on 26.09.2014, an incriminating document inventoried as page-60 & page-61 of loose paper was found and seized from the premises of the appellant. This seized document represents bogus entries in loose paper. Assessing officer was not satisfied with the explanation of the appellant and treated as unexplained expenditure and added to the total income of the appellant.

6.4 Undersigned has carefully considered the arguments and submission of Ld. A.R. of the appellant. The explanation offered for explaining the expenditure in seized document by the appellant cannot be accepted because, it is undisputed fact that the seized paper is found during the course of search action and presumption

u/s 292C of the Act is squarely applicable. As per legal presumption u/s 292C of the Act seized document belongs to the person, from whose possession it was found and seized and contents of the seized documents are deemed to be true and correct. Appellant has not rebutted this presumption with cogent evidence. Further, it is settled law that legal fiction created by statute should be accorded its fullest meaning. Hence, it is concluded on the basis of seized incriminating document that appellant has received Rs.1,14,95,000/- which is not reflected in his books of account/bank statement.

In many judgements of Apex Court, it is held that taxing authorities are entitled to go beyond the apparent truth to arrive at the reality of the financial transaction. Also, it is settled law that test of human probabilities can be applied to arrive at the reality of the financial transactions. The reliance is placed on the following judgements of Apex Court.

(a) CIT Vs. Durga Prasad More (SC) 82 ITR 540

(b) CIT Vs. Sumati Dayal (SC) 204 ITR 801.

6.5 In view of the above detailed discussion of the factual matrix of the case and applying the test of human probabilities, undersigned find no reason to interfere in the addition made by AO. The same is therefore confirmed and grounds of appeal of the appellant are dismissed.”

4. The case was scheduled for hearing on various dates i.e. 31.08.2022, 05.12.2022, 22.02.2023, 16.05.2023, 25.07.2023, 18.09.2023, 16.11.2023, 18.01.2024, 05.03.2024, 08.05.2024, 01.07.2024, 21.08.2024, 17.09.2024 and 25.09.2024; however, the appellant sought adjournments on few occasions. Most of the times, neither the assessee nor anyone on behalf of the appellant/assessee attended the proceedings. From the above details, it is seen that this case

was scheduled many times for hearing; however, none from the appellant/assessee side argued the case on merit ever except filing adjournments sometime. We therefore, have no option except to decide this case after hearing the CIT-DR. Accordingly, we proceeded with.

5. The Ld. CIT-DR contended that the CIT(A) had given categorical findings. The seizure of documents resulting additions in the case of the appellant/assessee were not in dispute. Therefore, as per the provisions of section 292C of the Act, the seized documents belonged to the person from whose possession those were found seized and contents of the seized documents were deemed to be true and correct. She further contended that the appellant had not rebutted this presumption with any evidence. Therefore, the legal fiction created by the Act should be accorded its fullest meaning. The Ld. CIT-DR, placing emphasis on various parts of the appellate and assessment orders and the submissions of the assessee extracted in such orders, submitted that the appellant/assessee had failed to bring any material on the record to contradict the finding of the CIT(A); therefore, the appeal needed to be dismissed as such.

6. We have heard the Ld. CIT-DR at length and perused the case record. The sole issue for our consideration here is that whether the additions made on the basis of seized material is justified. We do not find

any fault in the reasoning of the CIT(A) while upholding the said additions.

We therefore, uphold the impugned order.

7. In the result, the appeal of assessee is dismissed.

Order pronounced in open Court on 28th November, 2024

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:28/11/2024

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI